

UK IN A
CHANGING
EUROPE

**DOING THINGS
DIFFERENTLY?
POLICY AFTER BREXIT**

FOREWORD

For many Leave backers, Brexit was all about reclaiming regulatory autonomy, allowing the UK to reshape its economy in ways that were simply not possible within the European Union. Two years from the end of the UK's EU membership, just over a year since the UK finally exited the single market and customs union, how has public policy evolved?

To answer this question, we have brought together a number of policy experts to consider what has transpired in their area. I'd like to express my heartfelt gratitude to all the contributors, not only for writing for us but also for their willingness to respond promptly and good naturedly to repeated sets of comments and editorial suggestions.

Alison Howson copy edited the text and John-Paul Salter turned around the final proof with his usual alacrity. The design, structuring and printing was facilitated by Tom Mansfield.

Last but not least, it is thanks to Joël Reland and Jill Rutter that this report has appeared at all. Joël in particular has been the guiding spirit behind it, not only commissioning the various pieces, but also commenting with Jill in detail on various iterations of the contributions.

I think the report that follows makes an important and original contribution to an important ongoing debate about Brexit and its implications. I hope you find it interesting.

31 January 2022

Professor Anand Menon
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INTRODUCTION

Joël Reland, Anand Menon and Jill Rutter

Brexit is done, but what does it mean? Taking back control was supposed to provide an opportunity to rewrite rules for the British economy. Yet as the resignation of Lord Frost in December 2021 — ostensibly over concerns about the ‘current direction of travel’ and lack of movement to ‘a lightly regulated, low-tax entrepreneurial economy’ — shows, it has, to date, been too slow for some.

In what follows, a number of authors underline that important choices are in fact already being made. Immigration and trade policy have undergone profound transformation, and a new subsidy regime is imminent. In other areas, significant plans for divergence are in place, but these are complex and will often take years to develop fully. Their full implications will also take time to become clear.

This report brings together a number of experts in their respective fields to investigate how policy and policymaking have changed in a range of sectors. We asked them to consider how changes so far compare to what was promised before Brexit, and to analyse what changes lie ahead and what their impact might be. Their contributions are divided into three sections: first, those policy areas (trade, immigration, agriculture, fisheries and subsidies) where Brexit compelled the UK to put in place alternative policies. Second, those retaining significant amounts of EU law where the government could think seriously about divergence (financial services, procurement, taxation, consumer protection, environmental policy, energy policy and aviation). A final section considers new or emergent sectors in which both the UK and EU are looking to dip their regulatory toes (climate change and net zero, data and digital, autonomous vehicles and bioscience).

Overall, there has been no ‘big bang’ of immediate and major divergence from EU rules. Immigration, of course, is the big exception. Free movement has ended. The UK’s new ‘points-based immigration system’ is considerably more liberal for non-EU migrants than before — and the changing composition of inward migration reflects that. That being said, sectors particularly dependent on EU workers now report some of the highest levels of staff vacancies and evidence suggests that the more liberal non-EU regime will not offset the economic cost of ending free movement. It does, however, seem to have reduced the salience of migration among voters.

As for trade, the TCA created new bureaucracy for businesses and is estimated to have reduced UK exports to the EU by 14%, and imports by 24%. While the UK proved relatively successful in ‘rolling over’ the third-party agreements it enjoyed

as an EU member, new trade deals are taking longer to land, and will far from offset the losses from reduced EU trade. Although British fishers benefit from a slightly increased quota agreed in the negotiations, seafood exporters have faced extra paperwork and costs under the new trading regime.

England's new regime for agricultural subsidies marks a notable departure from the Common Agriculture Policy, rewarding farmers financially for 'public goods' — meeting biodiversity and net zero targets — rather than rewarding higher food production. The transition will be challenging for some farmers, and it will be interesting to see how the scheme evolves in practice and whether it offers the environmental dividend promised.

And, as intimated, the picture is further complicated by devolution. The fact that environmental policy is devolved means standards within the UK could diverge, potentially leading to issues around competition within the UK internal market. And while the Internal Market Bill will serve to reduce the risk of challenges to the functioning of the UK's own internal market, such internal divergence has the potential to stoke further political acrimony. As for Northern Ireland, the terms of the Protocol on Ireland/Northern Ireland limit the degree to which rules there can diverge from those in place in the EU.

Boris Johnson also came to power promising to 'level up' the country. The Subsidy Control Bill could prove central to his ambition to boost regional growth via investment. The new state aid regime allows subsidies to be approved more smoothly than under the EU system, albeit many would have been allowed under the EU regime.

As for areas where much EU law has been retained, ambition for divergence has been limited. One exception is financial services, where UK firms have lost EU passporting rights and are thus reliant on the EU 'equivalence decisions' to maintain market access. To date over 7,000 jobs are estimated to have left London for the EU. However, Rishi Sunak has expressed a preference for regulatory freedom over enhanced market access to increase the international competitiveness of the UK. There are also plans to put the UK at the forefront of green and digital finance regulation.

The promised 'bonfire of procurement red tape' and the 'Buy British' policy have, however, been quietly dropped due to the risk of contravening international agreements. Taxation policy has been unremarkable, with few 'Brexit dividends' in the autumn Budget, and very little use made of the increased room for manoeuvre on VAT. Similarly, little has been done to reform consumer protections, although there have already been some Brexit consequences, such as the reintroduction of mobile phone roaming fees.

As for environment policy, England has replaced the EU's environmental enforcement regime with the Office for Environmental Protection. However, there are question marks over its ability to enforce, its independence from government and its ability to hit the ground running. Skyrocketing energy prices (a global problem) have attracted plenty of attention in recent months, yet the direction of UK energy policy has not changed. Policy changes in aviation have been similarly scarce, although the loss of mutual recognition processes with the EU around safety are making life more difficult for many in the industry.

Finally, there are emerging sectors. Since Brexit, the UK has shown significant ambition in its targets for reaching net zero, although there remains little in its strategy which could not have been done inside the EU. Defra is planning to allow more permissive use of gene edited plants in research and development in England, which may have health and sustainability benefits — but there remain serious questions around guidance, definitions and regulation.

In terms of technology and data, the most notable UK proposal to date is the review of the EU's General Data Protection Regulation (GDPR). While often castigated as burdensome for small businesses, the price of divergence could be high — losing the 'adequacy' agreement with the EU which keeps data flowing. With regard to autonomous vehicles, safety standards are governed by international agreements, rendering regulatory autonomy something of an empty shell.

Overall, divergence could go a number of ways. There are genuine opportunities: on state aid or agricultural subsidies, there are signs of systems better suited to the UK's interests. The Treasury appears to know what it wants the City to look like in a decade. Yet, as our [UK-EU regulatory divergence tracker](#) shows and this report reaffirms, there are bureaucratic costs associated with developing new UK-specific regimes, not to mention trade-offs in terms of access to the EU market, even if these regimes are indeed more 'light-touch'. Not all planned reforms will necessarily be worth the cost.

Making a success of regulatory autonomy thus requires clear-sighted decisions about where such trade-offs are worthwhile, how plans stitch together, and what the architecture will look like in a decade. The question remains as to whether governments — now and in the future — have the wherewithal to pursue such long-term thinking.

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TRADE

L Alan Winters and Minako Morita-Jaeger

WHAT CHANGES WERE PROMISED AFTER BREXIT?

Theresa May's government used to talk of a comprehensive trade agreement with the EU offering [‘the exact same benefits’](#) as the UK enjoyed under its EU membership. The Secretary of State for International Trade, Liam Fox, declared that such a free trade agreement (FTA) would be [‘one of the easiest in human history’](#).

In addition, the government presented Brexit as the opportunity to become [‘Global Britain’](#), boosting trade with non-EU countries by striking new trade deals, promoting this as a road to [economic growth and prosperity](#), and setting itself the target of covering [80% of total UK trade](#) with FTAs by 2022. The most important such agreement was potentially with the USA, the then Foreign Secretary, Boris Johnson said, the USA [appeared keen to agree](#). The tilt from Europe to the Indo-Pacific, which is expected to generate [56% of global growth](#) between 2019 and 2050, clearly has a rationale, but the perception that it would be able to make up the UK's Brexit-induced trade losses with the EU [lacks foundation](#).

WHAT HAS CHANGED SO FAR?

Trade with the EU, the UK's largest trade partner, has changed dramatically; the rest very little. The TCA introduced significant [new hindrances to UK-EU trade](#), such as customs declarations, new VAT procedures, different regulatory regimes, and the elimination of the recognition of many UK professional qualifications. These have reduced UK trade with the EU substantially. Comparing 2021 with the average of 2017-20 (January to July), UK trade with the EU was harder hit than both UK trade with non-EU countries, and EU trade with non-EU and non-UK countries. Together these demonstrate a negative effect on UK-EU trade: UK exports are [14% lower than expected and imports 24% lower](#). The losses of exports are focused where the new frictions are greatest — e.g. animal and vegetable products, clothing, and food — but those in imports appear widespread, which is surprising given that the UK is yet to introduce its [new import checks](#) on goods from the EU. Similarly, UK [services exports to the EU](#) are lower by 12% and imports by 37% (January to June 2021). It is notable that [Northern Ireland's trade](#) with the Ireland, with which it has secure frictionless trade, has boomed over this period.

The UK government has signed ‘continuity’ trade agreements with 67 of the

70 countries which previously had FTAs with the EU, designed to as closely as possible [‘reproduce the effects of trading agreements that previously applied’](#) under the EU. They add nothing new to UK trade and, because they are not perfect replicas, represent a [slight reduction in access](#) compared to before Brexit. Similarly, the UK-Japan FTA basically replicated the EU-Japan agreement except for a more comprehensive digital trade chapter. However, a new FTA with Australia was signed on 16 December 2021, and one with New Zealand is agreed in principle. The former liberalises goods trade and offers gains in some services by legally binding current levels of market access. Nonetheless, although it is difficult to separate out the effects of the pandemic, it is plain that these agreements with non-EU partners have [not expanded trade nearly enough](#) to compensate for losses with the EU.

WHAT ARE THE POSSIBILITIES FOR THE FUTURE?

International trade seems unlikely to provide much stimulus to the UK economy. The widespread predictions that introducing new trade barriers with the EU would harm trade appear to be materialising. And even though the TCA [removes](#) a few of the barriers that a no-deal Brexit threatened, the continuing frictions between the UK and the EU over issues like the Northern Ireland Protocol and fishing licences — and, in indeed, the TCA’s [several built-in escape clauses](#) — raise the prospect that they may be re-instated. Such uncertainty alone is sufficient to [curtail trade](#) and [investment](#). Whichever cause pertains, the statistics above show that trade with the EU is currently weak, and the OBR estimates that Brexit will eventually reduce UK total (EU and non-EU) trade by [15% relative to not leaving the EU](#).

The weak trade performance has costs in terms of income. The OBR projects a [4% loss of GDP due to Brexit](#), and even the government’s own figures show that FTAs will not compensate for the lost trade with the EU. The projected [gains to GDP from the agreements](#) the government has assessed are: Australia 0.01-0.02%, New Zealand 0.00% and the USA (which seems unlikely to materialise) 0.07-0.16%. Although with new data and an (uncontroversial) change in methodology, the December 2021 estimate for Australia-UK [was 0.08%](#). The continuity and UK-Japan agreements offer no significant improvements over pre-Brexit trading terms, and accession to the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), which the government hopes will be completed by 2023, will produce only relatively small gains. This is because the UK’s existing bilateral agreements with eight of the eleven CPTPP members (nine with New Zealand) [already provide most of the potential benefits](#).

FTAs cover more than just trade. Notably, by promoting regulatory cooperation,

FTAs can have a profound effect on domestic industry and everyday life. FTAs can be used as a force to improve standards — as, for example, when Eastern European countries acceded to the EU — but, in the UK, which has high standards, the concern is the opposite. For example, the British public expressed deep [concern](#) that the UK's high food safety standards might be endangered by agri-food imports from countries, such as the US and Australia, that have different and, typically, lower standards. Similarly, on digital trade, the UK GDPR (copied over from the EU's GDPR) provides a high degree of personal data protection. Accession to the CPTPP, or an FTA with the USA, would oblige the UK to accept different and, typically, less protective regimes: only three of eleven CPTPP countries ([Canada, Japan and New Zealand](#)) have adequacy rulings from the EU as of December 2021. The CPTPP regime offers [fewer protections](#) for UK personal data transferred to partners. Moreover, since any EU citizen's data stored in the UK would be similarly exposed, adopting these rules is likely to endanger the EU's willingness to recognise [UK adequacy](#). Losing the EU's adequacy decision would cost UK firms [£1 billion to £6 billion](#) due to additional compliance requirements to transfer data from the EU.

Finally, although international trade is good way of stimulating long-run innovation and income growth, it inevitably involves [uncomfortable change and adjustment](#). For governments with short horizons and commitments to 'levelling up' it can pose serious political challenges. The enthusiasm of the British public and indeed the government for trade may decline.

IMMIGRATION

Jonathan Portes

WHAT CHANGES WERE PROMISED AFTER BREXIT?

At the time of the referendum, there was some ambiguity over what Brexiters actually wanted to happen on freedom of movement and immigration. Daniel Hannan, a leading figure in the Vote Leave campaign, said that [‘no-one is talking about leaving the single market’](#) and expressed support for a Swiss-style trading relationship, which would have included preserving free movement.

However, Vote Leave, led by Boris Johnson, [promised](#) a new immigration system — an ‘Australian-style points system’ — which would treat EU and non-EU migrants similarly, and was clearly incompatible with any version of free movement. Theresa May endorsed this approach, which was set out in a White Paper in December 2018 and implemented at the end of the transition period on 1 January 2021.

WHAT HAS CHANGED SO FAR?

In most policy areas, there has been no ‘big bang’ in terms of divergence from the EU. Immigration is the exception. The key provisions of the new system are that:

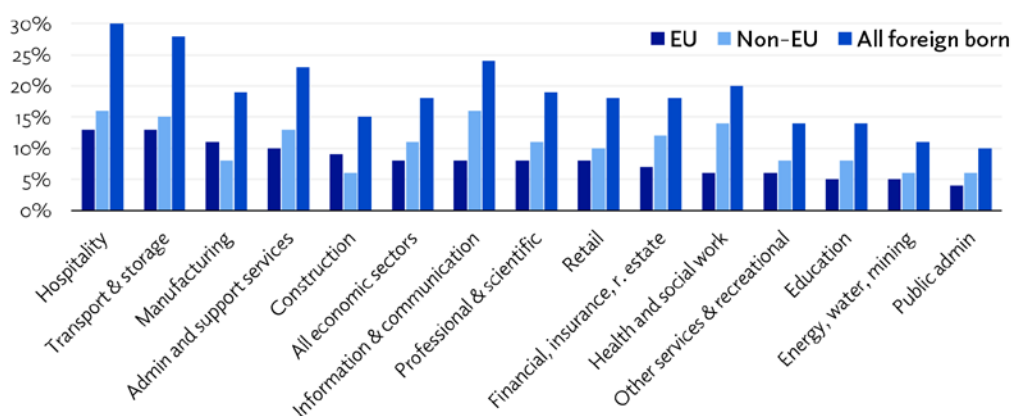
- Migrants with a job offer in an occupation requiring skills equivalent to at least A-levels (RQF3) and paying more than £25,600 or the lower quartile of the average salary, whichever is higher, are eligible for a ‘Skilled Work Visa’.
- There is a lower initial threshold (as low as £20,000) for new entrants and for those in shortage occupations.
- Students graduating from UK universities will be able to remain in the UK and work for up to two years, in any job.
- There is an expanded Seasonal Agricultural Workers Scheme, but no other sectoral schemes.

Freedom of movement has ended, and EU citizens — with the exception of Irish nationals — are subject to the same controls as non-EU citizens. Importantly, however, EU citizens who were resident in the UK at or before 1 January 2020 were eligible to apply for ‘settled status’ or ‘pre-settled status’, if they did not yet meet the full criteria for settled status, giving them the right to remain (and work in any job). Over 5 million such applications have been approved.

The sectoral and regional impact of these changes varies considerably. Hospitality and transport where EU-origin workers make up more than one in eight of the workforce, and turnover is relatively high, are most impacted. As is London, where EU nationals make up one in six of the overall workforce, including 15% of the finance workforce, and only slightly less in ICT. EU migration is not primarily for ‘low-skilled’ (or low paid) work: about half are in ‘high-skilled’ or ‘medium-high skilled’ occupations, only slightly below the UK average.

Half of EU migrants are in ‘high-skilled’ or ‘medium-high skilled’ occupations

Sectors of employment for EU migrants, non-EU migrants, and all foreign-born workers.



Source: Migration Observatory analysis of the Annual Population Survey 2019.

Since the ending of most Covid-related restrictions, there have been [consistent reports](#) of staff and skills shortages as businesses reopen. Meanwhile, the number of EU-origin workers on company payrolls (which omits the self-employed) fell by about 200,000 in 2020.

Although the exodus of EU workers in 2020 was primarily driven by the pandemic, their failure to return (or to be replaced by new migrants) is likely to be driven by the ending of free movement. Sectors particularly dependent on EU workers — accommodation and food services, and transport and storage — [have reported](#) particularly high levels of vacancies.

Although the government has announced some temporary visa schemes, their impact has been limited. Chronic staff shortages in social care also [appear to have worsened further](#).

WHAT ARE THE POSSIBILITIES FOR THE FUTURE?

The current conditions will, almost by definition, be transitory. Longer term impacts are less certain; the [government argues](#) that employers should respond by raising wages and/or increasing productivity. However, the scope for doing so in

the worse-affected sectors may be limited, and pressure to open the system up to a wider range of low-paid occupations is likely to continue.

If labour supply is indeed reduced more than demand, then there are a variety of possible responses: higher employment for UK-origin workers, higher wages (which in turn would likely mean higher prices), higher productivity, or lower output and fewer businesses. The Office of Budget Responsibility [was pessimistic](#), noting that ‘shortages of labour or other inputs may catalyse productivity improvements in some businesses, there is little evidence that supply constraints drive up economy-wide productivity or real wages’.

The [empirical evidence](#) suggests that the main impact of the ending of free movement will be lower overall employment and output; with no significant increase in employment for the UK-born; some, but probably small, increase in relative real wages for workers in the most affected sectors (offset by an even smaller fall in relative real wages for everyone else); and no offsetting increase in productivity, which may even fall.

Those challenges aside, the new system represents a considerable liberalisation for non-EU migrants, with lower salary and skills thresholds, and no overall cap on numbers. Approximately 68% of UK employees work in occupations with skills requirements compatible with the new Skilled Work Visa, and about half of all full-time jobs pay enough to qualify an applicant in principle for a visa. In London, the proportion is considerably higher.

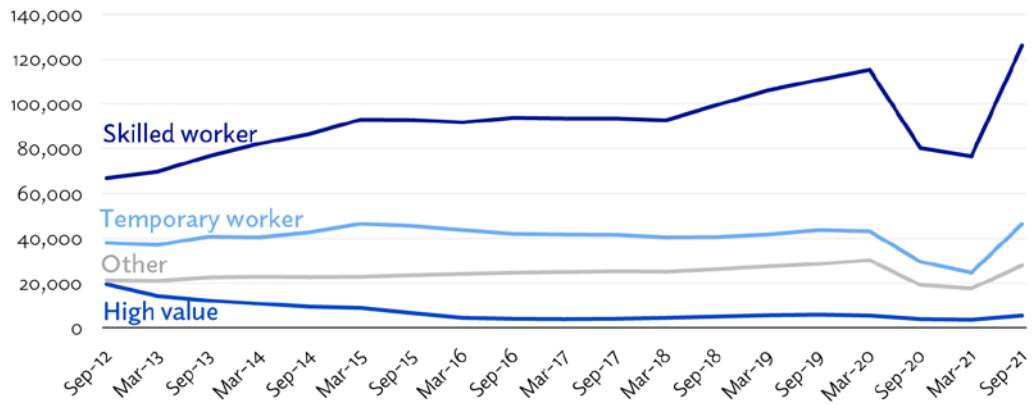
This represents a doubling in eligible jobs compared to the previous system for non-EU nationals. The new system is considerably more liberal for non-European migrants than that of most EU member states, which typically apply much more restrictive skill or salary thresholds, and often enforce a resident labour-market test. This could, in principle, be of considerable benefit, particularly to sectors like financial services and ICT, which employ substantial numbers of non-EU nationals, and could benefit from a simpler and less restrictive system.

So far, at least, the new system does seem to be operating as a liberalisation for skilled workers from outside the EU. In the year to September 2021, 14% more skilled worker visas were issued than two years earlier, pre-pandemic. The Health and Care Visa, in particular, has seen very high demand. Student numbers from outside the EU are also up sharply, counterbalancing a fall in EU-origin students, with a sharp rise in the number of students from India and some other countries, perhaps attracted by the new rights to work after graduation. So far, the impact of the new system is not to close the UK to immigration, but rather to orientate UK migration — once again — to the world beyond the EU.

Number of skilled work visas issued up 14%, compared to two years ago



Work-related visas granted by visa type, years ending March and September, September 2012 to September 2021.



Source: Home Office Immigration Statistics, year ending September 2021.

AGRICULTURE

Ruth Little and Jess Lyon

WHAT CHANGES WERE PROMISED AFTER BREXIT?

Brexit was regarded by many as an opportunity to leave behind the EU's Common Agricultural Policy (CAP), which absorbs [almost 40% of the total EU budget](#). The CAP no longer subsidises production per se, but payments are principally allocated according to the amount of land that farmers manage.

UK farmers sought freedom from the CAP's red tape, and environmentalists wanted to [reverse](#) the rapid decline of farmland birds and biodiversity attributed to the CAP's post-war legacy of boosting food production.

In 2018, Michael Gove, the then Secretary of State for Defra (Department for environment, food and rural affairs), declared that this would be a ['Green Brexit'](#) and that the new system of agricultural payments in England would provide farmers and land managers with 'public money for public goods'.

The subsequent [Health and Harmony Consultation](#) outlined a new system of payments that would incentivise a shift towards the delivery of clean air, clean water, biodiversity and habitat renewal, heritage and education. This would move away from the prescriptions and bureaucracy of previous schemes, towards a system that gave farmers scope for greater innovation and flexibility in how they deliver public goods by focusing on paying for environmental 'outcomes'.

WHAT HAS CHANGED SO FAR?

Following the passage of the [Agriculture Act in 2020](#), Defra embarked on delivering a new Environmental Land Management (ELM) scheme in England. Up until 2027, the ['seven-year agricultural transition'](#) will usher in three new schemes.

In the first phase from November 2021, the [Sustainable Farming Incentive](#) (SFI) is being piloted across 1,000 English farms from November 2021, testing eight 'standards' designed to incentivise more environmentally friendly actions by farmers.

From 2022, two further pilot-schemes will start: [Local Nature Recovery](#), which aims to assist farmers and land managers in collaborating to achieve greater environmental benefits across a larger area; and [Landscape Recovery](#), which aims to encourage large landowners and organisations to make transformative change to their land. The Landscape Recovery scheme will be the most ambitious in

terms of environmental protection, incentivising larger-scale, long-term land-use change projects that will help in delivering Net Zero targets. The first set of pilot projects will focus on [recovering threatened native species and restoring England's streams and rivers](#), covering an estimated 20,000 hectares.

The piloting of the first phase of ELM has coincided with the first reduction in the 'Basic Payment' received by farmers under the CAP. To cover the funding gap, Defra is implementing an early version of SFI — SFI 2022.

Agricultural policy is a devolved issue so there will be different approaches rolled out across the devolved administrations over the coming decade. Each nation has largely decided to prolong the direct payments to their farmers, with Northern Ireland starting to phase them out from 2022, Wales from 2023 and Scotland from 2024, but the direction of travel is very much in keeping with the model of rewarding farmers and land managers for delivery of environmental benefits.

WHAT ARE THE POSSIBILITIES FOR THE FUTURE?

The move towards a system of paying 'public money for public goods' is potentially a game changer in terms of using the circa 70% of UK land that is under agricultural management to contribute towards achieving ambitious biodiversity and Net Zero targets — including reducing the industry's own greenhouse gas emissions ([10% of the UK total](#)) — and delivering against the government's [25-Year Environment Plan](#). England is ahead of the other nations and time will tell if that pays off.

Although the promises of these schemes are highly encouraging, we do not yet know the detail of design and delivery. Across the UK, there has been an emphasis on the ['co-design' of schemes](#) in collaboration with stakeholders — in response to the enormity of the transition and the lack of trust the agricultural industry has in government. If the transition to these new schemes is successful, the process could revolutionise the relationship between government and the agricultural industry, but — if things do not go to plan — relationships could be further eroded and both livelihoods and landscapes could be put at risk.

It is important to note that [42% of farms in the UK](#) did not make a profit over and above the Basic Payment Scheme (BPS) when the UK left the EU — and a mismanaged transition could lead to hardship and political backlash. In England alone, Defra aims to enrol 82,500 farm holdings into ELM by 2028; a substantial increase from the circa 20,000 holdings already participating in agri-environment schemes (AES). To promote both the uptake and buy-in from farmers and land managers, the new post-Brexit schemes need to take account of the motivations and priorities of landowners and identify agronomic-environmental 'win-wins' (such as [agroforestry](#) which provides shelter for

livestock, thereby reducing energy loss and enhancing weight gain, while also sequestering carbon and enhancing biodiversity through habitat and food source creation).

Critics have [questioned](#) the ambition of the current schemes, stating that they need to push the agricultural industry harder and faster to meet the growing ecological challenges of the future. But, for the majority of farms that sit outside of the current agri-environmental model, there needs to be a first step on the ladder. Seven years may seem like a long time in policy terms, but they are the blink of an eye in agricultural timescales.

Although environmentalists are concerned with the level of ambition within SFI, some farmers feel that [payment rates still are not sufficient](#) for the scheme to be worthwhile. Defra's approach follows the principle of reimbursement for the loss of land for production, and the costs of undertaking actions. However, many farmers report hidden costs that Defra's methodology misses. Defra has [committed](#) the same amount of funding to farmers after Brexit as they received from the CAP, however for farmers to receive additional funding they need to be aware of and apply for different schemes and grants, which may prove a practical challenge.

The cycles of consultations, new frameworks and incremental policy changes — including the first reduction in the Basic Payments for farmers in England — have produced a period of real uncertainty for the agricultural industry, with challenges in the labour market and international trade deals compounding these anxieties. Although this may signify a potentially seismic and progressive shift towards a more environmentally sustainable mode of farming, the financial sustainability of the industry after Brexit is still a matter of genuine concern.

FISHERIES

Bryce Stewart

WHAT CHANGES WERE PROMISED AFTER BREXIT?

‘Taking back control’ of British fisheries and waters was wholeheartedly embraced by those campaigning for the UK to leave the EU. As a result, fisheries attained an exceptionally high profile during the Brexit referendum and the negotiations that followed, and continues to do so.

Many who promoted the benefits of Brexit for UK fisheries were senior politicians who now hold positions of power in government, including that of Prime Minister. Their promises fell into three main categories: UK control of fisheries regulations, restrictions on the access of foreign vessels to UK waters, and increased quota shares for UK vessels. All of this was to be achieved with only minimal effects on the UK’s ability to trade with the EU, which is [the main market for British-caught seafood](#).

As the Brexit negotiations rumbled on through 2020, it became increasingly obvious that the UK would need to make significant concessions on fisheries in order to avoid a costly no-deal Brexit. Consequently, although the fisheries minister Victoria Prentis [promised](#) an exclusive zone for UK vessels within 12 miles of the British coast, the government acknowledged that EU vessels would still have significant access to fish in offshore UK waters.

Likewise, although the UK government initially wanted all future fish quotas to be based on the proportion of fish populations living in UK waters ([zonal attachment](#)), this approach appeared to dissolve as the government pushed instead for large headline gains in quota ([up to 80%](#)), whereas the EU aimed to maintain the status quo.

WHAT HAS CHANGED SO FAR?

Despite the lofty promises to the UK fishing industry, the reality delivered by Brexit falls well short of the rhetoric.

The [TCA](#) provides for an increase in UK quota-share of 25% of the value of the previous EU catch in UK waters, phased in from 2021 to 2026. This translates into a [less than 10%](#) increase in value (less than 100,000 tonnes) of the total UK catch.

Many EU vessels have been granted access to offshore UK waters ([1,822 up 15 December 2021](#)). One hundred and fifty-three of these also permitted to fish

within the six-to-twelve-mile zone off the southern English coast, and another 170 in Crown Dependency waters. Crossing this UK red line generated particular anger from the UK fishing industry, with the National Federation of Fishermen's Organisations (NFFO) calling the deal '[miniscule, marginal, paltry, pathetic](#)'.

Despite these British concessions on access and quotas, [disagreements over French requests for further licences](#) continue to hit the headlines and currently remain unresolved. These tensions have arisen due to a lack of detail in the TCA about the specific proof of past fishing activities needed to qualify for a licence to fish in UK waters. Unfortunately, small vessels (under 12 metres) do not generally carry satellite-based vessel monitoring systems and are hence finding it difficult to provide this evidence. The French government maintains this is discriminatory, and fishers have already blockaded ports in protest. Further French government [threats include](#) banning all British seafood imports and imposing extra checks on goods arriving from and leaving the UK.

The TCA may have achieved tariff-free trade with the EU, but British seafood exporters face [extra paperwork and costs](#) and a ban on the exporting of live adult shellfish. Consequently, UK seafood exports to the EU have [dropped significantly](#). A recent analysis for the NFFO predicts that by 2026 the UK fishing industry will have lost [£300 million](#) in earnings due to Brexit.

WHAT ARE THE POSSIBILITIES FOR THE FUTURE?

Could UK fishers enjoy a better future once the initial adjustment period ends in 2026? It looks unlikely.

The wording of the TCA implies no further catch-share increase after 2026. If the UK sought to impose this, the EU could reduce reciprocal fishing access and place tariffs on fish imports and on other goods, or ultimately suspend other parts of the agreement. We are already seeing this play out with the [relatively minor disagreements](#) over licences with France. Compromises on fisheries will be essential for maintaining favourable trade.

If the UK cannot increase its quota-shares or further restrict foreign access, perhaps it could increase the productivity of the fish stocks in its waters through its stated ambition to become '[a world leader in managing our resources while protecting the marine environment](#)'. The TCA is more promising on this front, with long-term commitments from both the UK and EU to ensure that fishing activities for shared stocks are environmentally sustainable and to restore populations of harvested species above levels that can produce maximum catches. Whether these commitments will be acted on remains to be seen.

A more promising route may be through the measures contained in the [Fisheries Act](#). Again, there are [encouraging commitments on sustainability](#), especially the incentives to connect quota distribution with the use of fishing gear and techniques with a lower environmental impact, and recognition of the need to reduce the greenhouse gas emissions from fisheries while adapting to the effects of climate change.

Under the Joint Fisheries Statement, agreed by England, Scotland, Wales, and Northern Ireland, there are also new, more granular fisheries management plans, which might address the neglected issue of species for which catches are currently not limited by quota.

Brexit may also provide an opportunity for the UK to enhance the protection of its offshore Marine Protected Areas (MPAs), which [was previously hindered](#) by the need to gain agreement on measures from all relevant EU states. The UK government has [already proposed](#) banning bottom-towed fishing gear (e.g. trawling for flatfish and dredging for scallops) in four of these MPAs, including Dogger Bank, although this is now facing a potential legal challenge from Denmark over compatibility with the TCA.

The only certainty looking forward is that there will continue to be tensions between the UK and its neighbours over fishing rights. As climate change continues to [alter](#) the distribution of fish stocks across international waters, such disagreements over quota-shares and access seem only likely to escalate further. Shifting away from the current fixed system of allocating fishing opportunities according to past shares, towards a more flexible zonal attachment method, seems the only logical way forward. But whether the UK wants to keep rocking the boat remains to be seen.

STATE AID AND SUBSIDIES

Thomas Pope

WHAT CHANGES WERE PROMISED AFTER BREXIT?

Leaving the orbit of EU state aid rules, which determine which subsidies can be offered by governments to businesses, was one of the UK's goals during Brexit negotiations. The UK was a [relatively light user of subsidies](#) when a member of the EU, but still made freedom from them a priority. The UK government's [negotiating position](#) was that the UK should not need to make any binding commitment to the EU on subsidies after Brexit.

The best articulation of what the UK would intend to do with its new found freedom after Brexit came in [a document circulated to journalists](#) during the 2019 general election. It focused predominantly on the bureaucratic process to get subsidies approved in the EU. It promised a 'new state aid regime which will make it faster and easier to intervene to protect jobs when an industry is in trouble'. It said that a new system would be clearer, faster, more consistent and more permissive, contrasting this with the perceived failings of the EU regime. [Elsewhere](#), the government also emphasised the importance of having a system that was not subject to the jurisdiction of the European Courts.

Before Brexit, the government said little about how the use of subsidies would change when it introduced a new regime. It cautioned that it did not want to 'bail out failure' in its [2019 election document](#) and only provided a small example of support for steel companies that was delayed (although eventually permitted). Other Brexit supporters were more ambitious. For example, Rishi Sunak [highlighted](#) (while a backbench MP) that governments could provide more generous support for freeports and enterprise zones outside of the EU.

WHAT HAS CHANGED SO FAR?

The TCA [required](#) that the UK have its own system of domestic subsidy control, but allowed Great Britain to leave the EU State Aid regime, which happened when the transition period ended on 31 December 2020. The situation in Northern Ireland is more complicated: [Article 10](#) of the Northern Ireland Protocol means that many subsidies offered there will still be subject to EU rules. The UK failed to secure changes to Article 10 when it was negotiating the TCA.

The UK stopped following EU State Aid rules before legislating for a domestic system to replace it. However, the government's obligations in the TCA were still binding. This has led to a situation where the relevant chapter of the TCA is

binding domestic law for subsidy grantors (governments and public bodies), even though it was not written to be used for this purpose. Public bodies are required to demonstrate that their subsidy complies with principles laid out in the TCA or risk legal challenge, but there is no regulator or other structures that would make the system coherent and the guidance is relatively vague, resulting in [some confusion](#). The alternative — to continue to use EU State Aid rules without ECJ oversight in the interim — would have provided greater clarity and less upheaval while the government developed its plans for a new regime.

In the past couple of years, the UK government has made much greater use of subsidies to respond to the coronavirus pandemic. But these all either were permitted or would have been permitted under EU State Aid rules which [were relaxed](#) to allow governments to support businesses badly affected by restrictions. With the exception of [freeports](#), which were announced at the March 2021 budget with more incentives than would have been permitted as an EU member and continue to progress, no other policies that might have been prohibited by EU rules have yet been announced.

WHAT ARE THE POSSIBILITIES FOR THE FUTURE?

The next step in this area has already been laid before Parliament, putting subsidy control at the forefront of post-Brexit regulatory divergence. The [Subsidy Control Bill](#), which passed the House of Commons and is being debated in the Lords in early 2022, proposes a new domestic subsidy control system. It will operate in a similar way to the [‘interim regime’](#) that has applied since January 2021, but with a more formalised process for court challenge and a body — the Subsidy Advice Unit within the Competition and Markets Authority — to play a role as light-touch regulator.

The operation of the new system, which is likely to begin some time in 2022, will be an acid test for the government. Can it deliver a system that is clearer, faster, more consistent and more permissive as promised? Some commentators — including the [IfG](#) — have raised some concerns about the bill, including lax enforcement powers and limited powers for devolved ministers. But overall the structure of the new system could allow for a more efficient approvals process.

Strategically important subsidies offered by central government departments will no longer need to be tweaked or aborted to satisfy the Commission; nor will the government need to wait for six months or more while the Commission judges its merits. Instead, the department can self-assess compliance and go through a faster process. Smaller subsidies offered by local government could also have a simpler route to approval via safe harbour ‘streamlined routes’ which will replace the complex EU block exemption regulations. The extent to which the

new system does deliver these benefits will depend on the effective drafting of secondary legislation which has not yet been published.

Once the system itself has been established, attention will turn to how this government (and subsequent ones) plan to use subsidies, and whether leaving the EU was necessary to achieve this. They will face several constraints beyond the new domestic regime — challenge from the EU if subsidies are deemed to violate the TCA, possible challenges under EU State Aid rules via the Protocol, and possible challenges from other countries through the [WTO rules](#).

However overall constraints will be laxer than when the UK was an EU member. Over the coming years, we can expect a greater use of subsidies to enable the transition to net zero (such as [gigafactories](#)) and — possibly — more subsidies to support regional economies as part of the ‘levelling up’ agenda, though the new system does have safeguards to try to prevent subsidies that would distort investment in the UK which could limit some spending intended for these means.

The government is likely to claim a ‘Brexit dividend’ when it offers high profile subsidies. If the system operates effectively, it should mean that subsidies are approved more easily, and in some cases they may even be subsidies that were not permitted in the EU. Mostly, however, subsidies that the UK will pursue outside of the EU would have been deliverable — perhaps in slightly modified form — under the EU rules which are already enabling more [green subsidies](#). Even if the UK does become a higher-subsidy nation, the government will have its work cut out to demonstrate that Brexit was necessary to achieve that.

FINANCIAL SERVICES

Sarah Hall and Martin Heneghan

WHAT CHANGES WERE PROMISED AFTER BREXIT?

For many financial services businesses, Brexit was seen as a threat rather than an opportunity. EU Single Market membership allowed the City to build on its competitiveness as a leading international financial centre, rivalled only by New York, to act as a gateway for international finance to access the European market.

This gateway was facilitated through ‘passporting rights’ that allowed financial services providers authorised in the UK to deliver services across the EU/EEA without the need for additional regulatory clearances. In 2019, the EU [accounted](#) for 40% of UK financial services exports (£24 billion).

During the referendum, some analysts [warned](#) that, in the absence of passporting, Brexit could cause jobs losses in financial services totalling 100,000 by 2020, with the sector estimated to decline by up to 9.5% compared to continued EU membership. The Johnson government, for its part, emphasised the opportunities Brexit presented to tailor financial services regulations to the specificities of the City.

In the trade negotiations with the EU, the government prioritised regulatory autonomy over maintenance of Single Market membership for financial services. The City lobbied for special treatment through mutual recognition of rules, but the EU was clear that, without accepting free movement, the UK would not be able to cherry pick elements of the Single Market.

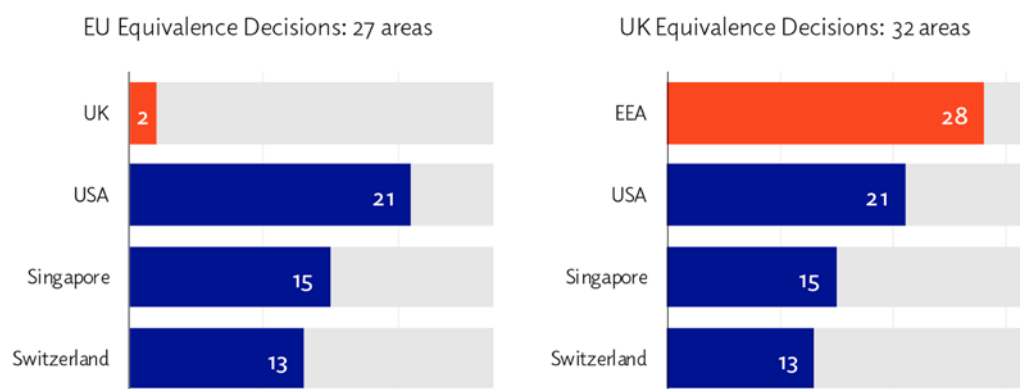
WHAT HAS CHANGED SO FAR?

UK financial services have lost passporting rights. Consequently, market access for specific parts of financial services depends on equivalence decisions, where the EU determines the UK has regulatory standards equivalent to the EU’s.

Despite the UK being equivalent to the EU by virtue of its Single Market membership up until the end of 2020, the EU only granted the UK two, time-limited equivalence decisions — far fewer than it has granted to key competitors such as the US and Singapore. There is little prospect of this changing while relations between the UK and the EU are strained, and the EU seeks to take market share from the UK.

The UK has granted the EEA equivalence in 28 areas whereas the EU has granted the UK equivalence in only two areas.

EU and UK Equivalence decisions



Sources: European Commission (10/02/2021); HM Treasury (14/01/2021).

The UK and the EU have agreed in principle the Memorandum of Understanding on regulatory cooperation that the TCA envisaged being finalised in March 2021. However, the text has yet to be published.

Even before the end of the transition period, as it became clear that financial services would lose Single Market access, firms began implementing their no-deal contingency plans. To date, an estimated 7,400 jobs have moved from London to European financial centres along with around €1 trillion in capital. These figures are lower than pre-Brexit worst case scenarios estimated but they do not represent the final Brexit outcome. Relocation plans were impacted by Covid-19 travel restrictions, and the EU has permitted a number of functions to continue to take place in the UK. However, once the EU takes a less permissive approach and pandemic-related restrictions are lifted, we can expect relocations from the UK to the EU to resume.

WHAT ARE THE POSSIBILITIES FOR THE FUTURE?

Financial services is one of the areas the government is prioritising for divergence from the EU's regulatory framework. The Chancellor, Rishi Sunak, confirmed his preference for regulatory freedom over potentially enhanced Single Market access in his summer 2021 Mansion House speech. The June 2021 Taskforce on Innovation, Growth and Regulatory Reform (TIGRR) report recommended a number of changes to the UK financial regulatory framework.

This strategy forms part of a broader ambition to position London as an internationally open financial centre. Rishi Sunak announced in November 2020 that the UK would be adopting a more liberal approach than the EU to equivalence, granting it from 1 January 2021 to EEA-based financial services in

a wide range of areas. An equivalence arrangement with Switzerland allowed the UK to reintroduce the trading of Swiss shares on London exchanges. This allowed London, temporarily, to reclaim its position as Europe's leading hub for share-trading, which it had ceded to Amsterdam earlier in 2021.

The government aims to use this regulatory divergence to enhance the competitiveness of UK financial services. This was made clear in its recent [proposals](#) that UK regulators should consider the international competitiveness of UK financial services when making regulatory changes — an objective that had been dropped following the 2007-8 financial crisis. However, the government has reiterated its commitment to maintaining high regulatory standards while seeking to foster growth and new partnerships in financial services.

Trade policy has a role to play too. The UK-Australia trade agreement includes commitments to deepen trade in financial services, albeit from a much lower [base](#) than trade with the EU. However, [research](#) suggests that it will be difficult to make up lost EU trade with new international partners because trade in services is typically greatest between geographically close trading partners

The Green Finance Framework sets out how the government plans to enrol private finance into the funding of sustainable technologies and infrastructure. The UK released its inaugural green gilt on 21 September 2021, raising £10 billion. However, it is playing catch up to the EU. Several member states, including Poland and Germany, have already launched green gilts, and the EU has been at the forefront of developing a green taxonomy that sets out what counts as 'green' from an investment point of view.

Investment in fintech and digital finance has remained [strong](#) in the UK, and the sector has welcomed the [Kalifa Review](#) that aims to enhance the competitiveness of UK digital finance. However, the sector relies heavily on EU workers, and there are [concerns](#) that the ending of freedom of movement could make it harder to attract the skills it needs to continue to grow.

We are still in the early stages of assessing what the future looks like for UK financial services after Brexit. It is clear that piecemeal regulatory changes are being made. However, it is not clear that these changes will be sufficient to offset lost financial services exports to the EU.

PUBLIC PROCUREMENT

Albert Sanchez-Graells

WHAT CHANGES WERE PROMISED AFTER BREXIT?

Public procurement regulation is a set of rules and policies controlling the award of public contracts for works, supplies, and services. Its main goal is to ensure probity and value for money in the spending of public funds, to prevent corruption, collusion, and wastage of taxpayers' money. As pandemic-related procurement [has shown](#), the absence of procurement rules (or their [disapplication due to an emergency](#)), all too often leads to the [improper award of public contracts](#). Nonetheless, the benefits of constraining discretion in the award of public contracts are easily forgotten in 'normal times', and procurement regulation is permanently challenged for creating an administrative burden on both the public sector and on companies tendering for public contracts, and for stifling innovation.

Procurement has long been heavily influenced by international and regional agreements, which constrain domestic choices to facilitate cross-border tendering for public contracts. Before Brexit, the UK was directly bound by the [procurement rules of the European Union](#), and indirectly by those of the World Trade Organisation's [Government Procurement Agreement](#) (GPA), to which EU rules are aligned. As a result, UK regulatory autonomy was limited to the spaces left by general EU rules requiring domestic transposition. The UK decided not to exercise that limited discretion and [consistently took a copy-out approach](#) to the transposition of EU rules, so before Brexit UK procurement regulation was virtually identical to the EU's.

During the Brexit process, public procurement was ear-marked for reform. Boris Johnson [promised](#) a 'bonfire of procurement red tape to give small firms a bigger slice of government contracts' and his government proposed to significantly [rewrite the procurement rulebook](#), and to adopt an ambitious '[Buy British](#)' policy to reserve some public contracts for British firms.

WHAT HAS CHANGED SO FAR?

Despite those promises, the UK government has made big efforts to replicate international and regional procurement agreements after Brexit, which means it will continue to be difficult to introduce an effective 'Buy British' policy. The UK gained [GPA membership in its own right](#) on 1 January 2021. This now directly constrains domestic choices on procurement regulation. The [TCA](#) also includes

a chapter on public procurement that leaves mutual market access commitments virtually unchanged.

The government was slow to understand (or at least clearly communicate) the implications of this continuity in the trade-related aspects of procurement regulation. On 15 December 2020, the Cabinet Office issued a Procurement Policy Note (PPN) on '[Reserving below threshold procurements](#)' that formulated the new 'Buy British' policy in terms of reserving contracts by supplier location (either UK-wide, or by county) and/or reserving them for small- and medium-sized enterprises (SMEs) or voluntary, community, and social enterprises (VCSEs). Aggressive implementation could have contravened international agreements to which the UK had signed up. This led to the publication on 19 February 2021 of a new PPN on '[The WTO GPA and the UK-EU TCA](#),' stressing that the pre-Brexit limits on a 'Buy British' policy remain in place and virtually unchanged since Brexit.

On 15 December 2020, the UK government published the green paper '[Transforming Public Procurement](#)' to consult on planned legislative changes to the procurement rulebook. The original timeline envisaged the introduction of a Procurement Bill in Parliament after summer 2021. However, the volume of responses to the public consultation (over 600), and the [complex issues they raised](#), as well as the intrinsic difficulty in [seeking to significantly change procurement law](#) in a manner that is compliant with international obligations, led the Cabinet Office to adjust the timeline. The [government response](#) to the public consultation on 6 December 2021 clarified that the new regime will not come into force until 2023 at the earliest.

So far, then, the Brexit-related changes have been modest. There have been some policy developments, such as the adoption of a [National Procurement Policy Statement](#) seeking to embed government goals, such as growth and jobs and climate change, in procurement decision-making; a push for a fresh approach to assessing [social value in the award of government contracts](#); new requirements for firms applying for major contracts [to have carbon reduction plans](#); and to also require those firms to have [systems in place that ensure prompt, fair, and effective payments](#) to their supply chains. None of these will reduce procurement red tape and most, if not all, would have been possible before Brexit.

WHAT ARE THE POSSIBILITIES FOR THE FUTURE?

Given the commitments in the GPA and TCA, there is virtually no scope for a 'Buy British' policy. The UK could be more aggressive in the exclusion of tenders from non-GPA jurisdictions such as China, India or Brazil (something the [EU is](#)

[increasingly doing](#)) as a practical way of seeking to boost contract awards to UK companies.

By contrast, the process of reform of the UK's procurement rulebook is likely to result in a new set of streamlined regulations, as well as a voluminous body of guidance. Despite the government's prioritisation of simplification as a primary goal of legislative reform, the extent to which procurement can be significantly deregulated is unclear, as a result both of international commitments and, more importantly, the need to create a legislative framework fit for purpose that does not overwhelm the public sector in its complexity.

There is an opportunity for the Procurement Bill to make some progress on the [modernisation and digitalisation of procurement systems](#), which has been slow in the UK despite it being a shared strategic goal with the EU. It is likely that the new rules will bring a clearer focus on open procurement data, which could enable a change of approach to the practice and management of procurement and offer some benefits from a red-tape perspective. However, the green paper was criticised, among other things, for a [lack of ambition in the automation of public procurement](#), so the extent to which tech will be a pillar of procurement 'transformation' in the UK remains unclear.

Overall, not much has changed and, rhetoric apart, there is limited scope for further change.

TAX

Judith Freedman and Glen Loutzenhiser

WHAT CHANGES WERE PROMISED AFTER BREXIT?

Protagonists on both sides of the Brexit debate claimed that tax was a motivation for Britain to leave the EU, but both groups overestimated the importance of the EU to taxation. One unfounded rumour, for example, was that Leavers wished to escape the effects of the EU Anti-avoidance Directive (known as ATAD), [a point that ignored](#) existing UK legislation and global commitments. Some Leavers claimed that Brexit would pave the way for a reduction in taxes to show that Britain was ‘open for business’ and hoped to make changes to the tax system without the constraints of EU law. This led to fears from some, including some EU member states, that the UK [might become a tax haven](#), with lower corporation tax, large tax reliefs to businesses and wealthy individuals, and a lack of transparency.

In reality, however, EU control over direct tax policy was always limited with any tax changes requiring unanimity. A small number of directives ceased to apply but the effect is mitigated by domestic law and bilateral treaties. Tax is a global issue, and the UK has played a leading role in OECD work on modernising the international tax system to raise greater revenues from multinational companies and relocate tax payments, especially in relation to tech giants. Westminster has also enacted many domestic provisions to prevent tax avoidance in recent years. It was always highly unlikely that the UK would U-turn on international or domestic tax.

The greatest practical difficulties of Brexit expected in the tax field were around value-added tax (VAT). VAT is an EU tax designed for a single market, so exclusion from this market was inevitably going to bring complications, in addition to opportunities for reform.

WHAT HAS CHANGED SO FAR?

The onset of the pandemic ended all thoughts of a corporation tax cut. The Finance Act 2021 raised corporation tax from 19% to 25% from April 2023. The quid pro quo was an accelerated depreciation allowance for plant and machinery — the so-called super-deduction — for two years (likely only to bring forward capital investments). The UK could have done this as an EU member.

Soon after leaving the EU, the government announced plans for eight new freeports in England, involving enhanced capital allowances, relief on stamp-

duty, land tax, and business rates, and reduced employer National Insurance contributions. Freeports exist within EU member states but are restricted by state-aid considerations. However, the UK remains subject to WTO rules, free-trade agreements including the TCA, and new domestic UK subsidy controls, which are softer than the EU state-aid regime but are still potentially limiting. It has been suggested that freeports face a problem from proposed domestic subsidy controls, which would prevent subsidies requiring relocation of activities from one area of the UK to another, but the government argues that designated freeports would have to show they were creating additional jobs and investment and not harmful displacement, so the controls would not bite (although the OBR has [cast doubt](#) on whether new activity will be created).

The Chancellor made much of Brexit opportunities in his 2021 Autumn Budget, but the changes made possible by Brexit were relatively small: the headline-grabbing alcohol duties rationalisation; measures on the tonnage tax to encourage shipping companies to move to the UK; a reduction in air passenger duty for domestic flights; a refocusing of research and development tax reliefs towards activity in the UK; and removal of cross-border loss reliefs reversing the impact of an earlier ECJ decision.

The government now has more freedom on VAT but so far has used this only to fulfil a promise made in 2016 to remove VAT on women's sanitary products. Traders, however, have faced a raft of new VAT complexities. A major EU reform to the VAT obligations of e-commerce sellers from July 2021, which will eventually be a simplification for those trading with the EU, has required UK-based sellers to register for VAT under the new system in one member state, or to pay intermediaries to handle the process.

WHAT ARE THE POSSIBILITIES FOR THE FUTURE?

International moves through the OECD towards establishing a minimum corporate tax, as well as the need for revenues, have taken corporation tax cuts off the table for now. The UK continues to be subject to the tax standards and the good governance provisions agreed in the TCA and will continue engaging with the OECD's programme to increase information exchange and to reduce base erosion and profit shifting. Immediately after Brexit, the UK showed its preference for OECD standards by repealing some detailed EU provisions on disclosure of tax arrangements (DAC 6) in favour of targeting its mandatory disclosure provisions in line with the OECD rules, arguably focusing more efficiently on the main mischiefs.

The EU faces challenges in implementing proposed OECD measures on international tax, due to the constraints arising from EU law on freedom of

establishment and of [movement](#) of capital, but the UK has no such difficulties. It seems likely that the next major tax project will be a global minimum carbon tax, and the OECD has already staked its claim to lead on this.

Rather than major rate cuts and structural reforms, we are likely to see a continuation of the modest adjustments that have begun, designed to attract investment to the UK and retain it. The UK tax regime had business-friendly features before Brexit. For example, Shell's planned move of tax residence to the UK is less a vote of confidence in post-Brexit Britain than (in part) a move to escape Dutch dividend withholding tax. However, the government may do more to ease corporate moves to the UK. It has, for instance, published a consultation on a new regime for corporate re-domiciliations into the UK.

Ministers will come under pressure to grant VAT reliefs and exemptions without being able to turn to EU rules as a defence, even if reductions are inefficient. But they have opportunities to modernise the VAT rules, for example on financial and insurance services — also being reviewed by the EU — and to [simplify VAT on land](#).

The dominant theme in taxation for the foreseeable future will be the need for revenue to deal with pandemic debt and ongoing calls on government services. Despite pressure from some for lower taxes, cuts look implausible in the current climate.

CONSUMER PROTECTION

Stephen Weatherill

WHAT CHANGES WERE PROMISED AFTER BREXIT?

Consumer protection was not central to debates about the changes that would become possible after Brexit. Rather, it formed part of the broader context within which it was claimed that the UK's release from the obligations of EU membership would permit the selection of regulatory techniques that were tailored to the UK's own particular situation and aspirations.

This is a coherent claim when it comes to legal rules governing the practice of suppliers of goods and services. The EU's body of legislation addressing the protection of consumers largely consists of harmonised rules designed to provide a common regulatory foundation for the EU's internal market, and it is expansive in scope. After Brexit, however, it is for the UK to choose the design of consumer protection law in light of local conditions and preferences.

In so far as consumer protection did form part of the debate about post-Brexit changes, it largely involved Leave campaigners insisting that no reduction in the level of protection was planned or likely. So, for example, mobile phone roaming charges are regulated in the EU by legislation, which forbids extra charges being imposed on consumers who use their phones in member states other than their own. Suggestions that Brexit would expose consumers in the UK to price discrimination of this type [were met with scorn](#).

WHAT HAS CHANGED SO FAR?

Brexit provides opportunities to rewrite consumer protection legislation, but some of the most immediate impacts on consumers have resulted from the UK's leaving the EU's internal market. Its rules, which prohibit obstacles to free movement of goods and services between member states and anti-competitive practices, serve consumer interest in a functioning transnational market. None of this can be re-created in or by the UK after Brexit. Consumers, who had previously made their choices within the EU's internal market, are now confined to that of the UK and by the new terms of trade with the EU (and indeed the wider world). No more unrestricted purchases of wine in the hypermarkets of Calais! The UK's choice to step away from the rules of the EU internal market and customs union, rather than pursue the closer relationship favoured by some other non-member states, accentuates the disruption. Consider the effects of the reduction in labour supply on the supply of consumer goods and services over recent months (e.g., haulage, delivery, hospitality, care and agriculture). These are

visible changes, as UK consumers lost the advantages of frictionless trade within the EU internal market at the beginning of 2021.

Changes are also apparent at a more detailed level. EU consumer protection measures are retained within the UK until such time as it is decided to alter them. However, these are rights provided by UK law, and they apply only within the UK. A consumer of mobile phone services travelling to the EU has no legal claim to protection against discriminatory pricing. And so most have chosen to adjust terms to provide that calls made by UK consumers when travelling in the EU cost more than those made within the UK — in contradiction to the predictions made by some Leavers.

WHAT ARE THE POSSIBILITIES FOR THE FUTURE?

As time ticks by, the level of divergence between UK and EU consumer law will increase incrementally. Every new piece of legislation adopted by the EU creates a separation — unless the UK chooses to adopt the same rules, to which one can readily imagine there would arise fierce political resistance. An early example was a [2019 EU directive](#) to strengthen the protective rules governing the sale of consumer goods. Member states are expected to apply it from 2022, and UK traders selling to consumers in the EU will need to comply. However, it will not apply to the sale of goods in the UK. Accordingly, alignment between UK and EU laws will begin to diverge in the absence of any active steps taken in the UK to adjust its existing system.

The key question is how far the UK is willing to align with EU rules in order to secure a relatively (though not entirely) friction-free economic relationship rather than insisting on exercising its regulatory autonomy. So far, the stated preference of the UK government leans strongly towards the appeal of regulatory autonomy and acceptance of the consequent costs.

However, just as consumer protection was not central to debates about whether to leave the EU, so too it appears not to be central to debates about the UK's regulatory trajectory after Brexit. Other matters loom larger, yet it is a surprise that the opportunities for reform which are presented by Brexit appear to have provoked few new ideas in the field. There is plenty of room. The TCA does not require the UK continue to apply EU law and the non-regression norms applicable to aspects of labour law and environmental protection do not impinge on consumer law. Despite the UK choosing to retain much existing EU consumer protection law for the time being, it is not legally obliged to do so.

The UK could choose to weaken consumer protection as part of a deregulatory programme designed to cut costs for business; equally it could choose to strengthen consumer protection in areas such as the control of unfair commercial

practices, where [EU law](#) prevents stricter standards than the harmonised EU norm. Moreover, it is perfectly possible for different choices to emerge in future as political rhythms change. Closer alignment may be preferred, as suggested by Labour leader, Keir Starmer, in his [speech to the CBI](#) on 22 November 2021. The UK could accept binding obligations to follow the EU model, reducing regulatory autonomy but potentially enabling a consumer-friendly increase in ease of access to EU goods, services, and labour markets.

ENVIRONMENT

Viviane Gravey

WHAT CHANGES WERE PROMISED AFTER BREXIT?

Discussions about environment [hardly featured](#) in the 2016 referendum campaign. Consequently, what Brexit would mean for the environment was rather unclear — and highly dependent on who delivered it. But there are three competing visions for the environment after Brexit.

First, a deregulatory vision, cutting back on EU environmental standards which are seen as needless red tape and rejects the idea of updating UK environmental governance arrangements. Ahead of the 2016 vote, the then Agriculture Minister, George Eustice promised Leave would mean getting rid of [‘spirit crushing directives’](#) such as the birds and habitats directive which underpin conservation efforts across Europe. This view was also espoused by [Andrea Leadsom](#) as Secretary of State for Defra, who further argued that judicial review and parliamentary oversight would be sufficient to replace the roles of the European Commission and the European Court of Justice in driving compliance with environmental law.

A second vision, of [‘rivalrous emulation’](#), was articulated by Michael Gove when he took over at Defra after the June 2017 election. Gove promised a [‘Green Brexit,’](#) with the UK competing with the EU to lead global environmental action. Boris Johnson appeared to support this approach when he became Prime Minister, presenting the Environment Bill as the [‘lodestar’](#) of his legislative agenda. Compared to Leadsom, Gove (and Johnson) recognised the need to fix the environmental [governance gap](#) that had opened with the end of EU jurisdiction and promised a new environmental watchdog. Both visions focused on divergence with the EU — either downward or upward.

But much of [environmental policy is devolved](#) — and so a third vision emerged, articulated by the Welsh and Scottish governments. On the one hand, it involved increasing ambition, while maintaining close alignment with the EU, and on the other hand resisting as much as possible shared UK regulatory and governance responses to Brexit, choosing instead to develop individual approaches for their own regions.

WHAT HAS CHANGED SO FAR?

During the Brexit negotiations, EU concerns about UK plans for a ‘Singapore on Thames’ deregulatory model underpinned demands for a strong ‘level

playing field’ chapter in the TCA to prevent the UK rowing back on existing environmental standards, and the inclusion of some key environmental provisions in the Northern Ireland Protocol. The TCA’s level playing field chapter is [a step-change](#) for environmental inclusion in EU trade deals. Its mechanisms, with temporary remedies for non-regression and a rebalancing mechanism, in case one party’s greater environmental ambition leaves it open to ‘material impacts on trade or investment between the parties’, are lengthy, [cumbersome](#), and unlikely to be used frequently. The Protocol has much sharper teeth but a narrow scope, with only a few environmental directives included in the list of EU law that Northern Ireland must keep pace with. There [uncertainty lies](#) in how frequently these EU rules will be amended, how often the list will be extended, and how the new patchwork of EU, UK, and Northern Ireland environmental rules will work together.

In Westminster, the government needed to put in place a new post-Brexit architecture. The Environment Act finally gained Royal Assent in November 2021. It is the [central plank](#) of England’s post-Brexit environmental policy and aligns with Michael Gove’s vision of ‘rivalrous emulation’. Key provisions include a new enforcement and oversight body — the Office for Environment Protection (OEP) — as well as a list of environmental principles both extended to Northern Ireland, pending approval by the Northern Ireland Assembly in early 2022.

Despite amendments during parliamentary debates, this new governance architecture does not fully allay concerns about greatly increased [executive control](#) of environmental law — in terms of the extent of OEP independence from government — or fears that, although the principles listed are the same as the EU, the way the Act operationalises them weakens them (requiring ‘due regard’ to a statement on principles written by Secretary of State, not the principles themselves). Critically, developments in both Scotland and Wales show that there were more environmentally ambitious alternatives. [Scotland](#) has put in place its own regulatory body, Environmental Standards Scotland, both more powerful and independent than the OEP. [Welsh ministers](#), when a new body is finally set up, will have ‘a duty (..) to apply the principles in the development of policy and legislation’.

WHAT ARE THE POSSIBILITIES FOR THE FUTURE?

Despite the Act, the future direction of UK environmental action remains rather murky for three reasons. First, adopting the Act is only a first step, delivering it — establishing legally binding environmental targets and setting up the OEP in practice — remains to be done. It is far from clear how the OEP will exercise its functions and how much attention the government will pay to its advice.

Second, although there has been little deregulation in the government's environmental agenda so far, [Boris Johnson's comments](#) about nature rules creating 'delays' for developers, the recent report by the [Taskforce on Innovation, Growth and Regulatory Reform](#) and Lord Frost's intent to revise [retained EU law](#) suggest there could still be appetite for revising and potentially removing key environmental protections in future in England.

Third, whereas Scotland, Wales and, to a lesser extent, Northern Ireland are keen to develop their own individual approaches to environmental action, the 2020 UK Internal Market Act has been characterised by devolved governments as having a '[chilling effect](#)' on devolved competences. Indeed, if for example the Welsh government were to adopt more ambitious (and constraining) rules on single-use plastics in line with new EU regulations, English producers could still sell goods prohibited in Wales in the Welsh market, following more lenient English rules and giving those English producers a competitive advantage over Welsh ones.

This is likely to make environmental action a core element of intergovernmental tensions in the years to come — and even more so if the UK government pursues deregulation of retained EU law while (some of) the devolved administrations choose to remain closely aligned to EU rules.

ENERGY

Jim Watson and Paul Drummond

WHAT CHANGES WERE PROMISED AFTER BREXIT?

The referendum campaign did not focus significantly on energy. Perhaps the most striking claims were made by Vote Leave, whose 2016 [briefing](#) asserted that around £90 billion of costs incurred by EU regulation of the energy sector could be avoided if the UK left the EU. The briefing focused on EU rules, including VAT on domestic energy and regulation of emissions from fossil fuel power plants, without any details to substantiate the figure. It also included a common complaint: that EU ‘eco-design’ regulation effectively banned certain types of ‘high-performance’ (and less energy efficient) appliances. As a government spokesperson [commented at the time](#), the Vote Leave figure of £90 billion implied that the UK would scrap its climate change targets after Brexit.

Boris Johnson and Michael Gove also [said that](#) VAT on domestic energy would be abolished if the UK left the EU, saving households £2 billion a year. However, some independent analysts pointed to the potential costs of leaving the EU’s single energy market. Two [separate studies](#) concluded that the costs could be around £500 million a year.

WHAT HAS CHANGED SO FAR?

The main direction of UK energy policy has not changed since the referendum. The UK government has strengthened its commitment to reducing emissions, published a [Net Zero Strategy](#) and submitted its own emissions reduction plan to the UN Framework Convention on Climate Change. Before Brexit, the UK’s plans and negotiating position were under the auspices of the EU.

Following the referendum, the government confirmed the UK would leave the EU’s main carbon pricing mechanism — the EU emissions trading system (EU ETS) — but that the post-Brexit approach to carbon pricing in the power generation and industry sectors would be at least as ambitious as the EU approach.

The UK ETS was launched in May 2021, with the same scope and similar design to the EU ETS. Since then, the price of emissions under the EU ETS has steadily increased, more than doubling in value by the end of November 2021 to a previously unseen €75/tonne, [largely matched](#) by the UK price. The two schemes operate separately — even though the Climate Change Committee saw advantages in linking to increase liquidity — but possible future linkage was held open in the TCA.

Despite speculation, VAT rates on domestic electricity and gas have not changed. The Net Zero Strategy trailed the possibility of rebalancing taxation from electricity (which is heavily taxed) to gas (which is taxed less). But the immediate costs of leaving the EU's single energy market did materialise. Analysis for the energy regulator Ofgem in late 2018 concluded that leaving the EU [had already cost energy consumers £2 billion](#), before the TCA was agreed: £1 billion due to the devaluation of the pound and a further £1 billion due to increased gas price volatility.

However, some of the assumptions made by independent analysts during the campaign turned out to be incorrect. For example, Vivid Economics' [expectation](#) of a £500 million annual cost from leaving the EU electricity market assumed no further electricity interconnector investment. Since Brexit, [two large interconnectors](#) have started operation and another is under construction.

Since Brexit, also, the UK has left the [North Seas Energy Cooperation](#) platform, established by the European Commission, the UK and other North Sea coastal states to facilitate co-ordination of offshore wind investment. Both the UK and the EU have ambitious plans to expand offshore wind as part of electricity sector decarbonisation. The TCA states that a forum for cooperation between the UK, the EU, and its member states will be established in parallel, but the timetable, and the degree to which it will effectively replicate or build upon the existing platform, is unclear.

There has also been very little divergence from EU eco-design regulations since Brexit. In 2020, the government stated that it would maintain or exceed EU minimum standards, and potentially expand their application to other products. In July 2021, UK regulations were amended to replicate new EU product eco-design and labelling standards.

The UK has also left Euratom, the EU's regulatory agency for nuclear material and its use in civilian (energy and medical) applications. Although the announcement of the decision in 2017 caused some [concern](#), the transition has been relatively successful. A new cooperation agreement came into effect in 2020, which replicates many of the previous arrangements and is complemented by bilateral agreements with other countries to ensure nuclear fuel supply.

WHAT ARE THE POSSIBILITIES FOR THE FUTURE?

In future, the UK could choose to diverge further from EU regulations and policy mechanisms — for example, by having a more distinctive approach to energy sector decarbonisation. For the time being, however, the UK seems intent on cooperating closely with the EU.

The potential establishment of formal links between UK and EU carbon pricing schemes remain very uncertain. In July 2021, the European Commission published proposals to extend the EU ETS to marine transport from 2023, with a parallel system for fuels consumed in buildings and road transport from 2026. The UK ETS may expand sector coverage to marine transport and waste incineration, however initial proposals to extend it to fuels used in road transport and heating are [likely to be dropped](#), at least in the near-term, to avoid the risk of exacerbating rising energy prices. The potential for the two systems to diverge in sectoral scope allows the UK flexibility to pursue its own decarbonisation policy approach. However, by the same token, this may also permit or result in divergent practical ambition.

In 2020, the EU began consulting on the future of its eco-design regulations, with a particular focus on the inclusion of broader ‘circular economy’ principles, including ‘right to repair’ and efficiency in the use of non-energy resources. In November 2021, the government published the initial outline of its proposed policy in this arena, with a similar focus. Maintaining respective market access for regulated products may constrain future divergence in this area. In the longer run, the TCA holds open the possibility of reintegration of the two energy markets.

AVIATION

Hussein Kassim

WHAT CHANGES WERE PROMISED AFTER BREXIT?

Brexit supporters argued that leaving the EU would deliver new opportunities for UK aviation, though were short on specifics. Following consultations in 2017 and 2018, the Department of Transport set out a future strategy in [Aviation 2050](#). The aims were fairly generic: to ensure a safe and secure way to travel; to build a global and connected Britain; to encourage competitive markets; to support growth while tackling environmental impacts; and to develop innovation, technology, and skills.

Although aiming to leave the world's most open aviation market, the UK was confident that it could continue to pursue a liberal policy. The government reasoned that the size of the UK industry would persuade EU member states, especially those dependent on tourism, to allow UK airlines some access to the single market. Although UK airlines would lose certain single market freedoms — the right to operate services inside, between or beyond individual member states — the government believed it could replace existing EU international agreements with liberal deals that were more favourable to UK companies.

On safety, Theresa May [had hoped](#) to negotiate some form of associate membership of the EU's European Air Safety Agency (EASA), but this proved unacceptable to some Brexiters and the EU since it would have required the EU to open membership to countries outside the European Common Aviation Area, and Boris Johnson dropped it from his [White Paper](#). However, when Secretary of State for Transport, [Grant Shapps](#), confirmed in March 2020 that the UK would withdraw from the EASA, the decision was met with dismay by UK stakeholders, concerned about the increased regulatory burden, duplication of red tape, and the ability of the UK Civil Aviation Authority (CAA) to catch up with EASA.

WHAT HAS CHANGED SO FAR?

The aviation provisions of the [TCA](#) offered significant continuity for UK carriers. UK airlines retained their rights to fly to and from the EU, though not to operate services between, within or onward from member states. Although some UK airlines created EU subsidiaries to retain full access to the single market, the new rules on ownership were less strict on UK carriers than expected. However, UK charters, cargo carriers, and [business airlines](#) have [experienced difficulties](#) in obtaining approval for providing ad hoc services to EU destinations.

On the safety side, the picture is more [mixed](#). During EU membership, UK pilots, airline companies, manufacturers, designers and others benefited from mutual recognition through [EASA](#), which also handled licensing and certification. Those responsibilities have now been transferred to the UK CAA. Moreover, although [the Aviation Safety Agreement Annex of the TCA](#) allows for the acceptance and validation of certificates and approvals in some areas, it does not cover all. The new arrangements are [tilted in the EU's favour](#), and whereas in some areas the UK has adopted transitional measures for EU-certificate holders, the EU has not done the same for UK holders. UK-trained pilots wanting to work for EU-listed airlines are [particularly disadvantaged](#).

In other areas — [airport charges, airport slot allocation, and ground handling](#) — the status quo has been maintained through commitments under the TCA or, as in the case of [passenger rights](#), through retained legislation.

Beyond these adjustments, policy changes have been scarce. The UK is [implementing](#) its plan [to modernise UK airspace](#) by ‘updating its structural design, changing how the systems on which it runs work, and using new technology to improve how air traffic is managed’. It has taken steps to make the UK ‘[the best place in the world for general aviation](#)’, that is ‘[private flying consisting of personal transport, training, recreational, and sporting activity](#)’. It has also begun to invest in and promote the use of [new and novel aircraft](#), including [drones](#).

WHAT ARE THE POSSIBILITIES FOR THE FUTURE?

Beyond the constraints imposed by the TCA, including the level playing field, the possibilities for future development are limited. Aviation is a sector where international regulation is extensive and detailed, leaving little scope for independent law making, regulatory divergence, or policy experimentation. Following the 1944 [Chicago Convention](#), safety standards are set globally through annexes issued by [the International Civil Aviation Organisation](#). Signatories to the Convention are obliged to implement these standards in their legal orders. As a result of Brexit, the CAA has resumed the responsibilities that were previously delegated to EASA, but since the UK has little discretion over the substance of the rules, regulatory autonomy is an empty shell.

On the economic side, commercial freedoms for airlines in the world outside the EU's multilateral zone are granted under [bilateral air service agreements](#) negotiated by governments as part of an international regime that also dates back to Chicago. The terms typically reflect the relative bargaining strength of the two countries, with a strong mercantilist element. Although the UK had been [optimistic](#) about a post-Brexit bilateral deal with the US, the agreement it signed

ultimately was less advantageous, [especially on ownership and new entrants](#), than the EU—US Open Skies agreement — regarded as the most liberal ever signed by Washington.

Given international constraints, it is unsurprising that the UK has focused on domestic policy developments, even if its key initiatives pre-date Brexit. These could be significant, even if they are unlikely to be transformative for a sector that [in 2018 was worth £22 billion to the UK economy](#).

Two of the new policies have already run into problems. Plans to lead the world in the use of drones had to be shelved temporarily following an incident that led to [the closure of Gatwick airport](#) in December 2019. More recently, the delay in setting up a post-Brexit accreditation system has led to a hold up in [drone certification](#) as well as [recognition of drone operators in the EU](#) and the wider [global marketplace](#). The government's promotion of general aviation has also [encountered difficulties](#).

The government has been able to claim some success in pursuit of its goal of sustainable growth. The UK was one of the 18 countries, accounting for 40% of aviation emissions, that signed a [declaration](#) at COP26 to meet the 1.5°C temperature pathway target by 2050. However, the declaration was criticised by environmentalists for its failure to prioritise green travel, reduce flights, or limit growth.

CLIMATE CHANGE

Andrew Jordan

WHAT CHANGES WERE PROMISED AFTER BREXIT?

Many experts predicted that the task of disentangling the UK from EU climate policy would be fraught with difficulty. Yet the risks and opportunities were barely discussed during the referendum; the Leave campaign certainly offered very few clues about its plans.

From the outset of the Brexit process, the EU was determined to prevent the UK lowering its standards to secure a competitive advantage. In April 2018, Michel Barnier [reassured](#) MEPs and NGOs that the Commission would fight to maintain the existing '[level playing field](#)' and ensure the UK fulfilled its wider international commitments. The 2019 Political Declaration enshrined these aims, committing both sides to 'uphold the common high standards applicable ... at the end of the transition period'.

However, disagreements soon emerged. The EU insisted that to access its Single Market the UK should sign up to binding 'non-regression' commitments and establish an independent, well-resourced environmental watchdog to enforce them. But the UK flatly refused to entertain the idea of any external restrictions on its regulatory autonomy.

Although the environmental provisions of the TCA were some of the very last to be settled, those relating to climate change proved a lot easier to agree, as both sides regard themselves as [international climate leaders](#). In fact as a member state, the UK regularly pushed the EU27 to adopt higher standards and shorter implementation periods.

WHAT HAS CHANGED SO FAR?

It is telling that the TCA contains some of the [most progressive climate provisions](#) of any trade agreement. It notes, for example, that climate change is 'an existential threat to humanity' and calls upon both sides to 'strive to increase' their respective policies. Unlike environment policy, climate change is deemed to be an 'essential element' of the entire agreement, on a par with democracy and respect for the rule of law. Breach it and the other side can legitimately petition to terminate the entire agreement.

Existing EU climate rules had been incorporated into UK law through the European Union (Withdrawal) Act 2018, [limiting the scope for immediate divergence](#). When the UK opted to exploit its new regulatory autonomy, it largely

adopted the same policy designs as the EU. The best example is the Emissions Trading System, which targets emissions from the largest industrial facilities.

The UK was instrumental in pushing for and designing the EU's system and did not object when the EU added specific references to carbon trading to the draft Political Declaration. However, Johnson's [sovereignty-first](#) approach to Brexit precluded continuing participation in the EU system, so just before the end of the transition, the UK decided to create a [mirror image](#) 'UK emissions trading system'.

This pattern of policy parallelism continued throughout 2021, as both sides launched large, integrated policy packages aimed at entirely decarbonising their respective economies by 2050 (Net Zero). They also collaborated in the run-up [to COP26](#), successfully co-chaired by the UK and Italy.

WHAT ARE THE POSSIBILITIES FOR THE FUTURE?

Despite these important examples of continuity, there is nonetheless potential for [future divergence on climate issues](#), particularly as the EU begins to adopt elements in its 'Fit for 55' package of new policies. For example, the Commission has proposed to broaden the scope of its emissions trading system to include housing and transport and to recycle some of the proceeds to poorer households. Will the UK do the same or leave its system as it is?

The Commission has also recommended the EU adopt a carbon border adjustment mechanism to raise the price of imported goods — such as cement, aluminium, and steel — that have a large carbon footprint. Interestingly, both [Brexiters](#) and the [UK's Climate Change Committee](#) of advisors agree that such a mechanism would help to protect the UK from being undercut by third countries, but the debate about what form it should take has barely begun.

Meanwhile, there is also potential for future divergence amongst the four nations of the UK. In the past, EU law served as a shared baseline from which they could 'diverge upwards' but not downwards. Brexit removed that baseline; it is telling that EU membership is being replaced with a patchwork of national policies and institutions.

There are also questions around divergent enforcement. The UK had left the EU system of Commission and ECJ oversight, before its replacement for England, the new [Office for Environmental Protection](#) (OEP), was on the statute book (despite the enabling legislation being proposed in 2018). The OEP does not have the same enforcement powers as the Commission (it will not, for example, be able to [levy fines](#)) and doubts about ministers' commitment to its independence were repeatedly raised during passage of the act.

Future collaboration with the EU may also be limited. Climate policy has not (yet) been infected with the acrimony that has surfaced over other cross-border issues such as fishing, but the UK seems reluctant to deepen cooperation. For example, it has not joined the European Environment Agency, even though membership is open to non-EU countries and offers a relatively cost-effective way to build trust through shared data and monitoring practices.

The UK's future trade deals are another potentially significant driver of future divergence. The Greener UK alliance of NGOs [was disappointed](#) that the climate provisions in the deal signed (in principle) with Australia were '[vaguer and less ambitious](#)' than those in the TCA. It fears that they set an unfortunate precedent for potentially bigger future trade deals. According to seasoned UK [campaigners](#), such negotiations are much harder to influence now that the UK is outside the EU: we 'generally learn what's in [them] ... by reading what the other country has published on their website, or when the [UK] government decides to send a press release out'.

Brexit increased the government's ability to adopt, modify, and implement its own climate laws and policies. Whether it uses that flexibility to chart a markedly different regulatory course on climate issues remains uncertain a year after the end of the transition and over five years after the referendum.

BIOSCIENCE

Adrian Ely

WHAT CHANGES WERE PROMISED AFTER BREXIT?

The 2019 Conservative Party [manifesto](#) pledged to make the UK the ‘leading global hub for life sciences after Brexit’. An indication as to how the government might do this had already come in the words of Boris Johnson’s [first speech as Prime Minister](#): ‘let’s liberate the UK’s extraordinary bioscience sector from anti-genetic modification rules’.

Differences of opinion around EU law on genetically modified organisms (GMOs) pre-date the Brexit referendum. GMO crops carrying genes from other species (such as bacteria and viruses) have been grown in the US and other countries since the mid-1990s, but their cultivation has been restricted in the EU, where food derived from GMOs has also long been subject to labelling requirements. Recent years have seen the emergence of gene editing (GE), [which involves](#) adding, deleting, changing, or replacing individual nucleotides or sequences of DNA at particular locations in a plant’s genome (but not necessarily the addition of genes from other species).

As genetic technologies have developed, so too have stakeholder positions. The National Farmers’ Union and some scientific bodies support a more permissive approach to certain types of [gene-edited](#) crops, a position incompatible with EU law since the ECJ ruled in 2018 that such products should be [subject to similar regulatory procedures as GMOs](#). In contrast, many NGOs representing environmental, animal welfare, and consumer interests have mobilised around the position of maintaining the EU’s approach.

WHAT HAS CHANGED SO FAR?

Defra [launched a consultation](#) on the regulation of genetic technologies in England in January 2021. It was divided into two parts: the first on whether certain products should be regulated as GMOs; and the second on the wider regulatory framework surrounding ‘gene editing and other genetic technologies’. It [received 6,440 responses](#), including from individuals, businesses, NGOs, and academia. Several critiqued the government’s focus on GE organisms that ‘could have been produced by traditional breeding methods’, because the absence of clear criteria for determining whether organisms fall into this category raises questions about how it might be dealt with in law. A [parallel study](#) commissioned by the Food Standards Agency found that consumers considered GM/GE plants to be more acceptable than GM/GE animals and that, although they found GE

more acceptable than GM, most consumers still favoured full labelling of GE ingredients.

[Responding](#) to the consultation in September 2021, the government indicated it would lay a statutory instrument before parliament by the end of 2021 making it easier for research and development with gene edited plants (although not animals) to take place. This was laid on 20 January 2022. The SI retained the consultation's focus on crops which could have been developed naturally or using traditional breeding methods, leaving the earlier critiques unaddressed. There is also a [practical issue](#) for labelling and traceability, since scientific methods currently deployed in food-safety regulation are not able to distinguish between equivalent products that are produced via gene editing or traditional breeding methods. The government response committed to 'explore options for labelling gene edited foodstuffs and other products derived from genetic technologies'.

Changes to date apply in England. In general, political opinion in Scotland and Wales has historically been more sceptical towards genetic technologies in food and agriculture, so they may follow different approaches.

WHAT ARE THE POSSIBILITIES FOR THE FUTURE?

These changes are taking place within the context of the most significant reconfiguration of the UK's agri-food system in a generation, with big changes heralded for farming support.

They are also occurring in the context of discussions about wider regulatory reform after Brexit. These include reports on genetic technologies by the [Regulatory Horizons Council](#), and by the [Task Force on Innovation, Growth and Regulatory Reform](#), both of which envision a future for GE and GMOs in UK agriculture. The government has also yet to respond to the review of [food strategy](#) it commissioned in 2019 and the BEIS consultation on '[reforming the framework for better regulation](#)', which closed on 1 October 2021.

Alongside these domestic discussions, another factor that will shape the adoption of GE (and GMOs) is existing and future trade arrangements. The [government response](#) stated that 'it is not expected that gene edited products arising from any change in UK regulation would appear on shelves in the UK for some years'. However, the UK already imports food and animal feed from places such as the US and Argentina, which currently exempt certain GE products from biosafety approval and labelling. The political debate is likely to increase in intensity as these products start arriving, as it did with GM soya in the 1990s. If public pressure grows, the government may decide to restrict such imports, however this could face challenge at the WTO.

Regulatory frameworks among key trading partners are dynamic. In a [report](#) to the Council in April 2021, the European Commission [implied that the EU's current GMO framework was not fit for purpose](#), and there have been [suggestions in the media](#) that the EU may move towards a more permissive approach towards certain GE products over a four- to ten-year timeframe. If the UK and EU regulatory frameworks move at different speeds or in different directions, this could create barriers to trade. To avoid tensions, the UK could choose to move in lockstep with EU changes.

Instead, however, the government may decide to allow the commercialisation of GE products (and possibly even GMOs) in UK farming, perhaps by adopting a relatively vague definition of gene editing and later moving towards [a case-by-case approach based on soft-law standards](#) around issues such as labelling. Such changes could be sold as a move towards more agile and 'pro-innovation' regulations in the life sciences more generally, enabled by Brexit.

Decisions around GE and GMOs in agriculture represent the first real test-case in the bioscience sector. In its rush to diverge on this issue, the government is coming to understand the complexities of reconfiguring a tightly interwoven set of technical, legal, and institutional arrangements, and the political challenges of balancing public opinion, strategic industries, and different trade interests.

DATA AND DIGITAL

Gavin Freeguard

WHAT CHANGES WERE PROMISED AFTER BREXIT?

‘Now that we have left the EU I’m determined to seize the opportunity by developing a world-leading data policy that will deliver a Brexit dividend for individuals and businesses across the UK’, declared Oliver Dowden, Secretary of State for Digital, Culture, Media and Sport (DCMS), [in August 2021](#). This would mean ‘new international data partnerships with some of the world’s fastest growing economies, for the benefit of British firms and British customers alike’, and ‘reforming our own data laws so that they’re based on common sense, not box-ticking.’

The government would prioritise partnerships with the USA, Australia, South Korea, Singapore, the Dubai International Finance Centre and Colombia. It appointed a new Information Commissioner. And it would consult on reforming the data regime to encourage trade and innovation. [That consultation](#) was launched 15 days later, on 10 September 2021.

Five days after that, Dowden — and every DCMS minister with responsibility for digital and data — were [reshuffled out of their post](#). Dowden’s replacement, Nadine Dorries became the tenth Conservative secretary of state since 2010.

For many, Dowden’s declaration encapsulated much of what taking back control of the UK’s data and digital policy after Brexit could mean. The UK could break free from rules like the General Data Protection Regulation (GDPR), allowing businesses to innovate, government to strike trade deals with more nations, and consumers to escape the bane of their online existence: [cookie pop-ups](#). (This was one of the points made by the [Taskforce on Innovation, Growth and Regulatory Reform’s report](#).) Another key pledge, in the 2019 Conservative [manifesto](#), was to ‘legislate to make the UK the safest place in the world to be online’. There was also a promise (since kept) to implement a digital services tax on major multinational companies, including tech giants.

WHAT HAS CHANGED SO FAR?

Relatively little has changed so far. Brexit and its political fallout disrupted data reform. The [National Data Strategy](#) (NDS), announced in June 2018, was not published until September 2020. Its missions include ‘securing a pro-growth and trusted data regime’ and ‘championing the international flow of data’ (alongside unlocking the value of data across the economy, transforming public sector

data, and securing data infrastructure). The Covid-19 pandemic brought home the importance of better data inside government, but also absorbed political and bureaucratic bandwidth. The [Online Harms White Paper](#), designed to deliver online safety through internet regulation was published in April 2019; the draft bill has not yet made it through parliament (despite the Prime Minister's [promise to present it before the end of 2021](#)).

The UK has not yet moved from general European data protection regulations to specific UK ones, suggesting reform may be more difficult than it looks. As a 'third country' outside the EU, the UK relies on a '[data adequacy](#)' ruling from the European Commission (which accepts that an external country's regime provides a level of data protection comparable to the EU's own) to keep data flowing. This was secured in 2021, during the six-month transition agreed in the TCA, but will expire in 2025 with a decision for the EU on further renewal.

WHAT ARE THE POSSIBILITIES FOR THE FUTURE?

2022 could bring change and, at the very least, the government's response to its data protection consultation (at 61,000 words, longer than *The War of the Worlds*). In 'reducing barriers to responsible innovation', 'reducing burdens on businesses', and 'boosting trade and reducing barriers to data flows', proposals included everything from changing rules on the reuse of personal data and replacing requirements on businesses to have data protection officers and produce data protection impact assessments with new 'privacy management programmes', to exploring 'Alternative Transfer Mechanisms' for cross-border data flows rather than relying on adequacy agreements.

As well as the NDS and other domestic strategies — around [data](#) and [Artificial Intelligence \(AI\)](#) in health or [digital identity](#), for example), there is a [National AI Strategy](#) (and an [AI Roadmap](#)), a forthcoming [Defence AI Strategy](#), a [UK Innovation Strategy](#) (and [public sector strategy for knowledge and innovation assets](#)), and [at some point](#) a National Digital Strategy (trailed in government's [ten tech priorities](#)).

We should expect parliamentary progress on the Online Safety Bill ([from March 2022](#)), now that [the joint committee has published its report](#) on the draft bill. If government listens to its advice, it could reduce the risk that the bill becomes a [Dangerous Dogs](#)-dinner of an act — well-meaning but misguided in its efforts to tackle a serious problem — leading to new harms like threatening freedom of expression while failing to mitigate existing ones.

The government's ambition for the bill to be world-leading signals its wider international intentions. Its [Integrated Review](#) of foreign and defence policy wants the UK to be a global digital and data hub and to be at the forefront of

‘regulatory diplomacy’, shaping international standards on technology and the digital economy. But other players — including the European Union, with its [Digital Services Act and Digital Markets Act](#) — are also seeking to shape the landscape around online safety, digital trade, AI, and more (GDPR already has global influence).

The Government Office for Science [published a report alongside the National Data Strategy](#) that considered the emergence of divergent global data systems: a Chinese one prioritising national economic and social security; a European one prioritising citizen rights and competition inside its internal market; and a ‘generally less interventionist’ US one. It called on the UK government ‘to clearly articulate what it wants to achieve with its data system’ in economic, social and security terms. Given the power and influence of the three existing blocs, it will be tough for the UK to develop a distinct direction, rather than attempting to nudge the big players closer to where it wants to go.

The government’s pronouncements since Brexit have so far generated more heat than light, although 2021 did provide some clues, if no clear vision. As we enter 2022, the government needs to build on the blueprints it has started to sketch out and to provide clarity on how it intends to ensure the UK can make the rules, rather than merely take them.

AUTONOMOUS VEHICLES

David Bailey and Ivan Rajic

WHAT CHANGES WERE PROMISED AFTER BREXIT?

One of the arguments consistently advanced for Brexit was that it would grant the UK freedom to determine its own regulations. The Conservative [manifesto](#) promised that ‘our departure from the European Union means we can develop forward looking regulations to ensure we are first in line to develop and benefit from the technologies of the future’.

That theme was picked up again with specific reference to autonomous vehicles and drones in the 2021 Plan for Growth. Expectations are high for the contribution of autonomous vehicles to road safety, mobility, and the economy in general. For example, one [report](#) estimated that the switch to such vehicles would create benefits worth up to £51 billion and generate 25,000 jobs directly in vehicle production (and up to 320,000 jobs due to the wider impacts) by 2030. Another [report](#) estimated nearly 40,000 new jobs in producing technologies and parts for autonomous vehicles. It is not just the government that has been interested in autonomous vehicles, tech firms and the car industry itself have also been actively engaged in their development.

WHAT HAS CHANGED SO FAR?

Although the EU Commission has adopted [a strategy paper](#) on connected and autonomous vehicles, so far there is no common EU legal framework in this area. New technologies not foreseen by EU rules can be provisionally approved by individual member states for use within their own territories, provided [certain EU guidelines](#) are followed, and each member state has to decide how to regulate issues such as insurance.

EU membership was therefore not an obstacle to the UK’s pursuit of an active strategy for autonomous vehicles (with a few possible exceptions, discussed in the next section). Consecutive UK governments have been taking steps towards this goal since before the Brexit referendum, and all the legal changes, and most of the funding and testing thus far happened before the end of the transition period, while the UK was still bound by EU law.

A 2015 review found that the UK regulatory framework did not prevent the testing of autonomous vehicles on public roads, provided a human driver was present. Later that year, the government introduced a [Code of Practice](#) to provide more details on how such testing should be carried out. It also set up the [Centre](#)

[for Connected and Autonomous Vehicles](#), which suggests and coordinates policies, engages stakeholders and manages research funding.

In July 2018, the [Automated and Electric Vehicles Act](#) became law, extending mandatory insurance to autonomous vehicles, and setting out the principles to follow — with a view to such changes [speeding up the testing](#) of autonomous vehicles (e.g., by making test-drives without an operator possible on any public road). A further review of the legal framework was published in 2020, and the government also [consulted](#) on allowing the testing of Automated Lane Keeping Systems (ALKS) on public motorways. The intention is for tests to [start as soon as possible](#) (probably in 2022). This would have been possible within the EU given that ALKS has been approved by the United Nations Economic Commission for Europe (UNECE) and has most recently [been extended](#) to trucks, buses, and coaches.

WHAT ARE THE POSSIBILITIES FOR THE FUTURE?

As noted, even before Brexit, the UK was able to create its own regulations for autonomous vehicles, as there is little EU-level regulation in place. However, the UK and EU are both members of the World Forum for Harmonization of Vehicle Regulations, which sets vehicle technical and safety standards, and the Trade and Cooperation Agreement (TCA) obliges both sides to continue implementing World Forum rules. Furthermore, the UK is a signatory to the 1968 Convention on Road Traffic (the Vienna Convention), which regulates numerous aspects of road safety and which applies in EU member states as well. Given this, and the fact that the UK car industry is fully integrated with the European industry, it is hard to imagine any notable future regulatory divergence in technical and safety rules.

Future divergence in relation to data protection could be greater, for which strong EU regulation exists, and for which the UK can now set its own rules. For instance, it is entirely conceivable that allowing companies easier access to the personal data gathered by autonomous vehicles could assist in faster improvements to their autonomous driving systems. If the UK relaxes data protection rules compared to those in the EU, car companies might find the UK more attractive. However, many firms, including in the automotive sector, rely on being able to receive personal data from entities within the EU. Although the EU Commission adopted an adequacy decision allowing data exchange with the UK, this is scheduled for review in 2025. Thus, data is an area where the government would need to weigh the benefits of divergence against the risk of the EU terminating adequacy. Furthermore, any cars sold in the EU have to conform to all EU rules, including those related to data protection. The fact that the UK car industry exports most of its output — the EU being its biggest market — would further limit the benefits of regulatory divergence.

Regulation aside, there is also the question of trade and other relations with the EU. Free trade and research cooperation with the EU is of utmost importance for the automotive sector, and the TCA has, for the most part, preserved these links. Nevertheless, there are now hurdles that did not exist before, such as administrative costs (e.g., proving rules of origin requirements have been met), restricted labour mobility (which is having a negative impact on both manufacturers looking to fill skills gaps and researchers needing to move between the UK and the EU) and uncertainty, with the continued risk of disputes around Northern Ireland jeopardising the entire trade agreement.

All things considered; it seems that the development of autonomous vehicle technologies in the UK will be more difficult than it would have been without Brexit. Flexibility existed in numerous regulatory areas even before Brexit. In the areas where there is more freedom now, the government has to weigh the benefits and risks of regulatory divergence. Finally, trade and other cooperation is now more difficult than before.

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

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