CONSTITUTION, EUROPE, EXTERNAL AFFAIRS AND CULTURE COMMITTEE

6th Meeting 2022, Session 6

24 February 2022

UK in a Changing Europe regulatory divergence tracker

1. UK In A Changing Europe (UKIACE) undertake independent research into the changing relationship between the UK and the EU. They are funded by the Economic and Social Research Council (ESRC) and based at King's College London.

2. They have produced a regulatory divergence tracker, originally for the House of Lords European Affairs Committee, which identifies and analyses the most significant cases of divergence in regulatory standards between the UK and EU since Brexit. It explains what the changes are, what impact they are having, and likely further consequences. The tracker focuses on the actions of the UK Government but some of what it covers applies across the UK.

3. Also of relevance to this evidence session is the Committee's Letter to Cabinet Secretary for Constitution External Affairs and Culture on the Continuity Act from last November, particularly the section on monitoring and reporting on EU legislative priorities, as set out in paragraphs 69-82 and including:

"*One of the key themes of our inquiry was the need for the Scottish Government to monitor and report on EU legislative priorities within the context of the commitment to maintain alignment with EU law. As highlighted by Professor Armstrong, outside the European Union, "the UK does not have the same access to that flow of information and that parliamentary structures—the UK Parliament and the Scottish Parliament—are highly reliant on whatever the Governments can provide by way of information.*"

4. That focus on information, monitoring and repotting was also covered in the legacy reports from our two predecessor committees.

5. The Culture, Tourism, Europe and External Affairs Committee stated:

"*In order to scrutinise this policy landscape, we recommend that a successor Committee will need to monitor EU policy and legislative developments in order to assess the extent to which a future Scottish Government is remaining aligned with EU law and the implications of the policy approach being taken.*"

6. While the Legacy Expert Panel in its Report to the Finance and Constitution Committee found:

"*The Panel's view is that, as a minimum, the Parliament will need to be sighted on and understand the impact on its competences arising from the operation of the UK internal market and especially the level of policy divergence both within the UK and between the different parts of the UK and the EU.*"

7. UKIACE have also published other reports that may be of interest, including Doing things differently? Policy after Brexit.

8. Please see a SPICe briefing in **Annexe A** and UKIACE's tracker in **Annexe B**.

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Constitution, Europe, External Affairs and Culture Committee

6th Meeting, 2022 (Session 6), Thursday, 24 February

UK in a Changing Europe – Tracking EU Divergence

Context

The UK in a Changing Europe provides independent research and analysis on three key aspects of the UK and EU relationship and the impact of Brexit:

- Impact of EU policies
- Attitudes towards the EU
- A changing UK in a changing EU

The UK in a Changing Europe is funded by the Economic and Social Research Council (ESRC), which is part of UK Research and Innovation, and is based at King's College London.

The UK in a Changing Europe team is led by its Director, Professor Anand Menon. The Committee may wish to note that Professor Nicola McEwen, Professor of Politics at the University of Edinburgh, and Co-Director of the ESRC Centre on Constitutional Change (CCC) is a Senior Fellow at the UK in a Changing Europe. Professor McEwen focusses on the devolution settlement and the future of the Union, and the impact that Brexit is having, and could have, on both. The Committee's adviser, Professor Katy Hayward is also a Senior Fellow focussing on the Post-Brexit Status and Future of Northern Ireland.

Amongst the recent research published by the UK in a Changing Europe are the following briefings:

- An EU border across Britain: Scotland's borders after independence
- Doing things differently? Policy after Brexit

- [UK-EU regulatory divergence tracker]

Alignment with EU law

Following the UK's departure from the EU and the end of the transition period, the rule that required Scottish Parliament legislation to comply with EU law has been removed. The UK Government is also no longer required to ensure alignment with EU law. This change has led to a difference in emphasis between the Scottish and UK Governments.

Scottish Ministers have indicated that, "where appropriate", they would like to see Scots law continue to align with EU law. This approach to EU alignment can be considered a policy choice rather than a legal requirement. However, the Scottish Government's commitment to continued EU alignment may be influenced or constrained by other UK-related constitutional arrangements in place - such as common frameworks, or the effects of the UK Internal Market Act 2020. In addition, the suitability of alignment in some areas of EU law may be impacted as a result of the UK no longer being a Member State.

From a UK Government perspective, the former Minister of State in the Cabinet Office, Lord David Frost sought to emphasise the opportunities for regulatory divergence as a result of Brexit. However, the UK Government's ability to diverge from EU law may be impacted by commitments it has made in international agreements (for example the WTO Government Procurement Agreement) and in the EU-UK Trade and Cooperation Agreement (for example around the level playing field commitments). In addition, the impact of the Northern Ireland Protocol (which aligns Northern Ireland with EU regulations in a number of areas which impact trade in goods) may influence UK Government's decisions about divergence.

Doing things differently? Policy after Brexit

At the end of January 2022, the UK in a Changing Europe published Doing things differently? Policy after Brexit. The report sought to set out how policy and policymaking have changed in a number of sectors following the UK's departure from the EU and more significantly following its departure from the EU's regulatory regime at the end of the transition period in December 2020.

The report is divided into three sections, the first sets out how changes have taken place in areas previously governed by the EU and as a result where the UK was required to put in place alternative policies. These policy areas are trade, immigration, agriculture, fisheries and subsidies. The second section set out areas which were significantly impacted by EU law, but in which the UK Government could plan for divergence. These areas included financial services, procurement, taxation, consumer protection, environmental policy, energy policy and aviation. The final section considered new or emerging policy sectors in which both the UK and EU are seeking to develop a new regulatory environment. These policy areas include climate change and net zero, data and digital, autonomous vehicles and bioscience.

The introduction to the paper sets out that whilst in many areas change has been slow, there has been significant change in some of those areas previously governed by the EU, notably immigration, trade policy and subsidy control. On the impact on devolution, the paper states:

> "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."

The report concludes that regulatory divergence may not always be the best policy choice:

> "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."

The UK in a Changing Europe tracker

The UK in a Changing Europe has developed a regulatory divergence tracker which is intended to provide an overview of "where and how the UK has used its newfound regulatory freedoms to diverge from EU standards". According to the UK in a Changing Europe, it identifies and analyses the most significant cases of divergence in regulatory standards between the UK and EU which have taken place since Brexit. It explains what the changes are, what impact they are having, and likely further consequences.

The most recent update of the divergence tracker was published on 20 December 2021. The published tracker includes a summary setting out the limited areas where the UK (or a part of it) has chosen to diverge from EU law. According to the tracker, there are 19 identified areas of divergence with 14 of those identified as "active" which means new UK (or devolved) law replacing or amending EU law. In addition, the tracker identifies 3 areas where there is passive divergence as a result of the EU legislating whilst some (or all) of the constituent parts of the UK fail to follow the EU's lead.

On the pace of divergence (i.e. whether the UK is seeking to move away from EU law), the analysis states:

> "Yet this tracker shows that the ambitious rhetoric around divergence is not yet matched by reality. Two of the biggest recent policy announcements have been the Net Zero Strategy and the Autumn Budget but, as the tracker highlights, the UK had made minimal use of its regulatory freedom from the EU in these areas."

The analysis adds that the tracker is showing divergence taking place based on previous commitments made by the UK Government, for example the commitment to end freedom of movement. The analysis suggests that this shows how:

> "divergence is a piecemeal process: long after a decision to diverge is made, the government is still having to develop policy and programmes to manage the consequences which only slowly become apparent."

From the perspective of the Scottish Government's commitment to continued alignment with EU law, the trackers identification of three areas where EU law is developing may be of interest to the Committee. The three areas identified are:

- EU legal framework on artificial intelligence with legislation not expected to become law until 2022 at the earliest and not expected to be applied in full until 2024 at the earliest.
- EU proposals for a Digital Market Act which is not expected to be adopted until 2024 at the earliest.
- EU proposal for improved working conditions in platform work (covering those working in the gig economy). The timescale for the legislation is unclear but once passed, Member States will have two years to transpose into national law.

In these areas it is possible that developments in EU law will lead to divergence unless the UK and/or Scottish Governments choose to ensure continued alignment.

Areas to explore

Today's evidence session is an opportunity to explore the following issues:

- How the UK Government is choosing to exercise its regulatory autonomy following Brexit.

- The policy areas most suited to divergence following the UK's departure from the EU.

- The extent to which the opportunity to diverge from EU law is influenced by commitments made by the UK Government in international agreements and the Trade and Cooperation Agreement or as a result of the Northern Ireland Protocol.

- The cost of developing new regulatory regimes and the trade-offs with access to the EU market.

- The pace at which divergence is taking place.

- In terms of continued alignment, the suitability of some EU laws from the perspective of a non-Member State.

- The impact of decisions to align with EU law in one part of the UK and the impact on the UK internal market of those decisions.

- The impact on access to the EU Single Market for UK businesses of regulatory divergence both within the four parts of the UK and between the UK and the EU;

- The resources needed to produce the regulatory divergence tracker, how the most significant areas of divergence are identified and key challenges in developing a similar too for devolution in Scotland.

Iain McIver, Senior Researcher, SPICe Research

17 February 2022

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UK-EU REGULATORY

DIVERGENCE TRACKER

2nd Edition - December 2021

INTRODUCTION

This is the second edition of UK in a Changing Europe's UK-EU regulatory divergence tracker, covering notable cases of divergence since (in most cases) September 2021. It was initially produced for the House of Lords European Affairs Committee. 19 cases of divergence are identified, 14 of which are 'active', meaning new UK (or devolved) law replacing or amending EU rules. There are three cases of 'passive' divergence, where the EU legislates and the UK (or some part of it) does not follow; and four of 'procedural' divergence where the UK (or some part of it) has to introduce new systems to manage regulation post-Brexit absent - in most cases - substantive divergence.

Does this high number of 'active' cases reflect the UK stepping up the pace of its divergence agenda this autumn? Not necessarily. There has certainly been a rhetorical step-change, with Lord Frost talking up the benefits of divergence in three separate speeches, presenting it is a political imperative to remove all EU law which is not right for the UK and liberalise regulations to free up innovation, productivity and growth. He has also announced a review of all retained EU law to identify scope for divergence, and a review into its legal status in a range of areas.

Yet this tracker shows that the ambitious rhetoric around divergence is not yet matched by reality. Two of the biggest recent policy announcements have been the Net Zero Strategy and the Autumn Budget but, as the tracker highlights (entries #1, 13, 14, 15), the **UK** has made minimal use of its regulatory freedom from the EU in these areas.

In fact, what we see most in this edition is the consequences of previously-agreed divergence catching up with the government. The most significant cases date back to the signing of the Trade and Cooperation Agreement (the ending of free movement, rules of origin requirements for goods), highlighting how divergence is a piecemeal process: long after a decision to diverge is made, the government is still having to develop policy and programmes to manage the consequences which only slowly become apparent.

This is most evident in migration policy. Free movement ended on 31 December 2020. However, it was only in October 2021 that policy changes such as non-recognition of EEA identity cards and the 'list of travellers' scheme came into effect (#17). In addition, this autumn has seen the start of the new Turing scheme in place of Erasmus+ (#9) and a number of temporary visa schemes for EU workers in in response to worker shortages (#16). It is only now, in other words, that we are starting to understand what 'control' over immigration means.

The continuing presence of 'procedural' cases underlines how the practical implications of divergence often arise only gradually. For example, the grace period for providing declarations to prove goods meet the 'rules of origin' requirements for tariff-free trade between the UK and EU will end in January 2022, creating new paperwork which many businesses are not prepared for (#12). New regimes for medical devices (#10) and chemicals regulation (#8) were both highlighted as procedural changes in the first tracker, with further practical issues emerging since.

The tracker does, however, highlight one place where UK plans for divergence appear more joined-up: HM Treasury. It has clear plans to use new UK freedoms to grow the financial services sector (#19), and there is also a plan to green finance (#18). This, together with plans for regulating fintech (see the first tracker), points to the Treasury as leading in terms of thinking about how divergence can be used to benefit UK operators in areas for which it is responsible. Presently under-regulated sectors seem a focal point, as there is no or little EU regulation to deviate from, and therefore little administrative or financial cost to business in terms of moving away from a pre-existing regime.

Nonetheless, even in areas of limited regulation, the UK does not have a free path to setting the future rules, with EU plans for Artificial Intelligence (#3), and green finance (#18) more developed that the UK's at present. What also stands out is a growing EU commitment to 'digital sovereignty' (#4, #5), which means that the UK and EU could soon be very different jurisdictions in their regulation of big tech.

The tracker focuses principally upon actions announced by the UK government. Some apply across the UK, while in other cases devolved approaches differ. We highlight these differences, as well as implications for the NI Protocol and the operation of the UK internal market.

Joel Reland, Jill Rutter & Anand Menon, December 2021

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ISSUE	SOURCE & STATUS	IMPLICATIONS & IMPACT	TIMELINE& REGION
1. CLIMATE AND ENVIRONMENT **ACTIVE DIVERGENCE** *UK sets out strategy to reach net zero by 2050, including 'maximising opportunities after leaving the EU'.*	**Summary:** Ahead of COP26 the UK published its wide-ranging Net Zero Strategy, which sets out how the UK plans to reach net zero by 2050. It contains a section on 'maximising opportunities after leaving the EU'. The benefits it pointed to- which were all already in place before the strategy - are: - Setting the UK's Nationally Determined Contribution (NDC) of a 68% reduction in carbon emissions by 2030 (compared to 1990 levels). The EU's 2030 NDC is 55%. - Setting out plans to meet the NDC across a range of sectoral policy papers. Establishing a UK Emissions Trading Scheme (ETS) to replace the EU ETS, which will be aligned to the UK's net zero target.	**Impact:** Were the UK still an EU member state it would have been signed up to the EU's 55% NDC target (unless it had been able to increase the EU's ambition as a member state), and would have had specific targets set under the EU's effort sharing regime. This would not have stopped the UK from pursuing a more stringent target, but it would not have been able to present 68% as its official NDC in the same way, given EU member states attend COP as a bloc rather than as individual actors. The 68% target was an important diplomatic tool in corralling commitments from other countries ahead of COP26. In theory, Brexit could also make it easier to enact policies for reaching net zero. There has been some concern that a potential EU target on the phase-out of oil and gas boilers could make it politically difficult for any member states planning an earlier phase-out, as they would need to have their plans to 'bend' EU regulations cleared with the Commission.	**Timeline:** Net zero strategy covers a range of policy areas with varying timelines. The NDC isa UK-wide commitment but there are some notable cases where devolved administrations are looking to move at a different pace - such as Scotland's aim to phase out gas

		However, in practice it is difficult to identify key elements of the UK net zero strategy which would not have been possible within the EU. For example, the UK plan to phase out gas boilers by 2035 (an 'ambition' and not a legally binding commitment) would be possible as the EU does not have its own strategy. Indeed, a number of EU member states have plans in place to phase out oil and gas boilers earlier than the UK. The UK plans to end the sale of petrol and diesel cars by 2030 (five years earlier than the EU). However, some member states such as Denmark and the Netherlands are themselves planning to introduce the ban at the same time as the UK. The UK has developed its own ETS, but the argument that this helps the UK's path to net zero is so far unproven. In theory a UK ETS could be better geared to the UK's specific net zero goals and the government says it is 'committed to exploring expanding the UK ETS to the two thirds ofuncovered emissions'. However this is yet to occur, whereas (as covered in the previous edition of the tracker) the EU's ETS is set to become wider in scope than the UK's.	boilers by 2030 (rather than the UK-wide aim of 2035).

		Although not highlighted as a Brexit opportunity in the Net Zero Strategy, England has diverged significantly on agricultural policy since Brexit and is going further than the EU in supporting sustainable agriculture and farming practices (see entry #7 for more details), which could well ease progress to net zero.	
2. PRODUCT STANDARDS ALIGNMENT & PROCEDURAL DIVERGENCE *British Standards Institution remains a member of European Committee for Standardisation. Manufacturing industry raises concerns over*	**Summary:** The British Standards Institution (BSI) will remain a member of the European Committee for Standardisation (CEN) and its electrical counterpart (CENELEC) from January 2022 following a vote by its General Assemblies. CEN and CENELEC are not EU bodies, but are rather comprised of 34 members including all EU and EFTA states and the UK. They support common standards for products and processes across a range of policy areas. This is not quite the same as having the same regulatory regime. Rather, a standard in this sense refers to 'an agreed way of doing something, from making a product or managing a process to supplying materials'. Common standards between CEN members enable a free flow of trade, removing concerns that a product produced in one jurisdiction will not be suitable for sale in another. The UK's continued membership also	**Impact:** It is important to emphasise that the UK's continued membership of CEN is not the same as the UK having the same regulatory regime as the EU for manufactured goods. What it means is that both jurisdictions continue to follow the same standards for a wide range of goods, which facilitates trade as laid out in the previous column. It is also means the UK will continue to be able to influence future European standards, which are typically developed when there are no agreed international standards. However, it does not mean that any good covered by CEN or CENELEC and produced in the UK is automatically acceptable on the EU market (or vice versa). As noted in the previous tracker, the UK is introducing a new UKCA mark which signifies that a manufactured good has been assessed and authorised as meeting the necessary standards to be placed on the British market. The	**Timeline:** UKCA marks will apply to goods in Great Britain. Northern Ireland will continue to use the EU's CE mark under the terms of the Northern Ireland Protocol. The deadline for products to be approved with a UKCA mark is 1 January 2023.

capacity for testing manufactured goods for new UKCA mark.	gives it a say in shaping standards which define much of the EU's regulatory agenda.	EU has its own CE mark which performs the same function. So while both sides have common standards, they have separate regulatory regimes and bodies for overseeing these, meaning a good needs to go through separate authorisation processes to be placed on each market, increasing bureaucracy for businesses seeking to trade in both. UK businesses have also struggled to get many products re-authorised with a UKCA mark in time (with the deadline accordingly extended to January 2023). Indeed, in November 2021 the Financial Times reported the Construction Leadership Council raising 'urgent industry concern' about 'limited or no capacity' to test a range of basic products, such as radiators, glass, glues and sealants, and the consequent risk that many products disappear from the British market in 2023. This could have knock-on effects on other government policies, potentially delaying the construction of 150,000 homes per year and the switch to low-carbon heating.	

3. DIGITAL AND DATA **PASSIVE DIVERGENCE** *EU publishes legal framework on Artificial Intelligence which sets out rules around how AI is developed and used.*	**Summary:** In April 2021 the EU launched a legal framework on Artificial Intelligence (Al): a wide-ranging set of rules and obligations on how Al is used by developers, deployers and users. The EU says this is the 'first ever' such framework, and aims to ensure 'Europeans can trust what Al has to offer'. The central aim is to identify and classify risks inherent in Al technology and impose obligations to address them. The framework has four risk categories: 'Unacceptable': a clear threat to the safety, livelihoods and rights of people, e.g. social scoring by governments. These will be banned. 'High': includes Al used in: transport and other critical infrastructure which could put lives at risk; exam scoring; surgery; CV-sorting; credit scoring; evidence evaluation in law enforcement; and verification of travel documents. These will need to meet 'strict obligations' including risk assessment, 'high quality' mitigation systems, activity logging and appropriate human oversight.	**Impact:** The EU is actively seeking to shape global **AI** standards through its framework. There is no UK regulation to speak of from which to diverge, however the EU's plans will impact how the UK's own Al industry and regulation develops. There are three effects of particular relevance. First, the global demand for UK Al products will likely dry up significantly if they do not conform with EU regulatory standards. Due to the nature of the EU's regulation, UK Al firms will need to comply with EU rules if they want to place their products onto the EU market. In addition, non-EU buyers of British Al will in many cases want the technology to meet EU standards, because any outputs the buyer generates from that technology (for example a credit scoring programme) will not be able to be sold into the EU unless the underlying, British-made Al conforms to EU standards. Investors put £13-5bn into over 1,400 UK tech firms between January and June 2020, and government investment in Al since 2013 is over £2.3bn. The EU's rules thus present an important new regulatory reality for a lucrative UK industry. Second, any plans for a UK Al regulatory architecture will inevitably have to be built to a greater or lesser extent around the	**Timeline:** The final form of the EU framework is subject to deliberation within the EU institutions. This means it will not become law until 2022 at the earliest and is not expected to be applied in full before 2024. UK white paper to be published in early 2022.

	'Limited': systems where there is a risk Al could be used to manipulate or deceive (such as chatbots and deepfakes) will have a transparency obligation to make sure users are aware they are interacting with a robot. 'Minimal': applications such as Al-enabled video games and spam filters. Free use will be allowed and the EU says the vast majority of present Al systems used in the EU fall into this category. The regulation applies to EU Al companies, Al systems used or placed on the market in the EU, and any 'output' from Al systems which is used in the EU, even if the Al provider is not located in the EU. Member states are responsible for enforcement, and fines can reach €3om or 6% of global revenue in high-risk cases. In other cases the maximum fine for non-compliance is €2om or 4 % of revenue. The Brookings Institution has pointed to some limitations in the strategy: it is 'surprisingly thin on the need for conducting and publishing disparate impact assessments' and leaves big tech 'virtually unscathed' due to not treating most of its algorithms as 'high risk'.	norms set by the EU. Experts anticipate a 'Brussels effect' similar to the EU's GDPR legislation, whereby the EU sets the global rules of the game through a heavyweight piece of legislation which international companies must comply with to access its single market. The Brookings Institution contrasts the EU's 'comprehensive' plan with the US's 'piecemeal' approach to Al regulation, and suggests it is likely to lay the groundwork for closer cooperation on regulation between the two. While it does not conclude that the EU has won the race to set all the global rules, it is clearly one of the three big players alongside the China and the US, and its foundational principles will have an important shaping effect. The foreword to the government's recent National Al Strateg)'.'. says it is the government's intention to 'build the most pro-innovation regulatory environment in the world', with a white paper set to be published in early 2022. Yet there is only so far the UK can go in developing bespoke 'pro-innovation' rules without diverging from the principles of the new EU strategy. Should the government prioritise an autonomous, pro-innovation regime over alignment with EU rules, the likely result is a loss of access to EU and possibly international markets for British Al (for the	

		reasons set out above) and, consequently, the UK being a less attractive environment for international investment in Al. One way to negate this risk somewhat is if the UK can develop its strategy faster than the EU. The EU's framework needs to be agreed across its institutions and likely won't be applied in full before 2024 at the earliest - meaning the UK could in theory have a strategy in place earlier, giving it a greater shaping effect on global rules. Third, it is important to bear in mind that Al regulation cuts across a range of sectors from transport to medical devices, and may become increasingly sector-specific in future. This could lead to greater UK-EU divergence if they take contrasting approaches to sector-specific Al issues.	
4. DIGITAL AND DATA PASSIVE DIVERGENCE *EU close to finalising plans*	**Summary:** The EU's Competitiveness Council in late November 2021 approved the terms of the EU's new Digital Markets Act, which imposes new obligations on 'gatekeeper' companies. A gatekeeper company provides online services and exerts significant influence on the digital economy through doing so. These 'core platform services' include social networks, search engines, online advertising, cloud computing and video sharing.	**Impact:** Practically speaking, the new Act aims to increase competition between digital service providers and therefore consumer choice, alongside better protection for consumers around how their data is used. It is more significant, however, as a manifestation of EU plans for 'digital sovereignty'. This idea is a response to concerns about the excessive "economic and social influence of non-EU technology companies, which threatens EU	**Timeline:** The Digital Markets Act is not expected to be adopted before 2024 at the earliest, with the

for Digital Markets Act which imposes to new obligations on biggest tech companies to limit their market dominance.	To qualify as a gatekeeper, companies need to be providing their service in at least three EU countries and have at least 45m monthly 'end users' and over 10,000 business users. As the EU puts it, gatekeepers are able to "fully exploit their market power and impose their own rules on the markets." The European Commission wants to apply the rules to companies with a market capitalisation of at least €65 bn in the last financial year - meaning 11 companies would be in scope, including Apple, Microsoft, Google, Amazon and Facebook (now Meta). Companies will no longer be allowed to combine personal data from multiple sources, and the European Commission will be granted the power to block acquisitions. Self-preferencing. where companies put their own services higher up in search results across various platforms, will be banned. Tech users will also be given the right to delete pre-installed apps from their phone, and operating systems will be obliged to allow users to download apps from other app stores and third party sources. Messaging services will also become interoperable - meaning that a message sent on WhatsApp could be received on, for example, Messenger.	citizens' control over their personal data, and constrains both the growth of EU high technology companies and the ability of national and EU rule-makers to enforce their laws." In response, the EU wants to act more 'independently' through 'protective' and 'offensive' measures against major digital companies. The Digital Markets Act is a clear example of the EU actively trying to limit the market dominance of the largest US tech companies in particular. Indeed, Apple (which does not allow third party app stores on its devices) has been especially critical of the decision to open up competition between app stores, which it says poses a security risk as other app stores do not follow the same measures (although companies would still be able to set their own security standards under the new rules). Apple is also set to face disruption from EU plans to require all smartphones sold in the EU to have a USB-C charger. Unlike most phones, Apple products do not use USB-C, meaning it would have to adapt its products for the EU market, and also lose the captive market whereby owners of iPhones are obliged to by Apple-made 'lightning' chargers.	final terms of the Act set to be agreed in Q1 2022.

	The European Commission will have the power to impose fines of up to 10% of total turnover from the preceding financial year on companies which fail to comply with their obligations.	How big tech responds to the new EU regulation - and indeed how effectively the EU is able to enforce it - remains to be seen. Companies will likely not withdraw their goods from the EU as it is a vital global market, and the EU will hope that its Digital Markets Act can shape the norms of the global game via the' Brussels effect' (i.e. the economic value of the single market meaning companies accept and adapt to higher EU regulation) in a similar manner to its aspirations for Al regulation (see entry #3). They, may, however consider relocating certain headquarters or take other more politicised action if they are feeling especially targeted by the EU, which is something the UK may seek to benefit from (in a manner akin to Shell leaving the Netherlands over political difficulties). There could also be implications for the EU-US relationship. As things stand, the Digital Markets Act is likely to affect a very small group of exclusively US companies, which the US government may consider a targeted attack on its businesses. The EU could widen the scope of what is considered a gatekeeper - either by reforming the definition or using investigatory powers to apply the classification to other companies - which could potentially cover major European companies such as Booking.com and	

		Zalando. The final shape of the plans is to be decided in the first quarter of 2022, when France (which reportedly wants a very tight definition of a gatekeeper) holds the Presidency of the European Council.	
5. DIGITAL AND DATA **PASSIVE DIVERGENCE** *EU proposal for improving working conditions in platform work - granting more legal rights to 'gig economy' workers.*	**Summary:** In December 2021 the EU published a proposal for a Directive on improving working conditions in platform work. The Directive seeks to ensure that those working in 'gig economy' jobs (e.g. delivery and taxi drivers working for app-based companies such as Uber and Deliveroo) are 'granted the legal employment status that corresponds to their actual work arrangements.' Presently, these workers are typically classified as independent self-employed, limiting the obligations that the platform company has towards them. Self-employed workers have no right to a minimum wage, collective bargaining, working time and health protection, paid leave, unemployment and sickness benefits, and contributory pension schemes. Under the Directive, the onus would fall onto the platform company to prove that gig economy workers should be classified as self-employed, unlike the present situation where an individual	**Impact:** The EU is explicitly challenging what it sees as the 'distortion' whereby digital platforms 'escape social contributions', chiming with its wider campaign towards limiting the influence of a few major tech companies to shape European market norms and labour practices. It is thus best understood alongside the EU Digital Markets Act (#4) as part of its 'Digital Sovereignty' agenda. Nicolas Schmit, the EU Commissioner for Jobs and Social Rights told the Financial Times: "If we leave this business outside the normal standards and create distortions, I fear that finally this platform model will develop in many other areas." 28m people are employed cross 500 digital platforms in the EU, with the number of gig employees expected to rise to 43m by 2025 and 90% presently classified as self-employed. It is estimated that the EU's proposal could affect up to 4m workers	**Timeline:** The proposal now needs to be discussed by the EU institutions, which could mean changes to its shape. Once passed into law, member states will have to years to transpose the Directive into national law.

	has to challenge the company in court to try to have their independent self-employed status classified as dependent self-employed (worker). Should a platform be deemed to be fulfilling two or more of the following 'control criteria', it will be classified as an employer: - Determining or capping the level of renumeration. - Imposing rules on appearance, conduct or performance. - Supervising performance or verifying the quality of results (including by electronic means). - Effectively restricting the freedom to organise one's work (including through sanctions), e.g in terms of choice over working hours or periods of absence, or the ability to accept or refuse tasks. - Effectively restricting the possibility to build a client base or work for a third party. Should a platform be classified as an employer, it will then fall onto the platform itself to - if it wishes - try to 'rebut' the classification.	and plugs into a very live issue - there are over 1,000 court rulings against platform companies with hundreds of cases still pending. Individual rulings against platform companies have already been made in EU member states. Spain and Portugal have both approved bills recognising gig workers as employees, a Dutch court ruled that Uber drivers are employees, and a Belgian ruling says Uber drivers must have official taxi licenses. A recent High Court ruling in London rejected the idea that Uber is merely an agent for drivers, meaning it will be required to enter direct contracts with passengers and pay VAT - which could add 20% to the cost of journeys. However, the new Directive would mark a fundamental shift in the EU-wide approach to platform work. Professor Valerio De Stefano of KU Leuven University told Wired magazine platform companies "will have to decide whether they want to run the business model according to the rules or completely change their business model by allowing workers to set their own fees and not expelling them from the platform for low ratings."	

	There will also be a push for increased transparency in how digital platforms use algorithms, to prevent cases where workers are denied jobs or working hours on the basis of an algorithmic decision. This will involve human monitoring and giving workers the right to contest automated decisions.	Alongside the Digital Markets Act, the ruling could have a lasting impact on EU relations with big tech (Deliveroo left Spain after its ruling that gig economy workers were employees) and potentially the US government given that is where many of the platforms originally hail from.	
6. DIGITAL AND DATA **ACTIVE DIVERGENCE** *UK mobile operators reintroduce roaming charges after UK opts out of EU mechanism to maintain tariff-free roaming.*	**Summary:** The Trade and Cooperation Agreement included a commitment for the UK and EU 'cooperate on promoting transparent and reasonable rates for international mobile roaming services', but crucially contained no provisions guaranteeing the continuation of tariff-free roaming between the two jurisdictions. Under EU rules, mobile phone customers are able to use their domestic tariffs anywhere in the EEA. That means they will incur no additional fees for using their data, making calls or sending texts in other EEA countries (with some constraints about reasonable use). Following Brexit, there are no limits on what UK mobile networks can charge customers for using their phones in the EU, and three of the four major operators have since reintroduced roaming charges. From May 2022, Three customers will have to pay £2 a	**Impact:** The immediate direct impact ofthe change will be that a British tourist on holiday in the EEA will typically have to pay in the region of £2 a day to use their phone like at home. Individuals may choose to take on that cost, opt for bespoke roaming deals if they are regular travellers, or use their phones less and rely more on wi-fi in cafes and hotels. How this develops overtime will depend on how EEA and UK mobile operators respond to the new situation. When a UK mobile customer uses their phone abroad (in, for example, Spain), their UK network provider pays a 'wholesale charge' to a Spanish network operator in exchange for it providing that customer with the required service (data, text or call). The UK customer then pays a 'retail charge' to their home network, to cover the cost of the wholesale charge it has paid to the Spanish operator. The EU	**Timeline:** Regulation guaranteeing tariff-free roaming in the EEA ended at the end of the transition period. Mobile operators are introducing new EEA roaming fees at different rates, with the first notable charges beginning in

	day for roaming in the EU, if they joined or registered after October 2021. EE customers will also have to pay £2 a day from January 2022, if they joined or upgraded after 7 July 2021. Vodafone will apply a range of tariffs from January 2022. 02 is the only major operator to so far not announce any new EU roaming charges. EU customers may also have to pay for using their phones in the UK, with charges at the discretion of their home network.	first capped wholesale and retail charges, and then abolished most retail charges in 2017. As the UK is no longer subject to EU rules, EEA mobile operators are free to charge whatever wholesale charges they like to UK network providers. Historically, both wholesale and retail charges have generated major profits for mobile operators UdQ..1Q 35% on retail charges). Should wholesale charges increase significantly, UK operators will be obliged to pass on significant costs to customers. Yet even if wholesale charges do not rise much, UK providers may be tempted to generate significant new profits by introducing high roaming charges. Some argue, however, that the competition for UK custom among EEA networks will keep these wholesale charges relatively low - and likewise that UK mobile operators will need to compete to offer the best-value roaming fees, keeping prices down for customers. On top of this, they argue that it is fairer for those who frequently travel (and are typically wealthier) to pay for the cost of their roaming abroad, rather than it being subsidised by	January 2022. No roaming charges will be applied in Ireland.

		those who seldom or never travel abroad, but nonetheless pay the same price for their contracts as those who do. However, the Centre for European Reform (CER) finds that evidence so far that EEA operators will compete for British custom, driving down wholesale prices is 'ambiguous', with profit margins in the region of 16-22% - suggesting competition 'is still not yet fully effective'. As a result, they foresee a 'real risk that wholesale charges will increase for UK operators and converge with the wholesale charges for other non-EEA countries'. Moreover, it questions whether UK customers will now really treat roaming charges as an important factor in choosing their mobile operator- which would increase competition and keep retail charges down. So far, it says, there is little evidence ofthis playing out: the new roaming charges introduced were 'not inevitable' and have been justified on the basis of 'uncertainty' rather than increased wholesale prices, implying operators are choosing to mark-up prices for profit. The CER further points out that, in future, the UK government has the option to regulate the roaming market, limiting the profits that mobile operators are able to make through roaming charges.	

		UK legislation can, of course, not prevent EU operators from choosing to increase wholesale prices for UK networks, which would pass on costs to customers.	
7. AGRICULTURE **ACTIVE DIVERGENCE** *UK leaves EU Common Agricultural Policy, with each devolved administration planning a new agricultural subsidy scheme.*	**Summary:** The UK is no longer a part of the EU's Common Agricultural Policy (CAP), designed to support EU farmers financially. Agriculture is a largely devolved policy meaning the UK nations are free to pursue their own new support systems which diverge from the inherited CAP model. The Institute for Government explains that, under the CAP, roughly 80% of payments to UK farmers were based on the amount of land they farmed (known as 'the basic payment scheme' or BPS), although this could be cut if they did not meet certain environmental standards. The other 20% comprised of financial support for delivering environmental benefits, improving farm efficiency and supporting rural development. In England (where plans are most developed, and radical), Defra is planning a system based on 'public money for public goods', paying farmers for delivering (primarily) environmental benefits.	**Impact:** England's plans for the new agricultural regime are a significant divergence from the EU's CAP, in that the primary focus is on providing money in exchange for delivering environmental benefits, rather than the amount of land farmed. This is a fundamentally different approach to that taken by the EU. The 2023-27 CAP retains the direct payments principle which results in a minority of large farms receiving the majority of support. The CAP does have 'greener' ambitions, for example 25% of the budget will go towards 'eco-schemes' which reward farmers for environmentally beneficial action such as soil restoration and reduced pesticides use, and 40% of the CAP budget will 'have to be climate-relevant' and support wider EU biodiversity objectives. However climate experts and campaigners have been largely critical of the EU plans as lacking in ambition and full of exemptions. This may partly be down to the fact that the new CAP was planned to a large extent before the EU agreed its 'green deal'.	**Timeline:** Plans for England are being phased in overtime, with some schemes beginning in 2021 before the ending of the basic payment scheme in 2024. Wales's scheme is set to begin in 2025, with direct payments until 2023.

	The Institute for Government summarises the three main elements as: - Sustainable Farming Incentive: paying farmers "for taking actions above minimum legal requirements to promote wildlife diversity, use water efficiently, enhance hedgerows and manage croplands and grasslands, while continuing to use their land for production." - Local Nature Recovery Programme: paying "for actions that support natural recovery in local areas, such as creating, managing and restoring natural habitats." - The phasing out ofthe BPS from 2021-24, after which farmers will not be paid in relation to the amount of land they farm. Instead, the Landscape Recovery Scheme will use money saved from the BPS to support projects such as tree planting and peatland restoration which require significant reductions in the amount of farming on land. The Welsh government has published its own Agriculture White Paper, based on the same idea of public money for public goods and paying farmers for promoting environmental benefits. The new scheme will not begin until 2025 (with EU-style direct	Professor Alan Matthews of Trinity College Dublin told the website Carbon Brief that England's agricultural reforms are 'more radical' with their focus on public goods over direct support payments to farms, although he notes that it remains to be seen 'to what extent the government can actually implement that policy'. In relation to the plans for England, the National Farmers Union has expressed doubt over Defra's claim that increased productivity will compensate for the loss of direct payments to farmers. In particular, it raises concerns that the Trade and Cooperation Agreement does not allow UK food 'free and frictionless access to the EU single market'. It adds that the lack of 'any substantive scheme to assist farmers with income support or risk management' could leave them vulnerable to 'future market and climactic volatility', and certain farm types including very small farms could be particularly vulnerable. It is also worth noting that the plans for new agricultural support schemes are moving at different speeds in each of the four UK nations. Plans in England are the most developed and look like being a more radical departure from the EU's CAP model than the	Scotland's new system is set to begin in 2024. Northern Ireland is expected to legislate on a new policy in 2022. The EU's new CAP programme begins in 2023.

	payments until 2023), with a detailed framework planned for summer 2022. Scotland is planning a new subsidy system from 2024, but its structure has not yet been decided. Northern Ireland's Assembly is expected to legislate on a new agricultural policy in 2022 but there are yet no details on this. The amount that Northern Ireland can spend each year on agricultural subsidies is capped under the terms of the Protocol - at a level comparable with what was received before Brexit.	plans in the rest of the UK. The result is that farmers in other parts of the UK will be receiving direct income support payments for longer or in greater amounts than English ones - which could create competitive distortions.	
8. PRODUCT STANDARDS **ACTIVE DIVERGENCE** **PROCEDURAL DIVERGENCE** *UK extends deadline for submitting data for new UK*	**Summary:** As covered in the first tracker, the UK is no longer part of the EU's chemical regulation programme (EU REACH) instead establishing a UK REACH regime, which aims to replicate EU REACH 'as closely as possible'. The UK Health and Safety Executive (HSE) takes over the regulatory role previously undertaken by the European Chemicals Agency (ECHA). A UK database of registered substances will be set up, replicating the ECHA system. Authorisations under EU REACH will be transferred over to UK REACH, but to do so companies must submit registration data to	**Impact:** As outlined, the adaptation to UK REACH brings a significant financial and administrative costs for businesses, who have to re-authorise chemicals for the UK regime despite it broadly being a replication of the EU one. The Financial Times has highlighted potential knock-on effects of the re-authorisation process under UK REACH, including the disappearance of certain substances which appear in low quantities on the UK market - because the profits they generate to businesses are less than the costs of re-authorising them under UK REACH. There could also be a loss of inward investment in UK	**Timeline:** UK REACH applies to England, Wales and Scotland, while Northern Ireland remains a part of EU REACH- meaning potential future divergence in

REACH chemicals regulatory regime.	the HSE over the course of a transition period which was initially set to run to October 2023. However, in December 2021, Defra Secretary George Eustice notified the Chemicals Industry Association that the government was 'minded' to extend the deadline by two years to October 2025. His letter also said government would 'reduce the need for replicating EU REACH data packages' meaning potentially less bureaucracy for businesses, although no details have been produced. This follows industry concerns over a potential £1bn implementation cost and the need to spend 'seven years of staff time and resources re-registering substances' to largely replicate the EU database. Moreover, importers of chemicals from the EEA now have new obligations to register products (which they did not under EU membership because the goods were being moved within the single market), which will be phased in over a period of two, four and six years from October 2021. Eustice's letter also said Defra would 'consult on what, if any, extensions of the other deadlines wou Id be appropriate'.	manufacturing, risking jobs in the Midlands and North, if it becomes administratively simpler to register a manufacturing hub in the EU instead of the UK, so as to avoid having to re-comply with UK REACH. It could also lead to repetitive animal testing - which does not sit well with the UK's stated ambition to have higher animal welfare standards after Brexit. Should the government indeed 'reduce the need' for companies to replicate all the data it previously provided to EU REACH, this will likely raise concerns that the UK regime has less rigorous safety standards than the EU. There is at present no sense that the UK is seeking to diverge from EU standards, which would mean businesses have to comply with two separate regimes in order to sell into both the UK and EU markets. However, the UK regime is not passing new chemicals regulation at the same speed as the EU, with only four of ten potentially hazardous chemicals added to the EU's watch list having been considered for inclusion on the UK's. This has led to concerns among environmental groups that the UK becomes a "dumping ground" for potentially harmful chemicals.	standards between Great Britain and Northern Ireland.

9. MIGRATION **ACTIVE DIVERGENCE** *UK launches Turing Scheme to replace EU Erasmus+ programme offering work and study placements overseas.*	**Summary:** The UK elected not to continue its participation in the EU's Erasmus+ programme, which funds study and work placements in other European countries, replacing this with a new UK programme called the Turing Scheme. Turing launched in 2021/22, with a first year budget of£ 110m to fund 40,000 work and study placements in 150 countries. The scheme is open to schools, colleges and universities, and 363 out of 412 applications were approved. 48% of placements were for pupils from disadvantages backgrounds. Administrative funding is provided to help organise projects, as well as cost of living grants of £545 or £480 per month depending on the destination (for placements of 4-8 weeks) and £380/£335 per month for placements lasting longer. This is greater for higher education students from a disadvantaged background. Travel costs are also funded for all but higher education students (unless from a disadvantaged background). This is according to the length of the trip, for example £165 for round trips of 100-499 km, up to a maximum of £1,360 for round trips over 12,000km.	**Impact:** The government's stated aims behind the Turing Scheme are to deliver better value for money for UK taxpayers, while developing key skills and promoting the aims of Global Britain and 'levelling up' life chances. Turing certainly provides UK students with access to a wider range of countries - over 150 in the first year. For higher education students, the top three destinations are the USA (13.5%), China (6-4°/o) and Canada (6.1%). Forfurther education/vocational education and training it is Spain (19.7%), France (8.9%) and the USA (6.9%). For schools it is France (22.8%), Spain (17.5%) and China(10%). In terms of value for money, this year's Turing budget of£ 110m provided over 40,000 placements. In 2018, there were just over 18.000 UK participants in Erasmus+ higher education and work placements on a budget of €145m. Turing thus costs far less per placement and the government cited the increased budget and £2bn estimated net cost to the UK of another seven-year Erasmus+ membership as a reason not to participate. However, whether Turing delivers greater value for money is far less clear.	**Timeline:** The Turing Scheme is already in operation although the budget for 2022/23 is yet to be unveiled and it well take time to be able to fully assess its performance against both Erasmus+ and the government's performance criteria. Turing is a UK-wide scheme but Scotland and

	One key difference from Erasmus+ is that Turing does not fund 'inward' placements for international students to study in the UK. Turing also doesn't cover tuition fees (which are waived under the Erasmus scheme). The government has said it expects partner institutions to waive fees but there is no obligation or partnership mechanism under Turing, instead relying on universities coming to agreements on fee-waiving. As Professor Paul James Cardwell and Max Fras point out, this will in all likelihood rely on maintaining a rough equilibrium of students exchanged in either direction, and may also be made more difficult because funding is announced in the summer before a new yearly programme, giving little time for students to ensure their fees will indeed be waived on a programme.	Under Erasmus+ students do not pay tuition fees, whereas under Turing this is not guaranteed, and travel costs are covered for all higher education students under Erasmus+, whereas under Turing it is only those from disadvantaged backgrounds. Grant funding is also less generous under Turing: with maximum funding of £380 a month (£490 for students from disadvantaged backgrounds) for stays of 3-12 months under Turing, compared to approximately £445 (£630 for disadvantaged students) under Erasmus+. If demand rises over time, Turing's budget will have to be spread more thinly still. Nor does the Turing scheme provide placements to study in the UK. Under Erasmus+ the UK received typically twice as many 'inward' students it sent 'outward'. The 'global' culture on campuses, increased standard of education through shared practices, and spending by students were all highlighted by a Lords European Union Committee report as benefits of inward placements. Such students would also be more likely to work or invest in the UK in future. The full economic impact of lost inward placements is hard to quantify but Universities UK argues that that student spending means the UK actually made a profit on the Erasmus scheme. Erasmus+ also covered staff development	Wales are developing their own additional exchange programmes while students in Northern Ireland retain access to Erasmus+ via Irish higher education institutions.

		placements, school improvement programmes, youth and sport opportunities which are absent from Turing. In terms of levelling up life chances, 48% of Turing placements were for individuals from disadvantaged backgrounds. Erasmus data is limited, but figures from 2013/14 show UK participants were, compared to the general population, more likely to be white and from a 'higher' socio-economic background. Looking regionally, 73% of UK students on Erasmus+ in 2017/18 were from England, 20% from Scotland, 5% from Wales and 3°/o from Northern I reland.Turing skews more heavily towards England, which obtained 85% of successful applications and funding, compared to 8% for Scotland and 4% each for Wales and Northern Ireland (the data is not available by number of individuals participating). The Scottish and Welsh governments jointly expressed regret at the decision to leave Erasmus+, citing its greater budget and opportunities for strategic partnerships. Wales has since announced an additional learning programme focused on 'two-way exchanges', youth work and long-term funding. The Scottish Government has also announced plans for a Scottish Education	

		Exchange Programme. Students in Northern Ireland will continue to have access to Erasmus+, due to an Irish government decision to allow them to register with Irish higher education institutions for that purpose.	
10. MEDICINES AND MEDICAL DEVICES ACTIVE DIVERGENCE PROCEDURAL DIVERGENCE *UK launches consultation into establishment of new framework for regulating medical devices.*	**Summary:** The Medicines and Healthcare Products Regulatory Agency (MHRA) in mid-September launched a new consultation on "possible changes to the regulatory framework for medical devices in the United Kingdom". Its stated aims include "greater transparency of regulatory decision-making and medical device information ... close alignment with international best practice" and a "more flexible, responsive and proportionate regulation of medical devices". The consultation closed in late November, and new legislation is expected to come into effect in !uly 2023, when Great Britain will no longer accept EU-authorised medical devices. Changes would not apply to Northern Ireland which continues to follow EU regulations on medical devices under the terms of the Northern Ireland Protocol. Over the course of the consultation period, it was reported that the MHRA is cutting the number of staff who assess new drugs by over a third, from 118 clinical roles to 69. The number of doctors	**Impact:** As noted in the previous edition of the tracker, passive divergence has already occurred where the UK opted not to follow the EU's new, more stringent demands on medical devices testing and approval. The MHRA's consultation is an important indication that the UK has a view to moving towards active divergence, with a lighter-touch, more 'flexible' system that is distinctive from the EU's. We do not yet know the results of the consultation, but if the UK does elect to create new and distinct standards, one likely consequence is an increased need for testing capacity in Great Britain. As long as Britain is passively diverging from the EU, it could in theory choose to accept EU-authorised medicines and medical devices as safe for the British market. Yet if it establishes its own distinct regulatory standards, EU authorisations will not be	**Timeline:** The government plans for the new regulations to come into force in July 2023, when Great Britain stops accepting EU-approved medical devices. Northern Ireland will remain aligned to EU standards.

	and pharmacists involved will almost halve. The MHRA's income expected to fall by 20% (in significant part due to the loss of contracts from the European Medicines Agency to assess new drugs) while operating costs are expected to rise by £7-9m a year.	sufficient to ensure compliance, meaning a distinct UK authorisation regime will be needed. However, planned staff cuts at the MHRA mean capacity is decreasing when it needs to be going up. As Professor Stephen Evans notes (in relation to the regulation of both medical devices and medicines more widely): "if... we go on accepting EU regulatory decisions, the need for UK assessment of new medicines will decline. If we wish to be totally independent while doing full assessments, the workload will increase dramatically since it will not be shared with the regulators from 27 other countries." Given how much the UK has struggled in its wider plan to replace wholesale the CE mark for goods with a new UKCA mark (with the process beset by backlogs and delays), it seems ambitious in the extreme for a new British authorisation regime to be set up *and* have approved all necessary medical devices in time for mid-2023 - before the MHRA staff cuts are even factored in. The government may intend to make up the shortfall but plans remain unclear.	

		There are also implications for clinical trials or investigations of new medical devices in emergency settings, or where a patient cannot consent for them self. These trials give patients early access to potentially life changing technologies, but British divergence from EU rules on medical devices would mean a different paperwork process for trials in Great Britain compared to Northern Ireland. The risk is that studies in Great Britain no longer extend to Northern Ireland, with patients there thus being excluded from trails that could be valuable to them.	
11. FOREIGN POLICY **ACTIVE DIVERGENCE** *UK establishes range of new sanctions regimes primarily targeted at individuals committing*	**Summary:** As a result of Brexit the UK is no longer a part of the EU's sanctions regime and has instead devised its own regulations. To a significant extent the UK and EU regimes will continue to align because the majority of EU sanctions are based on UN Security Council resolutions, which the UK must also implement. The government has committed to as close cooperation on sanctions as possible with the EU. However, the UK has chosen to launch some distinctive sanctions regimes since Brexit, which are wider-reaching in scope than the EU's (covering human rights and security) and targeted mainly at	**Impact:** It is hard to measure the exact impact of the UK's new sanctions regime, as most experts consider such 'Magnitsky-style' sanctions as one of many tools within a wider diplomatic arsenal. Mark Normington of the NGO Global Witness has argued that a benefit of Magnitsky-style sanctions is that they avoid 'broad-based' impacts which 'can affect vulnerable populations', and that individuals can be targeted without undermining 'broader foreign policy priorities' with entire nation states. This new regime will not come to dominate the UK's entire approach to sanctions. When seeking to maximise impact, experts have argued that the UK is better off aligning with other	**Timeline:** New UK regimes are already in place and more could follow in response to specific cases. This is a UK-wide competency with

human rights abuses.	individuals. In July 2020 the UK launched its first new 'Magnitsky'-style' sanctions targeting 47 individuals committing gross human rights violations (25 Russian, 20 Saudi, 2 Myanma), and 2 North Korean organisations involved in human rights abuses. They were sanctioned with asset freezes and travel bans. In September 2021, the UK and Canada imposed human rights sanctions against Belarusian President Alexander Lukashenko and others in his government following the rigged elections. In February 2021, a specific sanctions regime was announced against Myanmar following the military coup. In April 2021, the government announced a new set of Global Anti-Corruption Sanctions Regulations, with asset freezes and travel bans imposed on 22 individuals. The UK's Office of Financial Sanctions Implementation has said it will take a more aggressive stance against those who breach the terms of sanctions (for instance the £2om penalty imposed on Standard Chartered Bank for breaches of EU sanctions on Russia).	countries, and indeed so far the UK has done so. For example, in March 2021 the UK, EU, USA and Canada imposed parallel sanctions on Chinese officials over their treatment of Uighurs, and as mentioned in the previous section both the UK and EU are obliged to impose sanctions based on UN Security Council resolutions.	no devolved element.

12. PRODUCT STANDARDS PROCEDURAL DIVERGENCE *End of grace period on 'rules of origin' checks on goods traded between Great Britain and the EU, and Great Britain and Northern Ireland.*	**Summary:** The Trade and Cooperation Agreement allows tariff- and quota-free trade in goods between the **UK** and EU markets, as long as the goods originate predominantly from the **UK** or EU. 'Rules of origin' requirements are used to determine the 'economic nationality' of goods and therefore whether they are entitled to be traded tariff- and quota-free. The threshold for a good to be considered as UK- or EU-originating varies according to its categorisation but as a rule of thumb half of the good must be UK- or EU-made to qualify. A grace period was applied at the start of the Trade and Cooperation Agreement which means full rules of origin requirements do not come into force for businesses until January 2022. At present, traders can self-declare whether a good meets the necessary standards and do not need a supporting 'supplier's declaration' from the supplier. Those declarations will be required from January 2022.	**Impact:** Trade groups have expressed concerns about businesses not being prepared for the end of the grace period, and the wider damage the new rules could inflict on certain UK businesses' trade. One trade consultant told the Financial Times that it is a 'known fact' that many companies are providing statements of origin, without having any idea whether or not the product meets the necessary standards. Another said that companies thought placing a British sticker onto a product manufactured entirely in China was enough to comply with the standards. The concern is that, should UK suppliers repeatedly fail to comply with the new standards once the grace period expires, EU importers will stop using them in favour of a supplier from within the EU. The risk is a loss of export markets for British businesses. The Federation of Small Businesses says many small companies are not prepared for the new requirements, and a fifth of its members have stopped EU exports either temporarily or permanently. The extent of the impact on businesses will likely depend on how strictly EU member states enforce the new rules	**Timeline:** Full rules of origin checks come into force from January 2022, on all Great Britain-EU trade, as well as goods moving between Great Britain and Northern Ireland.

		of origin checks. Some, like the Netherlands, have already said they will be enforcing the rules strictly. Suppliers in Great Britain will also need to comply with the new rules of origin requirements in order to trade their goods tariff-free into Northern Ireland, if that good is deemed at risk of entering Ireland and thus the EU single market. There is thus a parallel risk of disruption in trade between Great Britain and Northern Ireland, should traders consistently fail to provide the new declarations and see their exports blocked. There has been no reporting of note on the potential risks to trade from this issue, but should it prove significant it could add fuel to the debate about whether the Northern Ireland Protocol in its present form is fit for purpose.	
13. TAXATION/ CLIMATE AND ENVIRONMENT **ACTIVE DIVERGENCE**	**Summary:** The Air Passenger Duty (APD) rate for domestic flights was cut by 50% in the October 2021 budget. As a result, from 2023/24, an APD of £6.50 will apply on all flights between airports in England, Scotland, Wales and Northern Ireland. In his budget speech the Chancellor pointed to the 'return-leg exemption' which meant UK travellers on a return domestic flight	**Impact:** The Chancellor has presented the policy as a measure to help cut the cost of living, with "9 million passengers seeing their duty cut by half". It would have been possible to deliver APD relief within the EU by cutting the lowest rate of APD on all EU flights - but it would not have been possible to target it specifically on passengers making internal UK flights.	**Timeline:** The changes to APD will be implemented from 2023/24

UK cuts air passenger duty on domestic flights byso%.	did not have to pay APD on the return leg, but was removed after the EU ruled it legally defective in 1998 on the grounds that the same provision applied only to flights within the UK, not throughout the EU. In response the government of the day halved the APD on economy flights within the EU to lower costs for passengers. APD has since risen over time (presently£13 for flights under 2,000 miles - which includes the entire EEA). The cut in APD for internal flights would not have been possible in the EU as it would have discriminated against other EU countries. Like the old 'return-leg exemption' policy, it means APD on return flights within the UK will be 50% lower than on return flights from the EU. It goes further than the return leg exemption in that single flights will also be covered. At the same time, the Chancellor increased the number of 'international distance bands' for APD from two to three, with a new 'ultra-long-distance' rate for flights over 5,500 miles. The rates for 2023/24 will be:£13 for 0-2,000 miles; £87 for 2,000-5,500 miles; and £91 for 5,500 miles plus. That compares to 2022/23 rates of£ 13 for 0-2,000 miles and £84 for 2,000 miles plus (if travelling in the lowest class). This would have been	One question is whether frequent domestic flyers are a group particularly in need of cost-of-living reductions. Passenger data shows that in 2019 the mean household income of leisure flyers on domestic flights from all UK airports was above £40,000, and in many cases above £50,000 or £60,000. Mean household disposable income in 2019 was £35,900. A significant extra chunk of passengers were also business travellers. The biggest question, however, is how the reduction - which makes the price of internal flights more attractive - fits with a Net Zero Strategy seeking to drastically reduce UK carbon emissions. The Office for Budget Responsibility forecasts that the cut in APD will lead to 410,00 more passenger journeys per year (a 3.5% rise), while the increase in APD for ultra-long haul flights will result in 23,000 fewer passenger journeys over 5,500 miles (a reduction of less than 1%). As domestic flights are covered by the UK Emissions Trading Scheme, it has been argued by the IFS that extra flights will not add to overall emissions because they will drive up the UK carbon price, resulting in lower emissions in other parts of the economy. Nonetheless, there remain questions as to whether the APD relief	and apply to the whole ofthe UK.

	possible within the EU, as member states set their own passenger levies (on the proviso that they do not discriminate between EU member states).	undermines the UK's role as a climate leader pushing partners towards more sustainable methods of transport, and whether in the longer term it is sustainable to prioritise air travel for connecting the UK over lower-emission modes of transport.	
14. TAXATION **ACTIVE DIVERGENCE** *UK restructures alcohol duty regime, cutting number of rates and taxing drinks in proportion to alcohol content.*	**Summary:** In the October budget the Chancellor announced a reform of the alcohol duty system, cutting the number of main duty rates from fifteen to six, with all products taxed in proportion to their alcohol content, and higher strength drinks paying proportionally more. This reform, the Chancellor said correctly, was "only possible because we've left the EU". EU rules do not allow the taxation of most alcohols according to their alcoholic content. While EU rules do allow member states to set their own excise duties on alcohol above a minimum level (the UK had some of the highest duties in the EU) there are restrictions on how the duty regimes can be structured. The duty imposed on beer is set by the overall alcohol content (so you can charge a higher duty on higher strength beers) but the duty on wine (and 'other fermented beverages' including cider) is set by the volume it comes in, with no attention paid to the alcohol content above 8.5%. As a result, a	**Impact:** The Chancellor has presented the reform primarily as a public health decision: "it will help end the era of cheap, high-strength drinks which can harm public health and enable problem drinking." This aligns with advice given by The School of Health and Related Research to Parliament: "consideration should be given to reforming alcohol duty structures to permit taxation which consistently reflects the alcohol content of products and the public health risk which this entails." The Chancellor also pointed to ancillary benefits: a simpler system, increased tax revenue on higher strength alcohol, and reduced costs for drinkers of lower strength alcohol. It does not appear a major revenue-raising exercise, especially in the context of a cancellation of a planned wider increase in alcohol duty, which would have been worth £3bn.	**Timeline:** The new duty is set to come into effect in 2023. It may not apply to Northern Ireland, which continues to follow EU rules on alcohol duty structure.

	750ml bottle of 11% wine would attract the same duty as a 14% one. In addition, The School of Health and Related Research told Parliament that a 500ml can of normal strength cider would attract more duty per alcoholic unit than 3 litres of high percentage cider - because duty is based on quantity not strength - encouraging those seeking to buy high-strength alcohol to do so in greater quantities, to reduce the per-unit cost.	The new regime may not apply in Northern Ireland which, under Article 8 of the Northern I reland Protocol, follows the EU directives on how alcohol duty is structured (which the new UK regime does not conform to). As a result, alcohol exported from Britain may have to pay a different excise duty if going to Northern Ireland- raising logistical problems in terms of how and where exporters and importers ensure the correct duty is paid, without creating new paperwork or checks for goods crossing the Irish Sea. This potential new bureaucracy, coupled with the symbolic fact that Northern Ireland may have a different alcohol excise regime to the rest of the UK, may add to the existing political difficulties around the operation ofthe Protocol. Indeed, the Treasury notes that the problem would be eased by a 'more flexible settlement' as advocated for by the Government in its July 2021 Command Paper on the Protocol. But this will not be resolved without much clearer proposals than those outlined in the Treasury note.	

15. TAXATION **ACTIVE DIVERGENCE** *UK reforms tonnage tax regime, to reward ships for carrying the UK 'red ensign' flag.*	**Summary:** In the October budget the Chancellor announced: "now that we've left the EU, today we start reforming our Tonnage Tax regime to make it simpler and more competitive." These are mostly technical reforms to the operation of the system, but the one element of UK-EU divergence is that ships participating in the regime will no longer be required to fly the flag of an EU country. The exact nature of the new regime around 'flagging' is as yet unclear, but the government has said it will seek to boost the use of the UK 'red ensign' flag and 'reward' companies who do so. This has been taken to mean that companies using the red ensign have a greater chance of joining the UK's tonnage tax scheme. The UK's tonnage tax scheme was set up in 2000 and is an 'alternative method of calculating corporation tax' for shipping companies 'strategically and commercially managed in the UK'. Law firm Watson Farley & Williams says the advantage of the scheme for shipping companies is that their daily profits are calculated according to a ship's net tonnage, instead of the company's income and expenses. This produces very low profit estimates for companies and thus 'a close to zero tax	**Impact:** This is a largely symbolic reform. The new flag requirements are designed to address to decreasing use of the British 'red ensign', but do not have a material impact on the workings of the regime. The wider suite of new reforms are expected to have a 'negligible' impact on the Exchequer and in 2018 Watson Farley & Williams deemed the UK regime to only have scope for marginal improvements. The law firm adds that tonnage tax schemes exist across Europe and there is little to distinguish them. Yet it says the UK had an advantage in that its scheme normally requires some management staff at participating companies to move to the UK, and staff generally found the UK a more attractive place to relocate to than other EU countries. However, the attractiveness of the UK as a place to live could be undermined by its exit from the EU.	**Timeline:** Amendments will apply from 1 April 2022.

	environment'. The purpose of the regime was to make the UK competitive with offshore jurisdictions - the rationale being it was better to have more low-taxed companies in the UK than few higher taxed ones.		
16. MIGRATION **ACTIVE DIVERGENCE** *New UK points-based immigration system ends freedom of movement with UK now using temporary visa schemes to respond to labour shortages.*	**Summary:** Freedom of movement between the UK and EU ended following the end of the transition period. This means EU, EEA and Swiss nationals must - like all other foreign nationals except Irish citizens - now apply for a visa if they wish to move to the UK to work, live or study. There are a range of immigration routes available under what the government has branded its 'points-based immigration system'. Applicants score points for meeting specified requirements of a given scheme, and must obtain a certain number of points to get a visa. Another policy lever available to government is the ability to introduce temporary visa schemes in response to sectoral shortages. On 11 October, the government opened applications for temporary visas for 5,500 poultry workers and 4,700 HGV food drivers (not HGV drivers in general). Applications closed on 15 November 2021 and visas take three weeks to process. The visas will expire on 31 December 2021 for poultry workers and on 28	**Impact:** The number of visas available under the temporary scheme is small compared to the estimated demand for 100,000 extra HGV drivers in the UK, and the limited uptake of visas may well reflect that there are more attractive terms of employment to be found in the European Union. Yet this deliberately temporary scheme was designed to alleviate acute shortages in the run-up to Christmas: not to resolve sector-specific labour shortages in the long-term. It does, however, point to a different challenge which arises from the UK electing to end free movement with the EU and introduce its own bespoke immigration regime: the system is less responsive to the needs of the labour market. The idea behind the new regime is to increase control, with the UK taking only the EU migrants it 'needs' rather than an uncontrolled flow. But in practice, as Professors Catherine Barnard and	**Timeline:** The poultry and HGV visa regimes expire on 31 December 2021 and 28 February 2022 respectively.

	February 2022 for HGV food drivers. The HGV drivers will likely be European or have worked in Europe due to the license required. As of 22 October it was estimated in news reports that half of the visas had been taken up. There is also a separate scheme, run out of BEIS rather than the Home Office, for HGV fuel drivers. This is not a visa scheme but rather a 'temporary concession'. Up to 300 drivers arriving for employment between 1 October 2021 and 15 October 2021 were granted permission to enter and work in the UK as fuel tanker drivers until 31 March 2022, if they had the necessary license and endorsement letter. A report on S October stated only 27 drivers had applied.	Jonathan Portes point out, this means moving 'from a market-led system - where, for better or worse, labour supply could respond relatively quickly to changes in demand - to one where politicians in Westminster and bureaucrats in Whitehall have to decide how to respond to the same changes in demand; and then potential migrants and employers have to decide whether, all things considered, they wish to jump through whatever bureaucratic processes and fees/charges are involved'. The result is 'delay, distortions (whether administrative or political) and complexity; and it is far from obvious that the end result is closer to what we 'need' than the answer given by the market'. Moreover, the temporary HGV and poultry schemes will not be isolated cases. Both in response to sudden, acute shortages, and longer-term labour market issues, the UK's immigration policy now relies on government identifying market needs and devising and implementing suitable schemes in response. Early indications cast doubt on how effectively it can do this.	

17. MIGRATION **ACTIVE DIVERGENCE** *UK leaves EU 'list of travellers' scheme, meaning non-EEA students on EU school trips require a visa to visit the UK, and stops accepting EEA ID cards.*	**Summary:** The UK has left the EU 'list of travellers' scheme which, in the words of the UK government, 'allows school children from third countries who are resident in a Member State to visit or transit another Member State of the EU if travelling as a member of a school group without the need to obtain a visa'. The result is that, as of 1 October 2021, non-EEA national children going to school in an EU member state need to obtain a visa (which costs £95) to travel to the UK as part of a school group. In addition, national identity cards are no longer accepted as part of the new UK border regime, meaning EEA school children require a more expensive passport in order to travel to the UK. Many children only have an ID card as this is sufficient to travel within the EU.	**Impact:** The Financial Times has reported tour companies experiencing a significant decline in the number of bookings for school trips to Britain, compared to other EU countries where English is widely spoken. A survey of French schools found the number of planned trips had fallen by two thirds (some of this will be related to the Covid-19 pandemic) while a selection of major French, German and Belgian companies reported a near-total collapse in planned trips to the UK, in favour of other EU destinations. A significant factor is thought to be the number of non-EEA students in EU school groups. For example, 5-10% of German school children would need to apply for a visa to visit the UK, and up to half of French school trips are thought to include a child who would need a visa. The cost of the visa aside, the administrative difficulty of individually obtaining a visa for each non-EEA child is considered a major factor turning school groups off the UK as a destination. The British Education Travel Association estimates the value of this student travel industry to the UK economy (including language schools) to be £1.5bn a year.	**Timeline:** The new rules were introduced on 1 October 2021, but do not apply to Northern Ireland.

18. FINANCIAL SERVICES **ACTIVE DIVERGENCE** *UK publishes Greening Finance Roadmap setting out plans to align UK financial system with net zero.*	**Summary:** The UK's Greening Finance Roadmap published in October 2021 set out three stages involved in aligning the UK's financial system with its commitment to net zero emissions by 2050: making information relating to sustainability available for financial decision makers; ensuring this information becomes embedded in financial and business decision making; and changing financial flows within the UK so that they align with net zero commitments. The Roadmap focuses on the first stage. It sets ambitious plans for new mandatory requirements for companies, including financial services firms, to make Sustainability Disclosure Requirements (SDRs) detailing how their practices impact the environment. It also points to the potential for divergence from EU regulation through the plan to roll out a UK Green Taxonomy, which categorises what counts as green and sustainable. This is one of the thorniest aspects of green finance - businesses, policy makers and consumers need to have clear and consistent information about what counts as green in an effort to prevent greenwashing:	**Impact:** The UK's intention to tailor its new Green Taxonomy to the specifics of the UK economy means that it is possible for the UK to diverge from the EU in either approach (the technical methods of investing) and/or in scope (the range of activities that are classified as green or not). The precise nature of any divergence and its potential advantages are not currently clear. However, there is a risk that divergence leads to additional costs for businesses in terms of regulatory compliance in adhering to multiple taxonomies. The Greening Finance Roadmap acknowledges these risks implicitly noting that the UK's green taxonomy will be developed with a 'clear focus on the benefits of coherence and compatibility with other international frameworks'. The Roadmap also needs to be understood as the pathway through which the government seeks to realise its ambitions to position the City as an international leader in green finance. Rishi Sunak's 'New Chapter for Financial services', published in Iuly 2021, identifies green finance (alongside digital finance) as a key	**Timeline:** Once adopted the government plans to review the taxonomy every three years.

	misleading customers or investors regarding the extent to which a company's activities are really environmentally sustainable, or how much they represent token efforts. The UK Green Taxonomy will set out the criteria that economic activities will need to meet in order to be classified as environmentally sustainable. The government says its proposed taxonomy will draw on the existing EU Green Taxonomy that the UK contributed to as a member state but will 'take an approach that is suitable for the UK market and consistent with UK government policy'. The government is planning to consult on two objectives within the taxonomy (climate change mitigation and adaptation) in Q1 2022. Consultation on the remaining four objectives (sustainable use and the protection of water and marine resources, transition to a circular economy, pollution prevention and control and protection and restoration of biodiversity and ecosystems) is anticipated in Q1 2023.	strategic priority for delivering a Brexit dividend for financial services. This ambition was reiterated at COP26 when Sunak announced ambitions for the UK to be the "first ever net zero aligned financial centre". Whilst London was recently top in a global ranking of green finance centres, overtaking the previous leader Amsterdam, eight of the top ten centres were in Europe. This reflects the leadership in green finance currently provided by the EU, much of which was built up in regulatory terms through UK involvement. Indeed, the UK's green finance roadmap needs to be located within wider international debates about which country or countries are setting the international standard for green finance, and thereby reaping the economic benefits of that. The EU's taxonomy is commonly understood as the world's first "green list certification system" but other countries are also developing their own taxonomies including Canada, Japan and Singapore. This reflects growing competition for one taxonomy to emerge as the accepted international standard in green finance. The UK is seeking to influence international developments through the international Taskforce on Climate related Financial	

		Disclosures (TCFD) created by the Financial Stability Board which the UK draws on heavily when setting out its Sustainability Disclosure Requirements (SDR). These disclosure requirements are aimed at ensuring that sustainability information flows into the real economy in order to help investors and consumers make financial decisions that meet their investing values.	
19. FINANCIAL SERVICES **ACTIVE DIVERGENCE** *UK review of wholesale markets regime.*	**Summary:** In line with its wider "New chapter for financial services", HM Treasury launched a review for consultation of the UK wholesale markets regime in July 2021 which closed in September 2021. The proposals are wide ranging and cover issues such as the derivatives trading obligation that determines where derivatives can be traded, the production of market data and providing clarity on what is and isn't included within the scope of FCA regulation. A full summary of responses and the Government's plans will be published early in 2022 but John Glen, Economic Secretary to the treasury provided an update in a speech to UK Finance at the end of November.	**Impact:** The consultation notes that "now that we [the UK] have left the EU, we can tailor our rules more closely to the unique circumstances of the UK, improve standards and make regulation more proportionate". This suggests that the outcomes of the consultation should be watched closely for UK plans to diverge from the EU. John Glen, Economic Secretary to the Treasury provided clear indications of the government's likely response to the consultation in a speech to UK Finance at the end of November. In this he emphasised that: the government intends to legislate as soon as possible to make changes that result from the consultation; that changes will be made to the transparency regime for fixed income and derivatives markets to "remove unnecessary burdens for firms"; and that in line with the Hill	**Timeline:** The UK's consultation has closed and both the UK and the EU are currently planning their legislative programmes in this area for 2022.

		listings review the UK will introduce a "simpler, more agile and more effective" approach to listings with the aim of making it easier for large and small firms to raise capital. Taken together, and alongside the Future Regulatory Framework Review, these changes place the competitiveness of the City of London much more centrally within its regulatory framework than was the case when the UK was a member of the EU. It is hard to assess whether these changes will lead to sustained divergence or convergence with the EU because the EU itself is undertaking regulatory reviews. For example, in November 2021, it announced that it too would table a legislative proposal in 2022 to make it simpler for companies to raise capital in EU markets, thereby converging with UK developments in this area. The UK's proposal to align the share trading obligation determining where derivatives are traded with the on shored European Market Infrastructure Regulation (EMIR) clearing obligation would result in greater alignment between the UK and the EU.	

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