



# UK IN A CHANGING EUROPE

UK-EU REGULATORY  
DIVERGENCE TRACKER

*4<sup>th</sup> edition - July 2022*

## INTRODUCTION

This is the fourth edition of the UK in a Changing Europe's regulatory divergence tracker, covering 30 cases of divergence since March 2022. There are 20 cases of active divergence, 9 of passive divergence, and one of procedural divergence. In addition, there is a new category of 'active convergence' where one side takes steps towards the regulatory standards of the other. There is one such instance in this tracker.

As the above numbers imply, the UK government has been energetic in its announcement of Brexit opportunities over the last quarter. The Queen's Speech was the focal point, although many statements repeated previous commitments, or were promises of initiatives to come. The most notable proposals since published are the **Procurement Bill** and **Genetic Technology Bill**. The full impact of the former - while unlikely to be a radical departure from EU standards due to obligations at WTO level - is hard to determine as much will depend on the secondary legislation which will flow from it. The latter fulfils an earlier consultation on a more permissive use of gene editing in England, and has potentially significant benefits for wider aims around net zero and sustainability. Again, its final shape will be tied to still-to-be-developed legislation around animal welfare - underlining the importance of continued scrutiny of the Bill as it passes through Parliament.

Another major development has been Jacob Rees-Mogg's announcement that he intends to oversee the introduction of up to 1,500 'sunset clauses' on inherited EU legislation. This represents an un-strategic approach to divergence, prioritising breadth and speed of change over precise, thought-through reform, and carries the risk of severe disruption for business. Elsewhere, Rees-Mogg is again **delaying the introduction of checks at the GB-EU border** - indicating more explicitly than before that government is willing to rely on EU regulators to protect UK consumers in order to maintain trade flows into Great Britain - even if GB exporters face barriers moving goods into the EU.

In terms of passive divergence, the most notable cases are the EU's twin **Digital Services** and **Digital Markets Acts** which are respectively about increasing the social obligations and diminishing the market dominance of big tech. They are also unambiguously part of an EU strategy to shape global norms around tech regulation (see also the introduction of a **common charger type for electronic devices**), with indications that US policymakers want to move in a similar direction on the Services Act in particular. This 'Brussels effect' limits the ability

of the UK to set its own tech regulation if it wants easy access to global markets, but at the same time there are signs that the UK and EU are philosophically in similar positions, with UK plans resembling the two landmark EU acts in many ways.

Indeed, UK proposals around **consumer protections**, a **Carbon Border Adjustment Mechanism (CBAM)**, **human rights in supply chains**, **waste export management**, **'ecodesign'**, a **'single customs window'** and **energy security** in response to Russia's invasion of Ukraine are all similar to the EU's. Ironically, it appears to have taken the UK's departure from the EU to underline the extent of their philosophical alignment. A question going forward will be whether the two sides can find grounds for closer and more formal cooperation where it is mutually beneficial: the CBAM, energy security strategy and **autonomous vehicles** (where the UK has moved ahead of the EU) stand out in this respect. The furore over the **Northern Ireland Protocol Bill** and the EU's continued blocking of UK access to **Horizon Europe** over related disputes (despite the clear mutual benefits of UK participation) suggests - however - that such cooperation may be some way off.

As always, a number of the cases have implications for Northern Ireland due to its unique position under the Protocol. New EU rules around **chemicals regulation**, **waste management**, **ecodesign**, **F-gases** and a single customs window could all create new barriers to trade between Great Britain and Northern Ireland. The EU's new chemicals regulations in particular are a fundamental rewriting of its rules - up to 12,000 new substances could face restrictions in Northern Ireland and the EU - which will lead to significant divergence from British standards and thus has major implications for future trade.

Finally, there are new points of divergence between England, Wales and Scotland. Defra's recently confirmed **'environmental principles'** and planned **reforms to the EU's Habitats Directive** are likely to lead to lighter-touch environmental regulation in England than in the rest of Great Britain. Wales' forthcoming **Taith scheme** for international study placements will mean its students have significantly more funding and choice when it comes to studying abroad than their English equivalents. Meanwhile, Scotland and Wales's alignment with EU rules on **single-use plastics** led to the first exception under the UK Internal Market Act to restrict the free flow of goods within it. Given the continued pattern of internal divergence, it is unlikely to remain an isolated case.

## CONTENTS

1. AGRICULTURE/FOOD STANDARDS	Genetic Technology (Precision Breeding) Bill (England)	5
2. CHEMICALS	Re-approvals for biocidal active substances delayed (GB)	7
3. CLIMATE & ENVIRONMENT	Consultation on Carbon Border Adjustment Mechanism (UK)	8
4. CROSS-CUTTING	Sunset clauses for EU legislation (UK)	10
5. CROSS-CUTTING	Northern Ireland Protocol Bill (UK)	12
6. CONSUMER PROTECTION	Consumer protection reforms (UK and EU)	16
7. DIGITAL & DATA	Data Reform Bill (UK)	18
8. EDUCATION/MOBILITY	Taith international exchange programme (Wales)	20
9. ENVIRONMENT	Environmental principles (England)	21
10. ENVIRONMENT	Consultation on reform to protected sites and species regulation (England)	24
11. ENVIRONMENT/PRODUCT STANDARDS	Restrictions on single-use plastics (Scotland & Wales)	26
12. FINANCIAL SERVICES	Financial Services and Markets Bill (UK)	27
13. FOOD STANDARDS	Removal of restrictions on certain food imports from Japan (GB)	30
14. HUMAN RIGHTS	Modern slavery amendment to Health and Care Bill (UK)	31
15. PROCUREMENT	Procurement Bill (England, Wales, NI)	32
16. PRODUCT STANDARDS	Easements to process for obtaining a UKCA mark (GB)	35
17. ROAD TRANSPORT	Highway code changes to allow self-driving vehicles (UK)	37
18. SCIENCE & RESEARCH	EU blocking UK access to Horizon Europe research programme	38
19. STATE AID & SUBSIDIES	EU legal challenge to UK contracts for difference scheme	40
20. TRADE & CUSTOMS	Delayed introduction of goods checks at GB-EU border (GB)	41
21. TRADE & CUSTOMS	Review into sale of goods in imperial measures (GB)	43
22. CHEMICALS	'Restrictions Roadmap' for chemicals (EU)	45
23. CLIMATE CHANGE	Update to F-gas regulation (EU)	47
24. DIGITAL & DATA	Digital Services Act (EU)	48
25. DIGITAL & DATA	Digital Markets Act (EU) / Draft Digital Markets, Competition and Consumer Bill (UK)	51
26. ENERGY/CLIMATE CHANGE	REPowerEU plan (EU) / Energy security strategy (UK)	54
27. ENVIRONMENT	Revisions to regulations on Waste Shipments (EU)	56
28. ENVIRONMENT/PRODUCT STANDARDS	Update to ecodesign regulations (EU)	58
29. PRODUCT STANDARDS	Amendment to Radio Equipment Directive (EU)	60
30. TRADE & CUSTOMS	Single Customs Window (EU)	62

ISSUE	SOURCE & STATUS	IMPLICATIONS & IMPACT	TIMELINE & REGION
<p><b>1.</b> <b>AGRICULTURE / FOOD STANDARDS</b></p> <p><b>ACTIVE DIVERGENCE</b></p> <p><b>INTERNAL IMPACT</b></p> <p><i>Genetic Technology (Precision Breeding) Bill to allow use of gene editing in plants and animals in England.</i></p>	<p><b>Summary:</b> The Genetic Technology (Precision Breeding) Bill was introduced to Parliament in May 2022.</p> <p>The Bill will make it permissible to use gene editing (GE) technologies in plants and animals in England. As outlined in the <a href="#">first divergence tracker</a>, GE - which involves altering the sequences of a plant or animal’s existing DNA - differs from genetic modification (GM) where DNA is added, sometimes from a different species.</p> <p>The EU currently classifies GE as a form of GM - and therefore does not allow use of the technology - but the <a href="#">UK government argues</a> they are substantively different. Its position is that GE is a way of creating changes which could have occurred through natural breeding methods, and should therefore be regulated differently to GM.</p>	<p><b>Impact:</b> The government <a href="#">argues</a> that ‘precision breeding techniques’ have a range of benefits as they allow farmers and producers to ‘develop plant varieties and animals with beneficial traits’ more efficiently and precisely.</p> <p>GE could, for example, accelerate the development of crops or animals less dependent on pesticides, fertilisers or antibiotics - making them more resilient, reducing costs for farmers, minimising damage to the environment and potentially improving animal welfare. It could also be used to breed out allergens and toxins from food. The UK government <a href="#">reportedly accelerated</a> the passage of the Bill following the food security concerns raised by the war in Ukraine.</p> <p>Some issues remain outstanding as the Bill begins its passage through Parliament. Dr Adrian Ely <a href="#">notes that</a> ‘Numerous studies show that most of the British public want GE food and ingredients to be labelled. How to deliver on these demands remains a key challenge for the Bill.’ There are also potential risks involved with GE such as the potential to create herbicide-tolerant crops, which in some contexts might</p>	<p><b>Timeline/region:</b> The Bill applies to England only and is subject to parliamentary approval.</p>

The legislation will exempt genetic changes ‘that could have been achieved through traditional breeding or could occur naturally’ from classification as GM. If passed the Bill will allow for genetically edited plants to be grown and raised for food. This follows a relaxation of regulations last month to permit research into gene edited plants.

promote the wider use of herbicides and thus harm biodiversity.

Dr Ely also points out that there are implications for trade: GE-goods produced in the UK may potentially not be permissible in other countries which regulate differently. Indeed, the EU has recently opened a public consultation on gene editing, leaving open the possibility that the UK and EU both liberalise their rules but in different manners - meaning they cannot trade gene edited goods with one another.

There are also concerns about potential animal welfare issues related to using GE methods. Professor John Dupré has welcomed the fact that, in accordance with recommendations from the Nuffield Council, ‘no changes are to be made to the regulation of this technology for animals prior to the development of regulations to protect animal welfare.’

The Bill applies to England only as agricultural policy is devolved and the Scottish and Welsh governments prefer to remain aligned to EU standards. This raises potential challenges for the UK internal market, as the Scottish and Welsh governments may seek to use common frameworks to

		<p>prevent the sale of GE goods from England in their markets in a similar manner to the recent ban on single use plastics from England (see <a href="#">entry #11</a>). Scottish and Welsh farmers may also feel at a competitive disadvantage compared to their English counterparts who have access to new GE technologies in their farming methods.</p>	
<p><b>2. CHEMICALS</b></p> <p><b>ACTIVE DIVERGENCE</b></p> <p><b>INTERNAL IMPACT</b></p> <p><i>Delay to re-approval deadline for biocidal active substances in Great Britain.</i></p>	<p><b>Summary:</b> The National Audit Office (NAO) <u>reports that</u> the Health and Safety Executive (HSE) ‘has extended approvals for biocidal active substances due to expire in 2021-22 to at least 2023 while it develops its biocide active substance assessment programme’.</p> <p>These assessments were <u>previously carried out by the European Chemicals Agency</u> and are designed to ensure that active substances in biocidal products are not damaging to human health and the environment.</p> <p>The extension of approvals which were set to expire in 2021/22 means the regulation of such substances in Great Britain will be less up-to-date than the EU and Northern Ireland (which</p>	<p><b>Impact:</b> This is another case of the UK struggling with its new regulatory responsibilities for chemicals following Brexit. Previous divergence trackers have highlighted delays to deadlines for <u>submitting registration data on chemicals to the HSE</u> (replicating the EU database to which the UK lost access) due to the high level of bureaucratic cost to businesses; and the slow pace of new chemicals restrictions post-Brexit <u>due to capacity issues</u> within the new UK ‘REACH’ system.</p> <p>Indeed, the NAO report identifies capacity problems as a pervasive trend among UK regulators which have assumed responsibilities which used to sit with EU bodies. Its report <u>notes that</u> the HSE’s Chemicals Regulation Division as well as the Foods Standard Authority (FSA) and Competition and Markets Authority (CMA) ‘are all finding it a challenge to recruit the specialist skills they need in some key areas.’</p>	<p><b>Timeline/region:</b> HSE’s extension of approval dates for biocidal products set to expire in 2021-22 runs to at least 2023 and applies in Great Britain but not Northern Ireland which remains covered by EU chemicals regulation under the Protocol.</p>

	<p>remains subject to EU decisions on chemicals regulation under the terms of the Protocol). This could mean some potentially harmful substances are kept on the market due to the delay to re-approvals.</p>	<p>It reports that the CMA has a 25% vacancy rate for legal roles; the FSA has expanded its Science, Evidence and Research Division by 115% but is struggling to recruit staff with expertise in toxicology; and similarly the Chemicals Regulation Division has grown its staff 46% but is struggling to find experienced toxicologists, with 25% of staff time spent on training in 2021-22. The Chemicals Regulation Division does not expect to reach full capacity for another four years. The NAO states there is ‘a risk that capacity constraints could delay regulatory decisions’.</p> <p>All three regulators <u>identified</u> losing access to EU databases and data-sharing agreements as an additional hindrance to carrying out risk assessments, and reported not having been able to make much progress on regulatory cooperation since the conclusion of the Trade and Cooperation Agreement.</p>	
<p><b>3. CLIMATE &amp; ENVIRONMENT</b></p> <p><b>ACTIVE CONVERGENCE</b></p> <p><b>INTERNAL IMPACT</b></p>	<p><b>Summary:</b> The UK government announced in May 2022 its intention to launch a consultation ‘later in the year’ on methods to address carbon leakage. Carbon leakage occurs when carbon-intensive producers move their operations from a more a heavily-regulated environment to a less-</p>	<p><b>Impact:</b> This is a notable development because the UK <u>had previously resisted calls</u> for a CBAM, despite the EU planning to introduce one gradually from 2023. As a <u>previous divergence tracker noted</u>, an EU CBAM would likely lead to significant financial and administrative costs for British</p>	<p><b>Timeline/region:</b> The UK consultation is set to take place later in 2022, with the Environmental Audit Committee calling on the Chancellor provide an initial</p>

<p><i>UK consultation on Carbon Border Adjustment Mechanism.</i></p>	<p>regulated one, to reduce the regulation and/or taxation of their carbon emissions.</p> <p>The potential policies the UK government will be consulting on include product standards and, notably, a ‘Carbon Border Adjustment Mechanism’ (CBAM). A <u>CBAM</u> involves imposing tariffs on imports of specified goods, to ensure they pay the same price for their carbon emissions as if they had been produced in the importing country. This is sometimes referred to as a carbon border tax.</p> <p>At present the UK’s main guard against carbon leakage is <u>providing free carbon emissions allowances</u> to companies deemed to be at risk of carbon leakage, under its emissions trading system.</p>	<p>exporters to the EU unless the UK aligned its emissions trading scheme with the EU’s (which it has not done).</p> <p>There are also implications for Northern Ireland, as the European Commission believes the EU CBAM should be applied to imports into Northern Ireland, to prevent it becoming a backdoor for carbon-intensive goods into the EU single market without paying the correct tariff. This raises the prospect of new checks and/or tariffs on goods between Great Britain and Northern Ireland, further adding to existing tensions around the Protocol (not least because the <u>UK says</u> the EU would have to ask for its consent to apply the CBAM in Northern Ireland).</p> <p>Yet recent developments suggest momentum towards a UK CBAM is growing. In April 2022 the Environmental Audit Committee <u>recommended</u> the UK develop a ‘comprehensive UK carbon border approach’, including a CBAM. It argued that UK carbon pricing on domestic production is limited in effect because it does not cover imports which make up 43% of UK consumption emissions. It further argued that while multilateral solutions (such as a global carbon price or a CBAM which is integrated with key partners, such as the EU) would most effectively address carbon leakage, such</p>	<p>report by the time of the 2023 budget. Whether an EU CBAM applies to Northern Ireland remains to be determined.</p>
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		<p>processes can be lengthy to agree and thus ‘unilateral action is essential in the short term’. It stated that ‘The Chancellor of the Exchequer should provide an initial report to the House on progress on a CBAM not later than Budget 2023’.</p> <p>Sam Lowe of Flint Global <u>argues</u> that if the EU’s CBAM is introduced, the UK may end up being ‘bounced into introducing at least a partial one’ or else face products with high carbon emissions being dumped into the UK instead of the EU.</p> <p>The extent to which a UK CBAM would offset the risks outlined above (about bureaucratic costs for UK exporters to the EU and new checks or tariffs on goods between Great Britain and Northern Ireland) depends on how highly aligned any future UK carbon pricing system is with the EU’s.</p>	
<p><b>4. CROSS-CUTTING</b></p> <p><b>ACTIVE DIVERGENCE</b></p> <p><b>INTERNAL IMPACT</b></p>	<p><b>Summary:</b> In May 2022 it was <u>reported by the Times</u> that the minister for Brexit opportunities, Jacob Rees-Mogg, is developing plans to introduce ‘sunset clauses’ for 1,500 pieces of EU legislation as part of the forthcoming ‘Brexit Freedoms Bill’.</p>	<p><b>Impact:</b> A ‘source’ <u>told the Times</u> that the aim of the sunset clause plan is to ‘force radical thinking’ within government about what inherited EU legislation ‘is actually necessary’. Rees-Mogg has argued the move would reduce the burden on businesses and the sunset clauses are expected to focus on regulations with high compliance costs.</p>	<p><b>Timeline/region:</b> The plans are part of the Brexit Freedoms Bill which has not yet been introduced. It could cover areas of devolved competence within the UK,</p>

*UK plans for sunset clauses on EU legislation as part of Brexit Freedoms Bill.*

Under the plan, a five-year expiry date will be placed upon the 1,500 pieces of legislation, by which point ministers will have to decide whether to keep, change or remove them.

The Times reported that Ministers want to apply the sunset clauses rules on chemicals; wine labelling, packaging and bottle sizes; high-powered vacuum cleaners and some planning regulations.

Then, in June 2022, the Cabinet Office announced the launch of a retained EU law dashboard which allows the public to explore EU-derived legislation which remains part of UK law and 'count down' the laws being removed. At the moment the dashboard's coverage of EU law appears to be incomplete.

The public has been encouraged to write in to the Brexit opportunities minister with suggestions for laws they would like to see amended, repealed or replaced.

Yet the plan raises several issues, which have been outlined in a blog for UK in a Changing Europe. In summary, the main issues are:

- Civil service capacity - as identifying, reviewing and reforming up to 1,500 pieces of legislation is a highly-time intensive undertaking.
- A raft of sudden deadlines in a few years' time leaves a risk that regulation falls away before it is adequately considered or replaced. It also gives businesses only a short timeframe to adapt to any new UK regulatory requirements, which will likely cause them major disruption.
- Where the UK modifies inherited EU regulations (rather than scrapping them altogether), UK businesses which want to sell into both markets may well have to comply with two sets of regulations rather than one, increasing bureaucracy.
- Widespread divergence creates many cases where international exporters will have to choose whether to first comply with EU or UK rules. Even if the UK's rules are simpler, they will likely prioritise compliance with

or where the Northern Ireland Protocol applies.

		<p>EU rules, as it is a larger market. The result could be limited or delayed access to certain goods in the UK.</p> <ul style="list-style-type: none"> <li>• The 1,500 reviews will inevitably cover areas where policy is devolved at the UK level and/or Northern Ireland remains aligned to EU standards under the Protocol. This could lead to more divergent standards within the UK internal market which in turn could cause trade disruption.</li> <li>• The sudden raft of changes could also create cases where the UK breaches non-regression clauses within the Trade and Cooperation Agreement. The Scottish government has <u>raised concerns</u> that the pace of change will put at risk its intention of aligning with EU standards, and that the Common Frameworks process for managing divergent standards within the UK may be ignored.</li> </ul>	
<p><b>5. CROSS-CUTTING</b></p> <p><b>ACTIVE DIVERGENCE</b></p> <p><b>INTERNAL IMPACT</b></p>	<p><b>Summary:</b> In June 2022 the government <u>introduced</u> the Northern Ireland Protocol Bill which, it says, is designed to fix parts of the Northern Ireland Protocol. If approved by Parliament, the Bill will give UK government</p>	<p><b>Impact:</b> The UK government is seeking to fundamentally and unilaterally rewrite the terms of an international treaty it signed up to in 2019, disregarding many of the obligations contained within it, and <u>has faced</u> widespread accusations that the Bill breaks international law. The UK says its action is justified under the international law ‘doctrine of necessity’</p>	<p><b>Timeline/region:</b> The Bill is currently making its way through Parliament and could be subject to amendment or defeat.</p>

*UK government's Northern Ireland Protocol Bill.*

ministers the power to override agreed elements of the Protocol through secondary legislation.

As the Institute for Government explains, the Bill would remove the effect of certain 'excluded provisions' in the Protocol and Withdrawal Agreement. This would mean elements of the Withdrawal Agreement would no longer have supremacy over UK law, giving the UK government the power to disapply parts of the Protocol or create new domestic law which overrides it. Only Articles 2, 3 and 11 - relating to individual rights, the Common Travel Areas and North-South cooperation respectively - will not be affected.

The House of Commons Library outlines that the Protocol can be overridden for a range of reasons including safeguarding 'social or economic stability in Northern Ireland', 'the territorial or constitutional integrity of the United Kingdom', the 'functioning of the Belfast

whereby legal obligations can be overridden by a need to 'safeguard an essential interest against a grave and imminent peril'. The government cites the strain placed on Northern Ireland and its socio-political institutions and 'the peril which has emerged' which needs urgent redress. It has separately argued the Protocol is leading to major trade disruption between GB and NI and 'a deep sense of concern that the links between Great Britain and Northern Ireland have been undermined'.

Most lawyers do not deem the UK government's invocation of the doctrine of necessity to be credible. It did not first exhaust the safeguards which exist to redress such concerns within the Protocol itself (such as Article 16) or use arbitration proceedings under the Withdrawal Agreement. It has also opted for a fundamental overhaul of the Protocol rather than seeking amendments to specific areas of concern.

If passed the Bill would raise serious questions about the operation of the rule of law in the UK. This could also do significant damage the UK's international reputation as a partner which can be trusted to live up to its commitments.

Agreement’ and for health, welfare or environmental interests.

The Bill also gives Ministers powers to change the working of the Protocol in specific ways.

- EU law would be disapplied on goods moving from Great Britain (GB) to Northern Ireland (NI) which are not deemed at risk of entering the EU, removing the need for checks. The UK government says such a ‘green lane/red lane’ system would be supported by a trusted trader scheme with data-sharing and penalties for non-compliance but details are sketchy.
- A dual regulatory regime would be established whereby companies supplying goods to NI can choose whether to follow UK or EU regulation - with EU law thus disapplied as far as is necessary. At the moment EU law applies in Northern

Further, as Professor Catherine Barnard puts it, it is unlikely a domestic challenge to the Bill will succeed: ‘Parliament can legislate freely to constrain the courts and there is very little the courts can do about it’. She also notes the Bill gives the executive ‘eye wateringly broad powers’ to alter existing legislation when they consider it ‘appropriate’. This could also do significant damage the UK’s international reputation as a partner which can be trusted to live up to its commitments.

Politically speaking, the government’s argument the Protocol is creating ‘peril’ which needs to be ‘addressed urgently’ also lacks credibility. Northern Ireland has not seen an upsurge in street violence, the Protocol is not one of the top issues of concern for NI voters and a majority of its Assembly members have condemned the Bill as ‘utterly reckless’. Moreover a majority of NI citizens think that particular arrangements are necessary for NI as a result of Brexit, and half think that the current Protocol provides appropriate means for managing the effects.

Professor Katy Hayward argues that the government’s evidence for the ‘strain’ caused by the Protocol is thus the 25 Assembly members of the Democratic Unionist Party (DUP)

Ireland to all policy areas covered by the Protocol

- GB changes to VAT and excise rules could be applied in Northern Ireland (whereas at present it follows EU rules in all areas covered by the Protocol).
- The jurisdiction of the Court of Justice of the EU (CJEU) would be removed (as would the right of EU representatives to survey how EU law is applied), meaning it no longer has the power to enforce rules or settle disputes.
- Northern Ireland would be fully integrated into the UK's state aid regime rather than the EU's.

The Bill also gives Ministers very wide scope to make further major changes to the Protocol via secondary legislation.

who are refusing to support the formation of a new NI executive until the Protocol is fundamentally altered. This, she says, is akin to telling your neighbour 'My kid likes to break things and I like to give him stones, so the only thing to do is to remove all the glass from your windows'

The Institute for Government has laid out the various legal routes the EU could pursue in response to the Bill - if and when it becomes law - if it considers the UK to have breached the terms of the Withdrawal Agreement. European Commission Vice-President Maroš Šefčovič has said a first step would be the possibility of resuming infringement proceedings against the UK - over its failure to comply with large parts of the Protocol - which were paused in September 2021. This could lead to financial penalties against the UK while an EU move to suspend or terminate the Trade and Cooperation Agreement would introduce tariffs and other barriers to UK-EU trade and cooperation.

## 6. CONSUMER PROTECTION

### ACTIVE DIVERGENCE

*New UK consumer protection rules and EU rules on Distance Marketing of Consumer Financial Services.*

**Summary:** In April 2022 BEIS announced plans to make it ‘clearly illegal to pay someone to write or host a fake review’ online, or to host consumer reviews without taking reasonable steps to check they are genuine. The reform is designed to reduce the prevalence of ‘bogus ratings’ which give a misleading impression of the popularity of a business or product.

Alongside this, the government wants to introduce ‘clearer rules for businesses’ so that consumers can more easily opt out of subscriptions they no longer want to pay for. Payment schemes like online savings clubs will also have to ‘fully safeguard customers’ money through insurance or trust accounts’ - to counteract previous cases such as ‘Farepak’ where the company collapsed and customers lost money they were saving with them.

BEIS is launching a consultation on its proposed legislation, after which more detail will be

**Impact:** The government’s announcement states: ‘The reforms underline the government’s commitment to seizing the opportunities provided by leaving the EU’. There is however little evidence of how the proposals make use of post-Brexit freedoms.

Professor Stephen Weatherill notes that under the EU’s Directive 2005/29 on unfair commercial practices (which the UK implemented in 2008) there is a general prohibition against unfair use of commercial practices (which would cover paying someone to write a fake review). The proposed new UK regulation could provide greater legal clarity but would not have contravened EU law had the UK still been a member. He further notes it could be argued - although it is difficult to determine in the abstract - that the new insurance requirements for businesses might have contravened rules about free movement of goods and services.

The government’s consultation response also states: ‘If we were still in the EU, there would be less scope and more constraints on reforms to Alternative Dispute Resolution (ADR). Any reforms would need to comply with the requirements of the EU’s ADR Directive. Now we are free to

**Timeline/region:** The Bill was included in the May 2022 Queen’s Speech but the timeframe for its passage through Parliament remains uncertain.

Consumer protection legislation will not apply to Northern Ireland, as it is a devolved power, however competition policy rules apply to the whole of the UK.

The EU proposal is to be discussed by the Council and Parliament.

provided on exactly what the new regulations will look like.

One clear intention is to give the Competition and Markets Authority (CMA) greater powers to enforce consumer law, ‘including new powers to fine firms up to 10% of their global turnover for mistreating customers’. Presently, such powers lie with the courts.

The government also plans on ‘boosting competition’ by increasing the powers of the CMA to gather evidence to tackle illegal anticompetitive conduct, to fine businesses abusing their market position, and to review ‘killer acquisitions’ where larger companies buy up potential rivals before they begin selling new services or products. However, mergers between small companies (where each company has a turnover of under £10m) will no longer be covered by the CMA ‘to reduce bureaucracy and keep the burden on smaller businesses to a minimum’.

implement proportional reforms in this area that are tailored best to UK businesses and consumers’.

However the extent to which the ADR Directive would have impeded any planned reforms is highly contestable. Professor Weatherill points out that the ADR Directive allows Member States to go beyond its requirements (known as a minimum measure of harmonisation): ‘Member States may maintain or introduce rules that go beyond those laid down by this Directive, in order to ensure a higher level of consumer protection’.

Looking more widely, the EU appears to be heading in a similar direction to the UK. In May 2022 the European Commission announced a reform of its consumer protection rules around the purchasing of financial services, focused especially on online consumers. New rules forbid the use of ‘dark patterns’ which guide users to make a certain choice online; giving consumers the right to speak to a human being; a 14-day ‘withdrawal button’ if consumers change their mind on a purchase bought electronically; and making key pre-contractual information (such as the total cost of a product

	<p>These plans were mentioned in the May 2022 Queen’s Speech as part of the <u>Draft Digital Markets, Competition and Consumer Bill</u>.</p>	<p>and potential risks) more visible when purchasing electronically.</p>	
<p><b>7. DIGITAL &amp; DATA</b></p> <p><b>ACTIVE DIVERGENCE</b></p> <p><i>Forthcoming UK Data Reform Bill.</i></p>	<p><b>Summary:</b> The Queen’s Speech in May set out the UK government’s plan for a <u>new Data Reform Bill</u>, while in June the government published its response to a consultation on reforming the UK’s data protection regime. The Bill is yet to be brought forward but the two documents give a sense of where the UK is seeking to head.</p> <p>The Queen’s speech laid out the central aims of the Bill: creating a new data rights regime which reduces the obligations on businesses over their handling of personal data; modernising the Information Commissioner’s Office and giving it greater enforcement powers; and increasing participation in ‘Smart Data Schemes’ to give businesses and citizens more control over their data. The first reform in particular would mean amending the UK General Data Protection Regulation (GDPR) copied over from the EU - and</p>	<p><b>Impact:</b> The law firm Norton Rose Fulbright’s <u>assessment</u> is that the proposed changes are more conservative than those outlined in the initial consultation. Nonetheless, the central focus remains on simplifying inherited EU GDPR regulations which the government believes ‘encourage excessive paperwork, and create burdens on businesses with little benefit to citizens’. Apart from this, Norton Rose Fulbright points out that the more limited personal data compliance demands could make the UK a more attractive destination for the development of products such as AI applications.</p> <p>The major risk that comes with such reforms, <u>as a previous divergence tracker has outlined</u>, is that the divergence from EU GDPR standards means UK loses its ‘adequacy’ agreement with the EU, which currently allows a free flow of data between the UK and EU up to 2025. The loss of the adequacy agreement would create new bureaucracy for businesses operating in both the UK and EU, and some estimates suggest it could cost major businesses millions of pounds a year.</p>	<p><b>Timeline/region:</b> The Bill is yet to be brought to Parliament.</p>

therefore diverging from EU standards on data protection.

The consultation response gives some more specific details on what the Bill might entail, including numerous specific tweaks to existing UK GDPR regulations.

The UK also wants to be more flexible and less prescriptive when seeking data adequacy agreements - which create a free flow of personal data between jurisdictions - with other partner states (including pursuing agreements with groups of countries). The stringent standards of the EU's GDPR mean it has only so far struck 12 global adequacy agreements. However, a more permissive approach to adequacy agreements could imperil the UK's adequacy agreement with the EU.

The UK government it says believes 'it is perfectly possible and reasonable to expect the UK to maintain EU adequacy as it designs a future regime', while the EU says it will closely monitor any UK reforms. Ultimately, all will depend on the final terms of the Bill and it is not possible to make definitive statements about the Bill's full implications until then.

**8. EDUCATION / MOBILITY**

**ACTIVE DIVERGENCE**

**INTERNAL IMPACT**

*Wales' 'Taith' international exchange programme for students and learners.*

**Summary:** The Welsh Government is funding a new international exchange programme called Taith, to be run by a subsidiary of Cardiff University. Running from 2022 to 2026, with funding of up to £65m, it will deliver opportunities to spend time abroad for learners and staff in adult, further, vocational and higher education, as well as schools and youth work. There will also be opportunities for students and educators from other countries to visit Welsh educational settings.

The scheme will not be confined to European countries and aims to have 15,000 participants from Wales and another 10,000 participants visiting Wales by August 2026; with 40 countries and 50 multi-annual partnerships by the end of 2024.

The scheme's aim is that participants 'will not only develop their own skills and experience, but will serve as Wales' ambassadors to the world'. Among other commitments (such as improving access for people with additional learning needs,

**Impact:** Taith is a response to what the Welsh government perceives as failings in the UK's new Turing scheme for international student placements, which has replaced the EU's Erasmus+. The Welsh government has criticised Turing for having a more limited budget than Erasmus+ and for the absence of 'inward' placements for international learners to visit the UK.

The potential funding of £65m over four years is a major boost in funding and placements for Welsh learners. Taith is worth £16m per academic year on average. According to the Turing scheme, around £5m of funding in 2021/22 (out of £99m overall) went to 12 Welsh organisations which successfully applied. Based on 5.2% of spending going to Welsh schemes and a total of 41,000 students participating across the UK, a rough calculation suggests around 2,000 Welsh students participated in Turing this year. Taith aims to have 15,000 Welsh students on placements (and another 10,000 visiting Wales) by 2026. Indeed, Taith also differs from Turing in offering 'two-way' international exchanges, with placements for international students to visit Wales.

Taith thus reflects the fracturing of the UK's international education exchange landscape post-Brexit. Whereas Erasmus+

**Timeline/region:** Taith is initially set to run in Wales from 2022 to 2026.

	<p>underrepresented groups, and people from disadvantaged backgrounds) Taith seeks to promote the Welsh language and culture to participants. This derives not only from sending students abroad but also ‘in exchange [bringing] students, learners and educators from around the world to Wales’ who ‘will enrich our education and youth sectors with new approaches and idea’.</p>	<p>acted as the central hub for outward and inward placements for students to and from the UK, there are now differing opportunities for learners and educational settings in different parts of the UK. Welsh learners have access to an additional placement scheme unavailable to their counterparts in England, which also looks set to offer far more funding per capita than Turing. Moreover, unlike in England, Welsh educational settings now have opportunities to apply to host placements for international learners. This may make Welsh universities more attractive than others in the UK, for both British and overseas students.</p> <p>Students in Northern Ireland, meanwhile, have access not only to Turing but also to Erasmus+, under an agreement with the Irish government. The Scottish government <u>has plans</u> for its own independent exchange programme, which will further diversify the picture.</p>	
<p><b>9.</b> <b>ENVIRONMENT</b></p> <p><b>ACTIVE DIVERGENCE</b></p> <p><b>INTERNAL IMPACT</b></p>	<p><b>Summary:</b> In May 2022 Defra published a draft policy statement which includes <u>five environmental principles</u> to guide policymaking cross-government. Once approved by Parliament</p>	<p><b>Impact:</b> Defra states that the new principles will assist in realising opportunities to strengthen environmental protections after Brexit. However, early indications suggest the principles may be of limited effect. Defra <u>notes</u> that ‘the principles are not rules and they cannot dictate policy</p>	<p><b>Timeline/region:</b> The principles are expected to be finalised in Autumn 2022, following parliamentary scrutiny.</p>

*Draft  
Environmental  
Principles for  
England.*

the statement will be legally binding. In Defra’s own words, the principles it sets out are:

- The integration principle states that policy-makers should look for opportunities to embed environmental protection in other fields of policy that have impacts on the environment;
- The prevention principle means that government policy should aim to prevent environmental harm;
- The rectification at source principle means that any environmental damage should, as a priority, be addressed at its origin to avoid the need to remedy its effects later;
- The polluter pays principle makes clear that those who cause environmental damage should be responsible for mitigation or compensation; and
- The precautionary principle states that where there are threats of serious or irreversible environmental damage, a

decisions by ministers’. Instead, they provide guidance around standards the UK government is signed up to internationally.

The question thus remains as to what material effect they will have on environmental standards. Defra says they provide ministers and policymakers ‘with the space to use the principles to enable and encourage innovation’. Yet environmental campaigners have expressed concern that this could lead to more limited regard for environmental standards, in particular by diluting the precautionary principle inherited from the EU.

The EU’s precautionary principle requires proof of an absence of danger or harm, whereas Defra’s new principle says ‘a lack of scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.’ This means some measures may be taken even if the risk of environmental damage has not been disproven. Defra’s statement also says innovative technologies should not be held to higher safety standards than existing ones where the level of risk is comparable.

The new principles apply only to England (and also Scotland in a small number of reserved areas).

lack of scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

Defra argues that the emphasis on proportionality will allow policymakers to apply the principles in a ‘lighter-touch way, where appropriate’, while the equal standards for innovative technologies it to prevent decisions which ‘unnecessarily hinder innovation due to novelty’. The environmental coalition Greener UK argues that this signals a move to a permissive ‘US-style’ system which could allow Ministers to show more limited regard for environmental interests. Government also points to the Environment Act 2021 which prevents ministers from diminishing existing levels of protection, yet this rests on the judgement of ministers themselves - meaning the safeguards are only as robust as the ministers enforcing them.

Wider concerns have also been raised by the academic Benjamin Sachs, who has previously pointed out how notions such as ‘environmental damage’ and ‘environmental harm’ have little meaning due to a lack of measurable baseline for determining what constitutes damage or harm. As environmental policy is devolved, the new principles apply only to England (and also Scotland in a small number of reserved areas). This leaves open the potential for divergence in UK environmental standards over time.

**10.**  
**ENVIRONMENT**

**ACTIVE**  
**DIVERGENCE**

**INTERNAL**  
**IMPACT**

*English  
consultation on  
reform to  
protected sites  
and species  
regulation.*

**Summary:** In March 2022 Defra launched a consultation paper on nature recovery, to look at whether existing regulations for protected sites and species (inherited from the EU) can be improved to help wider new commitments such as protecting 30% of land and sea by 2030 (known as 30x30). It notes that ‘just 38% of the area of our protected sites on land [is] assessed to be in good condition.’

It further argues that the existing ‘regulatory landscape for protected sites and species has become too complex’ highlighting the EU’s Habitats Directive. Last year the Prime Minister criticised the Directive’s ‘newt-counting’ requirement whereby surveys must be carried out on sites before development takes place to identify whether any protected species, such as the great-crested newt, inhabit it (in which case further licenses and process are required). The Prime Minister argues this stifles productivity (although the evidence on this is highly disputed) and Defra Secretary George Eustice has also

**Impact:** Dr Alan Bond, writing for the academic research group Brexit and Environment, reports that the fear of litigation is a noted flaw in environmental assessments required under EU law. When carrying out a habitat survey, there is a risk that third parties will contest a developer’s judgement and - because court action costs more than the initial survey - developers prefer to minimise the risk of legal challenge. Yet he argues this could be overcome through stronger legal protections for those making scoping decisions and has not advocated rewriting the existing EU rules.

Indeed, in response to the consultation the Brexit and Environment group has similarly noted that the government has opted for ‘reinventing the wheel’ rather than trying to implement existing rules properly. They suggest a more important priority would be addressing the fact that only 5% of the UK’s existing protected natural areas - integral to hitting the 30x30 target - are considered to be effectively protected and therefore ‘delivering for nature’.

A range of conservation groups have also criticised the government’s proposal as counter-productive. Wildlife and Countryside Link (which represents 60 wildlife groups) has argued that the proposals might actually make things more

**Timeline/region:** Proposals remain at consultation stage and would apply to England only.

previously called the Directive ‘rigid’ and ‘spirit-crushing’.

Defra’s paper argues the Directive’s lack of clarity about the exact type of evidence required in specific cases has led to a ‘risk averse’ situation where planning projects are curtailed by ‘legal uncertainty’ (and hence fear of litigation) rather than ‘scientific judgement’. It thus ‘wants to fundamentally change the way the assessments under Habitats Regulations work to create clearer expectations of the required evidence base at an early stage’.

As this remains at the consultation stage the final form of any reforms has not yet been outlined. They would apply to England only as environmental regulation is a devolved matter.

uncertain for business while also removing a layer of existing legal protection for habitats. It told the Financial Times that the proposals ‘would lead to more cost and uncertainty by chucking out decades of case law that’s helped businesses and courts interpret the law properly’. Similarly, the Royal Society for the Protection of Birds argues that rewriting the existing regulatory framework from scratch is ‘the best way to waste a decade’.

Brexit and Environment further points out that reforms applying to England raise challenges in terms of managing sites where migratory species move across national borders. Managing such differences may well become a new area of focus within the new structures for intergovernmental relations.

<p><b>11. ENVIRONMENT/ PRODUCT STANDARDS</b></p> <p><b>ACTIVE DIVERGENCE</b></p> <p><b>INTERNAL IMPACT</b></p> <p><i>Scottish and Welsh restrictions on single-use plastics.</i></p>	<p><b>Summary:</b> From 1 June 2022, the supply and manufacture a range of single-use plastic items has been banned in <u>Scotland</u>. It is now an offence for businesses to manufacture or supply items including single-use polystyrene cups, their covers and lids, single-use polystyrene food containers and single-use plastic cutlery, plates, drink stirrers, straws and balloon sticks. Wales has <u>similar ambitions</u>.</p> <p>This represents regulatory divergence within the UK. The UK adopted the EU’s <u>single-use plastics Directive</u> in 2019 but environmental regulation is a devolved policy area and the Scottish and Welsh governments have committed to matching or exceeding EU standards (to which Northern Ireland remains aligned under the Protocol, although <u>it has missed a January 2022 deadline</u> for meeting EU standards).</p> <p>Scottish and Welsh proposals <u>go further than regulation in England</u>, where the supply (but not manufacture) of certain single-use-plastic items is banned, while there are no restrictions on</p>	<p><b>Impact:</b> The decision is symbolically very significant, as it is the first time the devolved governments have come to an agreement to restrict the free movement of certain goods within the UK internal market.</p> <p>When the UK was an EU member, free trade within the UK internal market (England, Wales, Scotland, Northern Ireland) was guaranteed by the common rules of the EU Single Market. Brexit creates the possibility of divergence in regulation between different parts of the UK where policymaking is devolved (such as on environmental policy). In theory, that could create barriers to trade within the UK if, for example, a good or service permissible in England does not meet Scotland’s regulatory standards.</p> <p>As the Institute for Government <u>explains</u>, the UK Internal Market Act sought to address this by guaranteeing ‘businesses market access across the UK, provided they meet the regulatory standards in the part of the UK in which their goods are produced [or imported to], or service providers originate.’ Yet an additional series of ‘common frameworks’ have been established to manage situations where regulations diverge (<u>leaving open the possibility</u> of some regulations, subject to agreement, being excluded from the free market</p>	<p><b>Timeline/region:</b> The new restrictions apply in Scotland from June 2022.</p>
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	<p>other items now banned in Scotland (such as single-use plastic plates, cutlery, balloon-sticks and polystyrene containers).</p> <p>Following a <u>meeting of the Inter Ministerial Group for Environment, Food and Rural Affairs</u> in March 2022, it was agreed that Scottish and Welsh bans on single-use plastics would apply to products produced in England but sold in Scotland or Wales. This required a ‘narrow exclusion’ to be applied to the UK Internal Market Act (which guarantees the free flow of goods between the four nations of the UK) - the first time such an exclusion has been applied.</p>	<p>access principles); and the Northern Ireland Protocol also establishes a set of distinct rules for Northern Ireland.</p> <p>The single-use-plastics decision represents the first agreement to exclude certain goods from free market access principles. The exclusion applies to the products listed previously, however Scottish and Welsh Ministers have also <u>expressed a preference</u> for a broader exclusion of single-use-plastics, to avoid having to revisit the process if and when further products are banned.</p>	
<p><b>12. FINANCIAL SERVICES</b></p> <p><b>ACTIVE DIVERGENCE</b></p> <p><i>UK Financial Services and Markets Bill.</i></p>	<p><b>Summary:</b> In the Queen’s Speech, the government brought forward a <u>Financial Services and Markets Bill</u> (FSMB), which is yet to be introduced to Parliament. The main aim of the FSMB is to develop a domestic regulatory framework that is tailored to the specificities of the UK’s financial services sector.</p>	<p><b>Impact:</b> The FSMB represents a significant change in the UK’s approach to financial services regulation post-Brexit. It proposes to change the ways in which regulation is developed, is linked to the government’s post-Brexit priorities for financial services and identifies a secondary objective for regulators of competitiveness and growth.</p>	<p><b>Timeline/region:</b> Further details and timelines will become clearer when the Bill is formally introduced.</p>

This is important because the UK is currently operating with a complex regulatory landscape based on the onshoring of EU regulation into UK domestic Law called the ‘onshored acquis’. EU legalisation was onshored to prevent systemic financial instability at the end of the transition period and has been successful in achieving this. However, it is based on the institutional, regulatory and legislative structure of the now-EU 27 and is not directly transferable to the UK context.

The FSMB seeks to address these issues through operationalising proposals from the Treasury’s Future Regulatory Framework review. This review makes a number of important interventions aimed at better tailoring the acquis to the UK whilst also meeting the government’s strategic objectives for financial services as articulated in Sunak’s 2021 Mansion House Speech.

It makes provisions to empower UK regulators (the Bank of England, the PRA and the FCA) to

Notwithstanding the fact that the Bill is yet to be formally introduced to Parliament, some key questions have already arisen.

To what extent can the speed with which regulatory reviews are announced be matched by implementation? This is important given that Brexit costs to comply with the UK’s status outside the EU have been borne by businesses up front but it may be some time before Brexit dividends are delivered.

To what extent are the changes better understood as re- rather than de- regulatory? The PRA has noted that if it is given more rule-making responsibility from Parliament it will need to increase its staff base. This reflected wider issues regarding the staffing needs of regulatory bodies post-Brexit, not limited to financial services. It could be that the ambition for lighter-touch regulation is, especially in the short term, undermined by the practical challenges of establishing new regulatory architecture.

Key questions also remain concerning how the work of regulators will be scrutinised. The Treasury Select Committee has announced plans to establish a sub-committee to ‘take

develop regulations through their own rulebooks rather than regulation being developed through primary legislation. It also proposes a new secondary objective of growth and competitiveness for UK regulators.

It includes further provisions to:

- Revoke the onshored acquis and implementing changes identified in the Solvency II and Wholesale Markets Review - overall these aim to reduce regulation on UK financial services.
- Change the cryptoasset regulatory framework including bringing stablecoins within the domain of UK regulators.
- Protect 'access to cash' to ensure that withdrawal and debt facilitates are available across the UK.

the lead on scrutiny of regulatory proposals'. In its report it notes the possibility of cross chamber working on this issue.

In order to address these issues, and to ensure that the sector is not caught in a state of ongoing regulatory uncertainty, a clear strategy for post Brexit financial services will need to be developed so that regulatory changes can be prioritised.

**13. FOOD STANDARDS**

**ACTIVE DIVERGENCE**

**INTERNAL IMPACT**

*Great Britain removes requirement for radioactivity restrictions on certain food imports from Japan.*

**Summary:** The Food Standards Agency (FSA) has decided to remove a threshold which limits the permissible level of radioactivity (100 becquerels/kg) in certain food imports from Japan. Introduced initially following the Fukushima nuclear disaster, radioactivity restrictions were lifted on a range of products by the EU in 2019 but remained in place for 23 farm products including fish products, mushrooms and wild vegetables.

Those remaining restrictions have now been removed in the UK. The FSA stated that the decision ‘would result in a negligible increase in dose and any associated risk to UK consumers. Without specific import controls, the emphasis would fall on food businesses to ensure food is safe under General Food Law.’

Boris Johnson and Boris Johnson and the Japanese Prime Minister Fumio Kishida celebrated by sharing some Japanese popcorn.

**Impact:** This is another case of divergence in food standards following the EU’s decision to ban the food additive titanium dioxide (E171), which the FSA did not replicate. Unlike the E171 case, however, this is not likely to have a notable trade impact.

The EU’s E171 ban risks trade disruption between Great Britain (GB) and Northern Ireland (NI) as certain everyday food goods which use E171 in GB cannot be exported to NI (which continues to follow EU food standards under the Protocol), potentially disrupting certain GB-NI supply chains. However, the 23 Japanese products in question are peripheral to existing supply chains, thus diminishing the potential trade disruption.

However, it does reflect the ability of the UK to move faster on such decisions outside the EU, and to use its independent regulatory power to boost wider aims - in this case diplomatic ones. The Japanese government has been lobbying other countries to remove remaining food import bans, and the UK decision was announced on the same day the Japanese Prime Minister flew to Britain to finalise a new defence agreement.

**Timeline/region:** The relaxation of rules does not apply in Northern Ireland due to the terms of the Northern Ireland Protocol.

## 14. HUMAN RIGHTS

### ACTIVE DIVERGENCE

*Modern slavery amendment to UK Health and Care Bill.*

**Summary:** The UK government laid an amendment to its Health and Care Bill, following crossbench pressure, requiring the Secretary of State for Health ‘to make regulations with a view to eradicating the use by the NHS in England of goods or services tainted by slavery or human trafficking’.

The amendment was a response in particular to concerns about the NHS sourcing personal protective equipment (PPE) from certain Chinese companies which may be using forced labour, namely Muslim Uighurs in Xinjiang province.

The Financial Times reports that ‘billions of pounds’ of medical supplies were bought from China-linked supply chains during the pandemic.

Conservative MP Iain Duncan Smith, who was a leader of the campaign for the amendment, called on other departments to follow suit.

**Impact:** Anti-slavery charity Arise called the amendment ‘by some distance, the biggest advance in modern slavery legislation since the Modern Slavery Act 2015... much more significant in that it raises the bar massively for government procurement.’ The Modern Slavery Act focused primarily on human trafficking whereas this amendment looks at its presence in NHS supply chains.

It also reflects differences in approach between the UK and EU in tackling the same concerns about modern slavery practices (from China in particular). The previous divergence tracker covered the EU Directive on Corporate Sustainability Due Diligence which requires companies to examine their supply chains to ensure they meet human rights and environmental standards. Unlike the UK amendment, this is not limited to a specific sector and covers private companies. Yet it only applies to the largest companies operating in the EU (as well as those in their supply chains). Thus, the EU regulation is broader but less focused.

The EU’s approach is perhaps driven by an underlying aim to shape global norms, as major non-EU companies will have to comply to access its Single Market. By comparison, the UK’s new regulation does not seek to influence third countries but

**Timeline/region:** The amendment applies to the NHS England.

		<p>is more targeted at a specific sector where domestic issues have been identified.</p> <p>Nonetheless, some have <u>called on the UK to go further</u>, with the Liberal Democrats pushing the government to follow the lead of the USA which in December 2021 banned all imports from Xinjiang unless it could be proven they did not use forced labour.</p>	
<p><b>15. PROCUREMENT</b></p> <p><b>ACTIVE DIVERGENCE</b></p> <p><b>INTERNAL IMPACT</b></p> <p><i>Procurement Bill for England, Wales and Northern Ireland.</i></p>	<p><b>Summary:</b> In May 2022 the UK government published its <u>Procurement Bill</u> following its trailing in the Queen’s Speech. Procurement rules govern how public authorities may commission or purchase services and supplies, and to a very large extent existing UK law has been copied over from the EU.</p> <p>The UK government <u>argues</u> that the Bill will simplify procurement rules and make them more flexible. However, as much of the workings of the Bill remains to be settled by amendments and secondary legislation, it is better taken for</p>	<p><b>Impact:</b> The UK’s initial plans for procurement reform after Brexit were curtailed by wider international obligations. A ‘Buy British’ policy which reserved contracts for British firms <u>were paused</u> as after it emerged during consultation that it could contravene the UK’s commitments at the World Trade Organisation. Thus, the government’s focus is on streamlining existing regulations rather than fundamentally rewriting them.</p> <p>Yet the scale of these changes is hard to gauge at the moment. Professor Albert Sanchez-Graells <u>notes that</u> the new Bill ‘only represents a piece of the envisaged new regulatory architecture’. Much of the scope and impact remains to be</p>	<p><b>Timeline/region:</b> The Bill is subject to amendments as it undergoes parliamentary scrutiny and will also be supplemented by secondary legislation.</p> <p>It will apply to England, Wales and Northern Ireland, with some devolved decision-making. Scotland is outside its scope.</p>

the time being as a general indication of where the UK government is seeking to go.

Whereas the EU uses four different procurement regimes depending on the sector, most UK regimes will now be brought into a single system (with certain sector-specific exclusions such as for healthcare commissioning and other sector-specific rules e.g. for utilities). This will be based on changing the existing government procurement service to create a platform tenderers can use regardless of what they are bidding on and where core credentials need only be submitted once. Alongside this will be a 'single transparency platform' to provide suppliers with information on all potential bidders, and a single platform for contract data designed to facilitate investigations by a new Procurement Review Unit where there are concerns around awards.

There will also be more flexible rules for buyers, intended to speed up processes, and more opportunities for them to negotiate with

defined by a (yet-to-be-published) 'voluminous' amount of secondary legislation, statutory and non-statutory guidance.

One example is the plan to abandon the MEAT criterion in favour of MAT, reducing the emphasis on economic considerations in procurement decisions. The Bill's wording states that award criteria will include consideration of 'price, other costs, or value for money in all the circumstances'. This implies economic considerations will always be considered in the award process, and indeed the government itself notes that 'value for money' remains the most important criterion. Thus, it is hard to gauge to what extent the Bill will truly deliver on the government's promise of increasing the importance of non-economic criteria in the public procurement process. Much may depend on further guidance or secondary legislation.

There are similar questions elsewhere. Professor Sanchez-Graells notes that while there will be some 'significant' changes in terms of the level of flexibility in the procurement process it does not look 'truly transformational'. Indeed, he argues that the government's impact assessment underestimates the potential costs to businesses by assuming contracting authorities and not businesses will shoulder the

suppliers. There will also be a move away from the ‘most economically advantageous tender’ (MEAT) criterion on awarding contracts in favour of the ‘most advantageous tender’ (MAT) ‘which will require buyers to take account of national strategic priorities such as job creation potential, improving supplier resilience and tackling climate change’ (although value for money will remain the highest priority).

cost of moving to a new system: ‘As if businesses did not need to invest in training their workforce in the new rules, did not need fresh legal advice (including on compliance), did not face a risk of costly legal procedures (e.g. concerning debarment), or did not need to adapt their own IT systems to the new approach to digital procurement (once that is clarified).’ Greater flexibility could create new tasks for businesses having to carefully read tender documents to double-check ‘flexibility points’; and there is also an inherent pay-off whereby greater flexibility increases the level of discretion used in contract awards and thus the risk of corruption. It is hard to tell exactly what balance the UK has struck before the system begins operation.

Thus, uncertainty remains the predominant feature of the Bill. It contains no information on key issues such as treatment of contracts subsidised by awarding authorities; the use of electronic procurement rules; centralised and collaborative purchasing, use of labels; testing; third-party certification; variants; quality assurance; environmental management; contract performance; and abnormally low tenders. The earlier government Green Paper also had ambitions for the creation of a non-judicial mechanism for

		<p>the review of tender challenges. The government recognised that procurement litigation is too costly and slow to adequately remedy problems while a procurement is live, but no such mechanism appears in the Bill.</p> <p>Finally, powers to create subordinate legislation, including setting financial thresholds and strategic priorities for contracting authorities, <u>rest with the devolved governments</u>. This raises a significant possibility of divergence in some rules between England, Wales and Northern Ireland. The Scottish government <u>has already opted</u> not to follow the new Bill.</p>	
<p><b>16. PRODUCT STANDARDS</b></p> <p><b>ACTIVE DIVERGENCE</b></p> <p><b>INTERNAL IMPACT</b></p> <p><i>Easements to process of obtaining a UKCA mark.</i></p>	<p><b>Summary:</b> In June 2022 the UK government <u>decided</u> to introduce ‘easements’ to the process of obtaining the new ‘UKCA’ product safety mark. A previous edition of the divergence tracker <u>explained why</u> the UK needs to replace the EU’s ‘CE’ mark with a UKCA equivalent (denoting virtually identical standards), and why the transition has caused problems for businesses.</p> <p>Under the new easements, any EU conformity assessments of products undertaken before 2023</p>	<p><b>Impact:</b> The series of easements reduces some of the bureaucracy around the transition to the UKCA mark, and they have <u>been welcomed by business groups</u>, while also noting that other issues remain of concern.</p> <p>The British Chambers of Commerce argues it does not change the underlying fact that businesses will still face major cost pressures to obtain UKCA marks from 2023 onwards (the easements apply to tests up to the end of 2022). The Construction Products Association has also expressed concerns about the lack of testing capacity in GB. This risks delays to products getting authorisations and therefore being</p>	<p><b>Timeline/region:</b> The UKCA mark applies to GB and will be mandatory from 2023.</p>

will be considered as the basis for a UKCA mark - without the need for re-testing a product - in 2023.

Similarly, manufactured items with a CE mark which are imported into the UK before the end of 2022 will be permitted for sale without first obtaining a UKCA mark.

It will also now be permissible for replacement parts to be imported into Great Britain (GB) without first receiving a UKCA mark, as long as the part complies with the requirements which were in place at the time the original product which it is being added to was placed on the GB market.

UKCA markings will now also be permitted via a sticky label or accompanying document, to make it cheaper and easier to supply UKCA-approved goods to the GB.

placed on the GB market once the UKCA mark becomes mandatory in 2023.

The British Chambers of Commerce has previously said it is 'not persuaded' by the need for the mark - an alternative approach would be to continue accepting that any good which has previously obtained a CE mark is admissible on the GB market, something the Brexit opportunities Minister Jacob Rees-Mogg has previously hinted he might be amenable to.

## 17. ROAD TRANSPORT

### ACTIVE DIVERGENCE

*Highway Code changes to allow first self-driving vehicles onto UK roads.*

**Summary:** In April 2022 the UK government announced forthcoming changes to the Highway Code to allow the ‘first wave’ of driverless technology to be used on UK roads.

New regulations will permit drivers of a vehicle in self-driving mode ‘to view content that is not related to driving on built-in display screens’. The video content being viewed must be on the built-in screens, with it remaining illegal to use mobile phones while a car is in self-driving mode (as research shows this poses a greater risk of distracting drivers). Drivers must also remain ready to resume control within ten seconds should they be prompted by their vehicle (for instance when approaching a motorway exit).

The use of self-driving technology will be permitted for vehicles travelling at slow speeds (under 37mph) in a single lane on motorways, and the first approvals for vehicles could be granted later this year. The government is intending to have a full framework in place for the ‘widespread deployment’ of self-driving

**Impact:** The UK government argues that the long term rollout of self-driving technology could improve road safety - as human error is a factor in 88% of recorded road collisions - ‘spark the end of urban congestion’ and improve the reliability of public transport services through traffic lights and vehicles communicating to keep traffic flowing. It also argues there is a long-term economic benefit, claiming the autonomous vehicle industry could create ‘around 38,000 new, high-skilled jobs within Britain’s industry that would be worth £41.7 billion by 2035’.

The UK would have been able to implement these regulations as an EU member state, because the underlying technology (known as ALKS) has been approved for use in the EU and there is no common EU legal framework on autonomous vehicles, bar certain guidelines which the UK regulations seemingly conform to.

In the longer term the use and sale of UK autonomous vehicles into the EU (the UK’s biggest export market) could be hindered by wider regulatory divergence. The EU is working on its own legal framework for autonomous vehicles, which UK vehicles would have to conform to in order to be used or sold in the EU. Moreover, open access to data is

**Timeline/region:** The first authorisations for the use of autonomous vehicles on UK roads could be given before the end of 2022.

	<p>vehicles by 2025. This <u>will address</u> who is responsible for a self-driving vehicle, including in cases of crashes, with a recent report from the Law Commission <u>recommending</u> it be the manufacturer which obtained the license for the self-driving technology.</p>	<p>integral to autonomous vehicles (for example in judging liability in the event of an accident) and thus UK vehicles <u>would have to be compliant</u> with EU GDPR regulations, which the UK government says it is planning to diverge from.</p>	
<p><b>18. SCIENCE &amp; RESEARCH</b></p> <p><b>ACTIVE DIVERGENCE</b></p> <p><i>EU blocking UK access to Horizon Europe research programme.</i></p>	<p><b>Summary:</b> The EU is blocking the UK from accessing its Horizon Europe research programme due to ongoing tensions over the Northern Ireland Protocol. Horizon is a major EU funding programme for research and innovation (R&amp;I) with a current budget of €96bn up to 2027, facilitating collaboration across partner countries.</p> <p>The UK's ability to continue participating in Horizon was agreed as part of the Trade and Cooperation Agreement (TCA) negotiations, although as a third country the UK will have to make a specific contribution (rather than have its contribution met from the EU budget) and</p>	<p><b>Impact:</b> Continued access to Horizon <u>was a central ask</u> of UK universities during the TCA negotiations due to the level of funding and opportunities for collaboration it provides. The Russell Group of universities has now written a letter to the UK Prime Minister <u>asking him</u> 'to make a personal intervention to break the deadlock'.</p> <p>UK universities are considered international leaders in scientific R&amp;I and the Russell Group has <u>pointed out</u> that its network of 24 universities had won over 1,400 grants from the European Research Council (a central plank of Horizon) worth more than €1.8bn (more than France as a whole). Horizon 2020 - the predecessor to Horizon Europe - <u>helped created</u> over 31,000 collaborative links between the UK and partners around the world, with €1.4bn worth of funding going to almost 2,000 British businesses (60% of which were SMEs).</p>	<p><b>Timeline/region:</b> The UK's accession to Horizon Europe is yet to be formally finalised.</p>

will no longer be able to take out more funding than it contributes to the programme.

Although the UK's continued participation was agreed to, the EU is yet to formalise this, which led to the UK threatening to pull out of the programme last summer. The EU now says that the 'regrettable' decision not to formalise UK membership is 'collateral damage' resulting from the 'political impasses' over trade in Northern Ireland.

If the UK becomes a 'third country' to Horizon rather than an associate member it will not be able to apply for European Research Council grants or hold lead status on collaborative projects.

The UK government has a 'plan B' fund worth £6bn over three years should the UK remain locked out of Horizon. However, Universities UK argues that Horizon as a collaborative programme is unique in being worth more than the sum of its parts: 'You can do individual country to country collaborations, but they are scrabbly and difficult. The visionary and brilliant thing about Horizon is that it allows the 'best of the best' to work together at a scale that is just impossible when stitching together domestic collaborations'.

Moreover the House of Lords European Affairs Committee has reported evidence that the lack of agreement on Horizon is already having a chilling effect on science and research in both the UK and EU, by creating uncertainty in networks which experts say 'need to be nurtured'. Professor Kurt Deketelaere told the Committee that EU researchers were increasingly ignoring opportunities for collaboration with UK partners. Further research shows the international collaboration by British firms under Horizon halved between 2016 and 2019 due to uncertainty about the UK's future status.

The Committee notes that further uncertainty will exacerbate these issues, and has called the UK's association

		<p>to Horizon a ‘win-win’ which not only provides the UK with funding opportunities but opens up mutual commercial, scientific and cultural benefits through the partnerships and outputs (EU scientists <u>concur</u>). The Committee has written to the UK government and EU Commission expressing concern over ‘the UK’s accession is apparently being treated as a negotiating pawn in the context of separate difficulties in the UK-EU relationship’.</p>	
<p><b>19. STATE AID &amp; SUBSIDIES</b></p> <p><b>ACTIVE DIVERGENCE</b></p> <p><i>EU legal challenge to UK contracts for difference scheme.</i></p>	<p><b>Summary:</b> In March 2022 the EU launched legal proceedings against the UK over a change to its ‘Contracts for Difference’ scheme. The scheme has been running <u>since 2014</u> and provides financial support to renewable energy companies which face high upfront and long-term costs. Successful bidders <u>receive contracts</u> which insulate them against the costs of surging energy prices. <u>Since December 2021</u>, the UK has asked bidders to detail how much of the contract’s value will be produced in the UK.</p> <p>The EU <u>alleges</u> that this ‘local content criterion’ incentivises bidders to source content from the</p>	<p><b>Impact:</b> This is notable as the <u>first formal dispute</u> between the UK and EU since the end of the transition period which involves a formal trade body.</p> <p>On one level it has the potential to add further tension to what is already a fraught relationship with the EU over governance of the Brexit-related agreements. In response to the EU’s decision a UK official told the media: ‘At a time when the west should be united in defeating Putin, this act of envy by Brussels is ill-judged and ill-timed.’</p> <p>Moreover, the UK has indicated it will not concede the point to the EU - ‘The UK abides by WTO law and will rigorously contest the EU’s challenge’ - which makes a formal WTO ruling likely. This can take years to complete (and the UK <u>has</u></p>	<p><b>Timeline/region:</b> Formal WTO proceedings would begin later in the year and can take years to complete.</p>

	<p>UK rather than importing it, and that ‘this violates the WTO’s [World Trade Organisation] core tenet that imports must be able to compete on an equal footing with domestic products’.</p> <p>Consequently, the EU has requested consultations with the UK at the WTO, after previously raising its concerns directly with the UK ‘on several occasions, but to no avail’. This is the first step in formal WTO proceedings, and if no satisfactory solution is found within 60 days the EU can ask the WTO to set up a panel to deliver a ruling.</p>	<p><u>a right of appeal</u> if it loses) which means the issue is likely to drag on. Should the UK ultimately lose, it would have to end the local criterion practice or else face the <u>risk of EU countermeasures</u> which could spark a trade war.</p> <p>More broadly, it points to wider potential challenges for the UK in setting up its own domestic subsidy regime after Brexit. The UK has expressed a desire to use its new regime to ‘level up’ the UK through regional investment, with a particular focus on industries which accelerate the path to net zero. Yet experts have <u>previously flagged</u> that this approach risks violating the terms of both the UK-EU Trade and Cooperation Agreement and WTO rules. The fact that the EU has already made a first challenge in relation to a technical amendment to an existing UK regime suggests that such legal challenges could become a recurring feature as and when the UK’s state aid regime kicks fully into gear.</p>	
<p><b>20. TRADE &amp; CUSTOMS</b></p> <p><b>ACTIVE DIVERGENCE</b></p>	<p><b>Summary:</b> The UK government <u>has delayed</u> the introduction of new checks on food imports from the EU, which were set to begin in July 2022. Instead, the Minister for Brexit opportunities,</p>	<p><b>Impact:</b> This is the fourth time such a delay has occurred. Jacob Rees-Mogg <u>argues</u> the delay was necessary to avoid an ‘act of self-harm’ as the new checks would have created £1bn in additional costs for businesses in managing the new bureaucracy. Trade groups including the Cold Chain</p>	<p><b>Timeline/region:</b> Checks at the GB-EU border which were set to be introduced in July 2022 have now been delayed to the end of 2023.</p>

<p><i>UK delays introduction of new checks on goods at the GB-EU border.</i></p>	<p>Jacob Rees-Mogg, has said they will come into force at the end of 2023.</p> <p>Under the now-postponed checks, most plant and animal products <u>would have needed</u> to have full documentation including export health certificates upon arrival in the UK. They would also have been subject to physical checks at designated Border Control Posts away from the point of arrival itself.</p>	<p>Federation and the Federation of Small Businesses <u>said</u> the decision helped avoid making an already difficult situation worse, as businesses are challenged by wider new trading rules with the EU and rising inflation.</p> <p>Ports, however, have expressed annoyance at having spent millions of pounds on preparing for the new physical checks which will no longer commence from July. They are <u>demanding compensation</u> from the government.</p> <p>The National Farmers Union <u>says</u> the decision puts British farmers at a competitive disadvantage against their EU counterparts because British exporters must comply with full import controls when exporting food products to the EU, which are not in place for EU exporters to Great Britain (GB). Farming and veterinary groups have <u>also expressed serious concern</u> about the risk of letting animal and plant diseases into Britain through an ‘effectively open’ border.</p> <p>Indeed, a <u>June 2022 report</u> by the Foods Standards Agency says the reduced controls create ‘significant risks’ of failing to identify safety incidents on food imports of meat, dairy</p>	
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<p><b>21. TRADE &amp; CUSTOMS</b></p> <p><b>ACTIVE DIVERGENCE</b></p> <p><b>INTERNAL IMPACT</b></p>	<p><b>Summary:</b> BEIS in June 2022 <u>launched a consultation</u> on the use of imperial measurements by traders. It will last for three months and look into where and how imperial units can be used for selling produce.</p>	<p><b>Impact:</b> The British Retail Consortium <u>has called</u> the proposal a ‘distraction’ from the cost of living crisis and warned that the plan could push up the price of goods, because of the cost of getting products relabelled with imperial measures. It could create further administrative costs for businesses if</p>	<p><b>Timeline/region:</b> BEIS’ consultation runs from June-September 2022.</p>

<p><i>UK review into the sale of goods in imperial measures.</i></p>	<p>Under the EU’s weights and measures Directive, which was copied over following Brexit, traders have since 2000 <u>been obliged</u> to use metric units for the sale of fresh produce by weight or measure. This led to resistance from a UK campaign group known as the ‘metric martyrs’ but an EU concession allowed UK traders to continue selling their goods in imperial units alongside metric ones <u>as long as</u> the imperial measure is not more prominent (there are <u>some exceptions</u> allowing the sale of beer, cider and milk in imperial measures).</p> <p>The <u>government says</u> it is seeking to ‘identify how more choice can be given to businesses and consumers over the units of measurement they use for trade, while ensuring that measurement information remains accurate’. This suggests government is not seeking to make the use of imperial measures obligatory, but rather to permit traders to use imperial measures instead of (or alongside) metric ones if they wish.</p>	<p>they have to adapt their processes to be able to measure goods in imperial units.</p> <p>The decision could presumably disrupt international trade if importers and exporters need different labelling to sell a product in the UK compared to the EU or another international market. The added bureaucracy might diminish imports to the UK or reduce UK exports internationally.</p> <p>BEIS <u>acknowledges</u> ‘it may not be possible to implement this policy in the same way in Northern Ireland at present due to the current provisions of the Northern Ireland Protocol’, and in future there could be cases where packaging from Great Britain which makes imperial measures more prominent is not fit for sale in Northern Ireland.</p>	
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## 22. CHEMICALS

PASSIVE  
DIVERGENCE

INTERNAL  
IMPACT

*EU 'Restrictions Roadmap' for chemicals regulation.*

**Summary:** In April 2022 the European Commission announced plans for a new 'Restrictions Roadmap' which could see up to 12,000 new restrictions on potentially harmful chemicals.

Dubbed by campaigners as the 'largest-ever ban of toxic chemicals', it will cover numerous types of chemicals where there are concerns about harm to human and environmental health, for example flame retardants which have been linked to cancer, certain chemicals in nappies, PVC plastics and 'forever chemicals' which are almost impossible to break down.

This marks a step change in the EU's approach to chemicals regulation as entire groups of chemicals will be restricted, without needing to demonstrate an unacceptable human or environmental health risk associated with each individual chemical. This will lead to a massive increase in restrictions under the new roadmap, with the list to be regularly reviewed and

**Impact:** This represents a fundamental shift in the EU's approach to chemicals regulation, with the focus on entire groups of potentially harmful chemicals leading to a huge increase in the level of restrictions overall. This is likely to lead to significant divergence from British regulation as the government - despite plans for a 'Chemicals Strategy' - has so far not shown any desire to adopt the same principles as the EU.

Indeed, in June 2022 UK Health & Safety Executive published the 2022-23 work programme for UK REACH which set out five priority areas of focus but no formal restriction processes. At the same time, it identifies 10 EU restrictions which the UK will not take forward. A lack of resource is the main reason why the UK is already restricting chemicals at a slower rate than the EU and the Chemical Trust states that the publication of the EU's restrictions roadmap could turn the existing gap into a 'chasm'. The underlying concern is that that Great Britain (GB) may become a dumping ground for certain goods which are no longer exportable to the EU as they contain restricted substances.

Yet the EU rules could nonetheless have a big shaping effect on standards in Great Britain (GB). International chemical

**Timeline/region:** The Roadmap needs to be finalised and approved at EU level before restrictions are introduced.

updated until the EU introduces its new REACH regime for the regulation of chemicals by 2027.

The EU argues that the restriction of entire groups is necessary to prevent the practice of ‘regrettable substitution’ whereby chemical companies slightly alter the chemical components of a banned product to create a ‘sister’ product, which is then often subject to a lengthy legal process before any regulation is introduced.

manufacturers (and manufacturers who use chemicals) will likely adapt their processes to meet new EU standards, in order to maintain access to the EU market. Thus, many goods restricted in the EU could disappear from the GB market by default, especially as certain chemicals which are set for an EU ban are produced in the EU. GB companies which presently export to the EU will also have to adapt to the EU new rules to maintain that market access.

Under the terms of the Protocol, Northern Ireland (NI) has to follow the new EU regulations. Given the potential for up to 12,000 new restrictions, this could significantly disrupt the flow of goods from GB and NI, unless those goods are altered to meet new EU standards. If NI is only a small part of a GB-based company’s market, there is a risk they stop exporting to NI rather than adapt their manufacturing processes to conform to new EU regulations.

The chemicals industry has protested vociferously against the EU’s plans which some estimate could wipe out over a quarter of the industry’s annual turnover and will add significantly to the amount of bureaucracy for EU-based companies. Given the new EU restrictions cover substances used in many ubiquitous products (electric car batteries,

		<p>semiconductors, sun creams, perfumes, paints, lubricants, pesticides) it could lead to notable changes the availability of goods from the EU market.</p>	
<p><b>23. CLIMATE CHANGE</b></p> <p><b>PASSIVE DIVERGENCE</b></p> <p><b>INTERNAL IMPACT</b></p> <p><i>EU update to F-gas Regulation.</i></p>	<p><b>Summary:</b> In April 2022 the EU <u>tabled a proposal</u> to update its F-gas Regulation to impose greater controls on the emissions of fluorinated greenhouse gases (F-gases) including hydrofluorocarbons (HFCs).</p> <p>The proposal aims to impose a tighter quota on HFCs permitted on the EU market (aiming for a 98% reduction by 2050 compared to 2015), create further phase-down steps and end certain exemptions under the existing regulation. Alongside this it wants to bolster monitoring practices to cover a wider range of substances and activities, and increase enforcement through harsher penalties.</p> <p>F-gases stop electrical equipment from overheating and are common in goods such as fridges, heat pumps and air conditioning units, and also help the spray function in products like</p>	<p><b>Impact:</b> Northern Ireland will be subject to any updates to the EU F-gas Regulation under the terms of the Protocol. In theory this could mean restrictions on certain goods being traded from Great Britain (GB) to Northern Ireland (NI) - for example fridges or asthma pumps which continue to use F-gases where an alternative is available; and also put much greater restrictions on the level of imports of certain goods due to the stricter overall emissions quotas.</p> <p>Importers of F-gases to NI from GB (and vice-versa) <u>already have to</u> register on the EU or GB ‘HFC Registry’, ensure they have sufficient quota authorisation and make a customs declaration.</p> <p>The more restrictive quotas could also mean certain NI businesses have to change practices to ensure they reduce F-gas emissions by the necessary amount. This could make them less competitive vis-à-vis companies elsewhere in the UK or mean a major re-orientation of supply chains.</p>	<p><b>Timeline/region:</b> The final form of the Regulation remains to be finalised by the new institutions. Updates will apply to Northern Ireland under the Protocol</p>

	<p>asthma pumps. The EU is making the move as part of its ambition to see a 55% reduction in greenhouse gas emissions by 2030.</p> <p>The proposal also aims to ban the use of F-gases in equipment where less harmful alternatives are widely available; and checks and servicing will be mandated on equipment to prevent F-gas emissions from existing equipment.</p>	<p>For example, <u>70% of asthma pumps used in the UK</u> are metered-dose inhalers (MDIs) which contain HFCs - much higher than other countries (like Sweden, 13%) where ‘dry-powder inhalers’ (DPIs) are preferred. The carbon footprint per patient of an MDI is estimated to be around 40 times higher than for a DPI, and <u>4% of all NHS greenhouse gas emissions</u> are estimated to come from MDIs. The new EU regulation may necessitate a switch to wider MDI use in NI, which could cause issues given the current prevalence of MDIs within the UK. The lack of data on where NI sources its asthma pumps from mean it is hard to determine whether the F-gas regulation is likely to be a significant issue in this area.</p>	
<p><b>24. DIGITAL &amp; DATA</b></p> <p><b>PASSIVE DIVERGENCE</b></p> <p><i>EU Digital Services Act.</i></p>	<p><b>Summary:</b> The EU has finalised plans for its <u>Digital Services Act (DSA)</u>, which it first proposed in December 2020. The main purpose is to establish a common set of rules across the EU which strengthen the obligations on digital companies to protect users.</p> <p><u>The Act applies</u> to all relevant companies providing services in the EU (not just EU companies). It creates new obligations for four</p>	<p><b>Impact:</b> Alongside the Digital Markets Act (see <u>entry #25</u>) the Digital Services Act is one of two landmark pieces of EU legislation focused on reining in the power of big tech companies in particular.</p> <p>The EU’s aim is not only the imposition of greater obligations on big tech in the EU, but also to shape the global rules of the game. The fact that the Act applies to any company providing services in the single market means its obligations extend far beyond the borders of the EU to companies based</p>	<p><b>Timeline/region:</b> Formal adoption of the Act is expected later this year will and it will apply from 15 months after that or 1 January 2024 - whichever comes later.</p>

categories of ‘online players’ - ‘intermediary services’ (e.g. internet access providers); ‘hosting services’ (e.g. cloud and webhosting); ‘online platforms’ (e.g. social media platforms, marketplaces and app stores which bring together sellers and consumers); and ‘very large online platforms’ which reach over 45m people and thus ‘pose particular risks in the dissemination of illegal content and societal harms’.

The obligations vary according to the type of online player and cover a range of areas including reporting on transparency and criminal offences, data sharing, redress mechanisms and cooperation with national authorities.

A major emphasis has been put on the increased regulation of very large online platforms. While the exact details of some policies are yet to be published, there will be greater empowerment of users to flag ‘illegal content’ (such as images of child sexual abuse and terrorist content) on platforms and greater, harmonised obligations

all around the world - including the US tech giants. The EU will hope that this ‘Brussels effect’ means other major jurisdictions across the world will align with its regulatory standards.

Indeed, Hillary Clinton tweeted in response to the Act: ‘For too long, tech platforms have amplified disinformation and extremism with no accountability. The EU is poised to do something about it. I urge our transatlantic allies to push the Digital Services Act across the finish line and bolster global democracy before it’s too late.’ Key US officials are reportedly also supportive of the Act and there is notable political support particularly among Democrats for similar moves in the United States.

Naturally, there are implications for the UK. Any relevant UK company wishing to sell services in the EU will have to comply with the Act. It also raises questions for the UK about what kind of tech regulator it wants to be outside the EU. The UK’s Online Safety Bill suggests it will follow a similar vein, bearing some similarity to the DSA in its emphasis on tech companies taking active responsibility for moderating

on platforms to take down such content. Similar changes are incoming for ‘marketplaces’ in relation to the sale of illegal goods, including greater obligations on companies to check that the information provided by sellers is correct, and to display more information for users on the goods and services being sold.

A new ‘crisis mechanism’ will allow the EU to force platforms to reveal what they are doing to address misinformation in relation to crises such as Covid-19 and the war in Ukraine. More broadly they will also have enhanced powers to scrutinise how platforms’ algorithms function, and platforms will have to perform an annual risk analysis of the ‘systemic risks’ they create and carry out ‘risk reduction’ where necessary.

The Act will also ban adverts targeted at children and those which use data about ‘special’ characteristics such as age, race or religion to target individuals. ‘Dark patterns’

harmful content on their platforms and the potential for fines of up to 10% of turnover.

However, at the moment the EU is ahead of the UK in implementing its plans, which could give it a competitive advantage. While enforcement of the DSA lies largely with the European Commission, the Online Safety Bill depends on a new Digital Markets Unit (DMU) to, for example, levy fines.

The new unit has an estimated staff of 60 but the UK government chose not to legislate for the new unit in the May 2022 Queen’s Speech, meaning it will not have statutory underpinning before 2023-24 at the earliest (around when the DSA is expected to come into force). The delays mean that the UK risks slipping behind the EU in its ability to shape the global rules of tech regulation - as companies will respond to the jurisdiction which acts first.

	<p>which deceptively push users towards certain products or services will also be banned.</p> <p>The Commission <u>may impose</u> fines of up to 6% of a company’s total turnover in cases of noncompliance, and ban repeat offenders outright. Big tech companies will also pay for the ‘supervisory fees’ to ensure they are complying with new obligations.</p> <p>The Act is expected to enter into force later this year and will and it will apply from 15 months after that or 1 January 2024 - whichever comes later. There <u>could be a grace period</u> for medium-sized companies to adapt to its terms.</p>		
<p><b>25. DIGITAL &amp; DATA</b></p> <p><b>PASSIVE DIVERGENCE</b></p> <p><i>EU Digital Markets Act / UK Draft Digital</i></p>	<p><b>Summary:</b> In March 2022 the EU finalised plans for its Digital Markets Act (DMA), the details of which were outlined in the <u>December 2021 Divergence Tracker</u>. In short, the DMA aims to tackle ‘<u>gatekeeper</u>’ companies with monopolies on specific digital service markets (such as online messaging or search engines). The effect of gatekeepers is that potential new users are</p>	<p><b>Impact:</b> The DMA is <u>one of two key pillars</u> of EU regulation of big tech alongside the Digital Services Act (DSA - see <u>entry #24</u>). Whereas the DSA aims to protect consumers, by putting greater obligations on tech companies to monitor for and remove illegal content, the DMA is about increasing user choice (and, the EU hopes, economic growth) through greater competition in the digital services sector.</p>	<p><b>Timeline/region:</b> The DMA will <u>come into force</u> in Spring 2023 and apply <u>six months after that</u>.</p>

<p><i>Markets, Competition and Consumer Bill.</i></p>	<p>highly incentivised to use the company which already dominates the market, reinforcing its monopoly and diminishing consumer choice.</p> <p>The DMA addresses this by obliging major tech companies to allow their services to be interoperable with those of rivals, preventing them from conditioning products to block or limit access to services from rival providers, and preventing them from giving preferential treatment to ancillary services. So, for example, WhatsApp users will be able to send messages to users of other platforms like Signal and Messenger; users of Apple or Android phones will be able to download apps from rival app stores; and Google cannot deliberately list Google-related results first in its search results. Fines for noncompliance can reach up to 10% of a company’s global turnover, and up to 20% in repeat cases.</p> <p>The March 2022 announcement was significant because the EU had not watered down its plans as some suspected it might. There was also some</p>	<p>The DMA could thus be the more economically significant of the two. It remains to be seen how it affects markets in practice, but if it works as envisaged it should help growth among smaller EU rivals to US tech giants, and greater choice for EU consumers. Indeed, it is notable that there are a number of European companies (the tech magazine <a href="#">Wired cites</a> Swedish Spotify, Swiss ProtonMail and German NextCloud) which have complained about the ‘unfair advantage’ whereby Apple, Google and Microsoft products push users towards using their own email, music or cloud storage platforms over rival ones.</p> <p>At UK government level, there appears to be appetite to move in a similar direction to the EU. In May 2022, BEIS and DCMS <a href="#">published their response</a> to a consultation on ‘a new pro-competition regime for digital markets’. It sets out the intention for the new Digital Markets Unit to have responsibility ‘to promote competition in digital markets for the benefit of consumers’, targeted at ‘a small number of firms with substantial and entrenched market power’. What the EU calls a ‘gatekeeper’ the UK is calling ‘Strategic Market Status’, although the UK is yet to determine what the revenue threshold for this status will be. Similarly to the role</p>	<p>The UK is yet to bring forward legislation on its own proposals.</p>
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speculation about whether the policy would be widened to cover a more companies rather than predominantly the US tech giants, but it has remained focused on only the very largest companies - with a market capitalisation of over €75bn and 45m monthly users.

of the Commission under the DMA, the DMU will be tasked with making ‘pro-competitive interventions’, including ‘the ability to enforce interoperability between platforms or services’, providing users with more choice over messenger and search engine apps, and preventing anti-competitive mergers. It will also have powers to impose financial penalties of up to 10% of a company’s global turnover.

The plans were then included in the May 2022 Queen’s Speech as part of the Draft Digital Markets, Competition and Consumer Bill. This also contains a pledge to address unfair terms in the news publishing sector, which is expected to see tech platforms like Google and Facebook having to pay media companies for hosting their news content via negotiated deals.

Although not yet fully fleshed out, the UK approach bears much similarity to the EU’s DMA. One substantive difference could be in enforcement methods - the Centre for European Reform (CER) notes that the EU’s Act is relatively specific and inflexible whereas the UK’s reforms would empower the Competition and Markets Authority (CMA) to take a more of a ‘nudge’ approach which ‘will probably prove more enduring and future-proofed’. However, the fact that the UK has

		<p><u>delayed plans</u> to introduce its own regulation means it risks falling behind the EU in shaping global norms (although the CER argues the CMA could make more use of its existing powers) and uncertainty over future UK rules could make it a less attractive <u>environment for tech investment</u>.</p>	
<p><b>26. ENERGY / CLIMATE CHANGE</b></p> <p><b>PASSIVE DIVERGENCE</b></p> <p><b>INTERNAL IMPACT</b></p> <p><i>EU ‘REPowerEU’ and UK energy security strategy to reduce dependence on Russian oil and gas.</i></p>	<p><b>Summary:</b> In May 2022 the EU launched its ‘<u>REPowerEU</u>’ plan to end its dependence on Russian fossil fuels. The strategy is supported by €300bn of spending and has four pillars.</p> <p>First is saving energy. The EU proposes increasing the target reduction in energy consumption by 2030 from 9% to 13%, supported by targeted communication campaigns on energy saving practices and encouraging member states to promote energy saving measures, for example by reducing VAT on energy-saving products.</p> <p>Second is replacing Russian gas with other fossil fuels (an issue over which member states have <u>struggled to come to agreement</u>). A new ‘<u>EU Energy Platform</u>’ will support common purchases of pipeline gas, liquid natural gas and hydrogen</p>	<p><b>Impact:</b> While the EU’s REPower plan offers some EU-specific policy solutions to the energy crisis engendered by the war in Ukraine, it does not amount to significant divergence from the UK’s approach.</p> <p>The UK also published an ‘<u>energy security strategy</u>’ policy paper following the Russian invasion of Ukraine. Plans include up to eight new nuclear reactors; reform of planning laws to accelerate approvals for offshore wind and solar; a doubling of hydrogen production targets; a new licensing round for North Sea Oil projects; and £30m ‘heat pump investment accelerator’.</p> <p>Overall, the UK package shows a similar strategy and level of ambition to the EU - new targets and funding for renewable energy coupled with a renewed emphasis on nuclear and hydrogen, and diversifying existing supply chains for oil and gas - though the emphasis on demand reduction and energy</p>	<p><b>Timeline/region:</b> Different aspects of the respective strategies will begin at various speeds. Northern Ireland is subject to a range of EU regulations on the environment and electricity generation under the terms of the Protocol, which could be touched on by some of the proposals.</p>

through co-ordinated engagement with suppliers and any new pipeline infrastructure will have to be capable of being adapted to carry zero-carbon gases. The EU has also acknowledged that reducing reliance on Russia means 5% more coal will be used over the next 5-10 years than was planned for, and more nuclear will also be used.

Third is boosting green energy. The target renewable share of the EU's 2030 energy mix is rising from 40% to 45%. This will be supported by, among other things, a new 'Solar Strategy', phasing in a legal obligation to install solar panels on new public, commercial and residential buildings, and setting a new deployment and production targets for heat pumps, hydrogen and biomethane. Officials have also indicated that member states should loosen regulation to build wind and solar projects more quickly.

Fourth is supporting new infrastructure to reduce fossil fuel usage in industry and

saving is absent from the UK strategy. At the edges there are some differences in policy approach, for example the UK has not replicated the EU's strategy of creating a legal obligation to use solar panels in building construction (although Northern Ireland presumably would be subject to this).

Ultimately both sides have responded to the war in Ukraine by proposing increased development of renewables alongside diversification of oil and gas supply, rather than simply reverting to increased dependence on fossil fuels. This reflects existing trends whereby both sides are showing similar ambition to be global leaders on the path to net zero, despite no formalised cooperation on matters such as emission trading (although the UK has just announced a forthcoming consultation on a Carbon Border Adjustment Mechanism - see entry #3).

	<p>transport. There will be guidance for business on renewable energy and power purchase agreements, and new ‘contracts for difference’ which give financial support to businesses taking up green hydrogen, supported by revenues from the EU’s emissions trading scheme (which has <u>angered green groups</u>). A ‘Greening of Freight Package’ will promote (in as yet mainly unspecified ways) increased energy efficiency in the transport sector and potentially deliver an initiative to share of zero-emission vehicles in corporate car fleets.</p> <p>€225bn of loans have been made immediately available under the EU’s Recovery and Resilience with additional funding set to take the total financing for the programme to around €300bn.</p>		
<p><b>27.</b> <b>ENVIRONMENT</b></p> <p><b>PASSIVE DIVERGENCE</b></p> <p><b>INTERNAL IMPACT</b></p>	<p><b>Summary:</b> The EU is planning to revise its <u>Waste Shipments Regulation</u> - to limit the extent to which it can ‘export’ its waste and address illegal waste shipments. The EU notes that in 2020 it exported 33m tonnes of waste to non-EU</p>	<p><b>Impact:</b> The EU’s reforms would apply to Northern Ireland (NI) under the terms of the Protocol. This could mean NI businesses having to adapt to new administrative procedures which the rest of the UK can ignore, or having to manage two parallel sets of rules for exporting waste to the to the EU and</p>	<p><b>Timeline/region:</b> The EU’s proposals are expected to undergo negotiation in Q3/4 2022, while the UK consultation on waste</p>

*EU's proposed revisions to regulations on Waste Shipments.*

countries and imported around 16m tonnes (with a further 70m tonnes shipped between EU member states) and estimates that at present 15-30% of the waste shipments could be bypassing waste management rules.

Thus, the EU proposes that exports of waste from the EU to non-OECD countries would require an official request from the importing country, and a 'demonstration that it can recover it in a sound manner'. EU companies will also have to carry out audits of their waste exports to similarly demonstrate it is treated in a 'sound manner'. The EU will also monitor waste export levels to non-OECD countries with the potential to suspend exports in response to surges in volume.

To improve its own internal waste management, the EU wants to digitise all shipment procedures, fast-track waste destined for 'recovery', harmonise classifications of waste at EU level, and impose stricter conditions on the use of incineration and landfilling. To address illegal

Great Britain (GB) respectively. Similar issues, highlighted in the last tracker, are likely to be created by changes to EU rules over the treatment of certain pollutants.

In addition, the new EU standards could create new administrative costs for businesses in GB which export or import waste to or from the EU. That said, the 2019 Conservative Manifesto goes further than EU plans in pledging to ban the export of plastic waste to non-OECD countries, leaving the potential for a high degree of alignment between future UK and EU plans, depending on how and when exactly they unfold (the UK government is planning a consultation on its proposal by end 2022).

The House of Commons European Scrutiny Committee wrote to Jo Churchill, UK Minister for Agri-Innovation and Climate Adaptation to ask about the EU's proposal's potential implications for the UK and its own plans for waste management. The Minister advised that that UK officials continue to monitor the EU's plans but substantive EU negotiations are unlikely until the second half of 2022 (and the proposal is thus subject to change). She also advised that the EU's plans would be analysed as part of a 'wide range of

management is expected in December 2022.

	<p>shipments, the EU is planning to support more transnational investigations, establish an enforcement group and strengthen rules and penalties.</p>	<p>information’ feeding into the planned consultation on the UK’s approach to waste management in December 2022.</p> <p>The extent of potential divergence thus depends to a large degree on the final form of policies being planned at both UK and EU level, as well as the wider management of the Protocol at UK-EU level.</p>	
<p><b>28. ENVIRONMENT/ PRODUCT STANDARDS</b></p> <p><b>PASSIVE DIVERGENCE</b></p> <p><b>INTERNAL IMPACT</b></p> <p><i>EU update to ‘ecodesign’ regulations.</i></p>	<p><b>Summary:</b> In March 2022 the EU announced a new package of proposals - known as the sustainable products initiative - as part of its European Green Deal.</p> <p>The proposed <u>Regulation on Ecodesign for Sustainable Products</u> sets new requirements which products must meet in terms of durability, reparability, energy and resource efficiency and several other parameters. This extends the existing EU ‘ecodesign’ regulation to cover a wider range of products and a broader set of requirements.</p> <p>Regulated products will also require ‘Digital Product Passports’ to inform consumers about</p>	<p><b>Impact:</b> The Commission has <u>several aims</u> for the package of proposals: ‘to decouple economic growth from resource use’; to increase transparency in supply chains; to create harmonised regulations in new product areas to establish a level playing field for businesses; and to provide better information on products’ environmental impact to consumers.</p> <p>The EU also points to the fact that about 20% of raw materials used by its citizens are imported. It thus argues a push to make materials last longer and boost the use of recycling will increase the EU’s strategic autonomy by reducing its dependency on third country producers.</p> <p>The direct effect on the Great Britain is that the EU rules will apply to all products placed on the EU market, regardless of whether they were produced within the EU or outside. This</p>	<p><b>Timeline/region:</b> The EU plans to launch a consultation on the specific terms of the new regulations by the end of 2022. This aspect of environment policy is a devolved competence in the UK.</p>

their environmental impact. The EU says this information ‘can also take the form of ‘classes of performance’ - for instance ranging from ‘A to G’ - to facilitate comparison between products, possibly displayed in the form of a label.’ Although the format is yet to be decided, this would function in a similar manner to the existing EU energy label (ubiquitous on white goods) and be used for metrics such as level of reparability or environmental footprint. Data would be given on a ‘need-to-know’ basis, with different people (consumers, regulators) having access to different bits of information.

A second proposal laid out was the Strategy for Sustainable and Circular Textiles which will introduce similar ‘ecodesign’ requirements to maximise use of recycled fibres and remove ‘hazardous substances’ and ensure goods are ‘produced in respect of social rights and the environment’. A Digital Product Passport similar to the one detailed above will also be introduced.

means that British businesses in affected sectors which export to the EU will be obliged to comply with the new regulations if they want to continue to export. Given that the EU remains Britain’s largest export market, this is thus likely to have a major indirect effect on British practices.

Moreover, Northern Ireland will have to comply with the new EU rules under the terms of the Protocol. That means British businesses in the affected sectors which export to Northern Ireland will also have to start complying with the new EU rules (even if they don’t export to the EU), or else their goods will disappear from the Northern Irish market.

The UK inherited existing EU regulations on ecodesign when it left the EU. Since then, Defra and the devolved governments have outlined similar ambition to make moves towards a circular economy, and the UK and EU share similar goals on the transition to net zero. There is thus likely to be little political resistance to any indirect effect on UK standards from EU rules, and regulation in Great Britain may even over time align with that of the EU. There is however the potential for future internal divergence, should the devolved

	<p>The third and final proposal was a <u>revision of the Construction Products Regulation</u>, introducing new design and manufacturing requirements on construction products covering durability, reparability, recyclability, and ease of re-manufacturing. Again, a Digital Products Passport will be introduced.</p> <p>The EU plans to launch a consultation on the specific terms of the new regulations <u>by the end of 2022</u>.</p>	<p>governments opt for different degrees of alignment with EU standards.</p> <p>The EU will hope that the regulation will shape behaviours across the world, due to the '<u>Brussels effect</u>' whereby major international companies in third countries opt to comply with new EU regulation in order to maintain access to the single market. The Consultancy EY <u>has noted</u>: 'Industry-wide, leading companies are already looking at adjusting operating and business models in the pursuit of sustainability.'</p>	
<p><b>29. PRODUCT STANDARDS</b></p> <p><b>PASSIVE DIVERGENCE</b></p> <p><b>INTERNAL IMPACT</b></p> <p><i>EU amendment to Radio Equipment Directive which mandates one</i></p>	<p><b>Summary:</b> In June 2022 <u>the EU agreed</u> an amended Radio Equipment Directive, which will establish a single, common type of charger for a wide range of electronic devices including smartphones and laptops.</p> <p>The USB Type-C charging port will become the EU-wide standard from autumn 2024. It is already used by Android devices but means Apple iPhones will have to move away from their current lightning cable.</p>	<p><b>Impact:</b> The EU <u>presents the reform</u> as both a sustainability and consumer empowerment measure. It will mean a new charging cable will no longer be required to be sold alongside every electronic item (consumers will have a choice whether or not buy a charger when they purchase new electronic equipment), which reduces electronic waste. The EU estimates that disposed and unused chargers generate 11,000 tonnes of waste each year. Having a single charger for most items also makes consumers' lives simpler, with the EU estimating it could save up to €250m a year in unnecessary charger purchases.</p>	<p><b>Timeline/region:</b> The reform will take effect in the EU and Northern Ireland in 2024, with laptops given a longer 40-month adaptation period.</p>

<p><i>common type of charger for electronic devices.</i></p>	<p>The regulation covers fifteen categories of electronic product including cameras, earbuds and video game consoles. The chargers will support fast charging, and due to technical issues laptops have been given an extended period of 40 months to make the transition.</p>	<p>The reform will affect Apple in particular as its products do not presently use USB-C chargers but Apple-specific ‘lightning’ ones. It can therefore be seen as part of wider EU efforts (see <a href="#">entry #25</a>) to break up digital monopolies whereby - for example - Apple consumers are obliged to buy Apple accessories to maintain their appliances.</p> <p>Apple <a href="#">claims that</a> the move will stifle innovation in the development of charging technology - in particular the move towards wireless charging. In response the EU <a href="#">notes</a> that the European Commission ‘will be empowered to develop so-called delegated acts’ to update the legislation as and when wireless charging technology becomes more common - but that does not resolve the question of whether the new regulation will prevent wireless innovation in the first place.</p> <p>Apple <a href="#">has also argued</a> that the decision restricts consumer choice because users of Apple products adapted for USB-C will not be able to buy cheaper, older chargers based on previous Apple technology.</p> <p>The regulation will apply to Northern Ireland (NI) under the present terms of the Northern Ireland Protocol, which creates the possibility that an electronic device in NI could require a</p>	
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		<p>different charger to one in Great Britain (GB), potentially reducing the level of trade in electronic goods across the Irish Sea, or leading to a reconfiguration of procurement chains away from GB toward the EU for NI-based companies requiring electronic devices.</p> <p>The same implications would apply to GB-EU trade, especially as the UK government <u>has said</u> it is not ‘currently considering’ copying the EU’s plans. However, it could be the case that GB becomes de facto subject to the new charging rules if, for the sake of having one global production standard, Apple opts to move to using USB-C chargers in its products worldwide.</p>	
<p><b>30. TRADE &amp; CUSTOMS</b></p> <p><b>PASSIVE DIVERGENCE</b></p> <p><b>PROCEDURAL DIVERGENCE</b></p> <p><b>INTERNAL IMPACT</b></p> <p><i>EU Single Customs Window.</i></p>	<p><b>Summary:</b> In late 2021 the EU Parliament and Council finalised <u>their positions</u> on the proposal for a ‘Single Customs Window’ (SCW), with final negotiations on its form set to be concluded in the coming months.</p> <p>At present, goods being imported or exported by a third country to or from the EU <u>can be subject to</u> a range of declarations and checks sometimes involving traders submitting information to several different authorities (covering, for</p>	<p><b>Impact:</b> As a third country to the EU, the UK would benefit from simplified trading arrangements under the SCW. At the end of 2021 the British Chambers of Commerce <u>reported</u> that 45% of companies it surveyed were experiencing difficulties in adapting to the new rules for buying or selling goods under the Trade and Cooperation Agreement (TCA).</p> <p>However, it could prove a politically difficult change to manage, not least because under the terms of the Protocol the new SCW would apply to Northern Ireland (NI). The House of Commons European Scrutiny Committee <u>reports</u> that this</p>	<p><b>Timeline/region:</b> The final form of the legislation is expected before the end of the year although it could take up to 10 years to fully implement.</p>

example, quotas and standards across health, environment, cultural heritage, product safety etc.).

Under the SCW proposals, traders would submit (and be able to re-use) all the required information into a single portal in a specific EU member state, which all relevant EU-level authorities will then be able to access from a single IT platform. In principle this would simplify the amount of paperwork and bureaucratic process which businesses have to undertake, although the House of Commons European Scrutiny Committee notes that ‘it appears to be optional for individual EU countries to decide whether traders can submit documentation for all relevant formalities covered by the SCW in their jurisdiction via a single submission (rather than still having to make multiple submissions, albeit using only the unified SCW digital portal).’

could mean the UK government (at its own time and cost) being expected to set up new EU IT systems in NI to manage goods imports (from the rest of the UK as well as other non-EU countries). In November 2020 (after the EU proposals were first announced) the Treasury noted this ‘could’ be the case but would be subject to further discussion.

In addition, a SCW could create new processes to adapt to for companies shipping goods between Great Britain and NI, meaning new disruption for businesses. That said, given the UK government’s decision to unilaterally delay the introduction of customs checks mandated under the Protocol it is hard to foresee such systems being implemented at present. Ultimately, in the current context any EU request that the UK implement SCW systems is likely exacerbate existing tensions over the Protocol. The UK government would likely cite it as a further example of how the Protocol in its current form is leaving NI politically and economically adrift from the rest of the UK.

The European Scrutiny Committee also notes that the UK is developing plans for its own ‘Single Trade Window’ (STW), designed to perform a similar function to the EU’s SCW (a UK consultation closed at the end of February 2022). The

Committee argues that there is potential for interoperability between the two (for example where information submitted for an export declaration in the UK STW is automatically shared with EU SCW as an import declaration) while noting that whether this can be achieved remains an ‘open question’. If interoperability is not found, the burden could fall most heavily on NI. Because it is part of both the UK and EU markets, NI importers and exporters will in certain cases (especially when trading with non-EU countries) have to submit information to both the UK STW and EU SCW simultaneously.

Making the two systems interoperable will require coordination from early on in their respective development, which is reliant on a significant degree of political cooperation between the UK and EU. The Committee judges that if such coordination is not found, it is more likely ‘that the UK will find itself in a position of having to adjust its Single Trade Window to the EU’s approach (since there may be limited political appetite on the EU side to adjust its own Single Customs Window proposals only to facilitate interoperability with a separate initiative being developed by a former Member State).’

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