BREXIT DIVIDEND

DEREGULATION AND ECONOMIC GROWTH

IBN Independent Business Network

Table of Contents

1. Chairmans Opening Statement

‘Deregulation is really important. The impacts can be analysed to death and made very complicated, especially by those who wish to frustrate it. Lifting bureaucratic burdens on business frees up resources, improves productivity, facilitates growth, and then encourages risk taking and investment.

This is particularly true for SME’s. There are some very large family owned or run businesses however many are SME’s. These businesses are not only the majority of the economy they are also the innovators and disrupters from whom, uniquely, economic growth comes. Some large corporates favour regulation, prefer to retain rules as they consider it to be an area of competitive advantage and a way of creating barriers to entry of disrupters and innovators. For the sake of national interest and economic growth they should be ignored except where there is unfair competition from overseas (eg dumping, state funding and subsidy).

It should go without saying that economic growth is vital if the people of the U.K. are going to be prosperous and be able to afford the best that the world has to offer, including public services such as healthcare.

The history of deregulation is not encouraging. All regulation has its champions, but it should be recognised that hard cases make bad law, regulation can be an anti-competitive weapon and gold plating is not unknown. The body of EU law within the context of REUL. has had no Parliamentary scrutiny. Whitehall officials have a predilection to creating and retaining rules, after all what other purpose do they have? They also tend to mistrust business despite that they are the wealth creators that pay their wages. Even under PM Thatcher meaningful deregulation was frustrated by officials and by politicians who wanted to retain regulations.

This Report sets out a pragmatic approach to the reform, elimination, and retention of regulations and to their integration into a common law framework.

Finally, I would like to thank Barney Reynolds for producing a chapter on Retained EU Law and the UK Legal Method which has been included in this paper.

John Longworth
Chairman

2. The Independent Business Network

Small and medium sized enterprises (SMEs) account for 99.9% of UK businesses, an estimated 61% of UK employment (16.3 million people) and 52% of turnover in the UK private sector. Employment within small businesses alone amounts to 12.9 million (48% of total) with a turnover of £1.6 trillion (36%)[1].

The Independent Business Network speaks for the overwhelming majority of businesses across the UK that are SMEs which for the purposes of regulation are now considered to be up to 500 employees, and micro-businesses (defined as employing fewer than 10 employees) and family-run or family-owned businesses. We want to ensure every part of the UK SME business community has the chance to seize the opportunities that Brexit provides. Following the Covid pandemic we seek to ensure that British businesses are able to grow and recover from the regulatory restrictions placed on them during the pandemic.

We believe that Brexit Britain should be pro-enterprise and work, while breaking down the power of monopolies and their domineering influence on public policy and the regulatory landscape. We believe that SMEs including family owned and family run businesses must have a greater voice in public policy. One of the primary reasons for the UK leaving the European Union was to ensure that we should diverge from our European Union member state counterparts in order that the UK economy would become more dynamic and competitive. Notably around 92% of British firms do not export to the EU[2] so it is wrong to force EU regulation on 100% of the country. There is no need for regulatory alignment.

The majority of businesses in the UK are family owned or family run. Including the self-employed, they constitute 84 per cent of the private sector and employ almost 55 per cent of all workers. Smaller businesses generate around two thirds of new jobs in the UK economy[3] and around 90 per cent of innovation is estimated to come from businesses with less than 100 employees[4]. These businesses are the backbone of our economy and we must ensure they are allowed to flourish so that we can generate the wealth we need for investment and, via taxation, public services. The Government is right to focus on ensuring that future markets in technology and artificial

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1 https://www.gov.uk/government/statistics/business-population-estimates-2022/business-population-estimates-for-the-uk-and-regions-2022-statistical-release-html

2 UK SMEs in the supply chains of exporters – BIS May 2016 exportershttps://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/524847/bis-16-230-smes-supply-chains-exporters.pdf#page=7

3 BIS, 'SMEs: the Key Enablers of Business Success and the Economic Rationale for Government Intervention', (2013).

4 Hall, D, Entrecode: Unlocking the Entrepreneurial DNA, (2013)

intelligence have the most competitive environment here in the UK, but it must not forget to ensure that there is fairness for all businesses.

The IBN works to ensure the best possible business environment for our supporters, through lobbying, research papers, and articles in the press and via our social media channels. This research paper is a contribution to creating that environment and we hope the Government will look upon it favourably.

Some regulations are necessary to ensure good business practice, the safety of workers and fair competition. But regulations also create unnecessary costs for businesses. The Government has repeatedly said that it wants to remove unnecessary EU regulations but we are yet to see any substantial movement on that front. This paper has been produced in consultation with businesses and contains those regulations that we believe could be removed to better enable businesses to flourish and help our economy to grow.

When the Government wants to speak to a constructive business voice the Independent Business Network is ready and eager to engage.

Brendan Chilton
Chief Executive

3. Executive Summary and Recommendations

Our research has shown that the volume and scope of EU Regulations now adopted onto the UK statute book as Retained EU Law (REUL) significantly adversely impacts British businesses. In particular EURL has a disproportionate impact on UK SMEs, creating an uneven playing field and barriers to entry and growth for smaller businesses. Examples of this are set out in this paper.

In order to level-up the playing field it is necessary to take bold steps in deregulation by repealing or reforming EURL, not only generally in line with HMG's *'Framework for Better Regulation'*[5] but also particularly implementing the specific deregulatory needs of UK SMEs. Particularly as the nation and small businesses in particular continue to recover economically from the Covid pandemic and the temporary measures brought in to manage it.

The scale of EURL also places the UK at a global competitive disadvantage as compared with less overregulated jurisdictions such as Hong Kong, Singapore, New Zealand and Switzerland[6]. While the IBN recognises that some level of EU standards harmonisation is necessary where UK origin or manufactured goods are exported to the EU market, 12.8% of UK goods are exported to the United States, 6.9% to mainland China, 4.7% to Hong Kong, with a further 14.8% of British exports going to other destinations in Asia[7]. Thus, concerns about the added costs to UK businesses of duplicating EU standards are sometimes legitimate but have also been exaggerated.

Examining both the needs of small UK businesses, the backbone of our economy, as well as Rest of the World and EU trade, in this paper we set out our priority and secondary policy areas for deregulation. Summarising here some of the common themes and the deregulatory opportunities recommendations arising from Brexit that we have identified, we believe HMG should, among other possibilities:

- Fiscally incentivise business growth, for example by zero or reduced rating currently standard rated VAT goods and services that particularly impact UK SMEs and their clients. Assess possible deregulatory savings for pensions beneficiaries who are passed on the costs of EU pension provider governance compliance.

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5 BEIS – *Reforming the Framework for Better Regulation,* October 2021 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005119/reforming-the-framework-for-better-regulation.pdf

6 Fraser Institute – 2019 Annual Report *Economic Freedom of the World* https://www.fraserinstitute.org/sites/default/files/economic-freedom-of-the-world-2019.pdf

7 International Trade Centre, Trade Map https://www.trademap.org/Index.aspx

- Reform excessive EU data protection rules (GDPR), which have a disproportionate impact on small IT businesses and disincentivise tech investment, new market entrants, innovation and competition.

- Take a grown-up, common-sense approach to health and safety. Replace overzealous, expensive EU rules with no or very limited benefit to employees, with guidance and recognise the pre-existing UK legal safety net of employer liability and insurance.

- Reduce or exempt, where appropriate the application and processing costs for small businesses of environmental and waste disposal licences, permits and surveys to encourage investment and growth.

- Revitalise the rural economy by forging a new British agricultural policy, through meaningful reforms that prioritise national food security and local British produce equally with environmental stewardship.

- In the case of fishing, level up deprived coastal towns, economies and communities by working with devolved administrations to meaningfully reverse the unfair hand dealt to British fishermen over the last 50 years by the Common Fisheries Policy.

- Deregulate and simplify employee support requirements for small business employers to incentivise business expansion and reduce reliance on underpaid or limited/ zero-hour contractors.

- Liberalise administrative procedures for public contract tendering, to increase accessibility of the public sector to efficient businesses, thus rewarding and encouraging public sector competitiveness, while reducing costs for taxpayers.

- Reform road transport regulation to support businesses that depend on and frequently use our road network.

- Reform alimentary and plant labelling rules, rejecting one-size-fits-all approaches and taking into account consumer shifts towards online purchasing.

We ask that HMG and each Whitehall department tasked with assessing and implementing post-Brexit deregulatory opportunities specific to their policy portfolio, approach their task expansively and urgently. The future of small British businesses depends accordingly.

4. Our Principles for Regulation

The Independent Business Network believes in the need for regulation to ensure a fair playing field and competitive environment in which SMEs including family-run and family-owned businesses can operate and flourish. But, as a principle we believe that all regulations should be kept to a minimum and all regulations should face a five-year review and at which point if they are no longer required, they should be scrapped.

In 2015, Open Europe found that the cost of 100 EU regulations on the British economy stood at £33billion[8]. Professor Patrick Minford shows that around 6% loss in growth took place during the years the UK was a member of the EU[9] as a result of excessive EU regulations. During the 2016 EU referendum[10] the official Vote Leave[11] campaign promoted leaving the EU for reasons including the cost of EU regulations on existing British businesses[12]. Boris Johnson advocated leaving the EU citing the enormous number of EU regulations, costing £600million per week, imposed on British businesses as a core reason to leave the EU[13].

Since leaving the EU we have seen little divergence from existing Brussels regulations. While the UK may have ‘taken back control’ by leaving the EU, the reality is that virtually all of the regulations coming from the European Commission[14] remain in force in the UK. Essentially, Brussels still has a stranglehold on the British economy, limiting innovation and entrepreneurs. In order to set the British economy on a different path: one that is more adaptable and dynamic, streamlined and growth driven; we need to establish new principles for regulation based on Britain’s role in the global economy now.

The principles upon which the British Government consulted with business on the regulatory future of the UK were published in July 2021. The ‘Framework for Better Regulation’[15] set out five key tests for the future of regulation. Those tests are:

1) A sovereign approach: we will use our new freedoms to follow a distinctive approach based on UK law, protected by independent UK regulators, and designed to strengthen UK markets.

8 https://www.cityam.com/open-europe-reveals-100-eu-regulations-cost-britain-33bn/

9 https://conservativehome.com/2018/02/05/patrick-minford-more-compliance-lower-productivity-reduced-growth-why-we-must-free-ourselves-from-eu-regulation/

10 https://www.bbc.co.uk/news/politics/eu_referendum/results

11 http://www.voteleavetakecontrol.org/why_vote_leave.html

12 http://www.voteleavetakecontrol.org/briefing_redtape.html

13 https://conservativehome.com/2016/05/09/boris-johnsons-speech-on-the-eu-referendum-full-text/

14 https://ec.europa.eu/info/index_en

15 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005119/reforming-the-framework-for-better-regulation.pdf

2) Leading from the front: we will focus on the future, shaping and supporting the development of new technologies, and creating new markets. We will use our new Reforming the Framework for Better Regulation 4 freedom to act quickly and nimbly, and we will pursue high-quality regulation because it leads to better markets.

3) Proportionality: Where markets achieve the best outcomes, we will let them move freely and dynamically. We will pursue non-regulatory options where we can. When strong rules are required to achieve the best outcomes, we will act decisively to put them in place and enforce them vigorously.

4) Recognising what works: we will thoroughly analyse our interventions based on the outcomes they produce in the real world, and where regulation does not achieve its objectives or does so at unacceptable cost, we will ensure it is revised or removed.

5) Setting high standards at home and globally: we will set high standards at home and engage in robust regulatory diplomacy across the world, leading in multilateral settings, influencing the decisions of others, and helping to solve problems that require a global approach.

The Government recognises that markets can achieve the best outcomes for consumers and for businesses. While broadly sensible, unfortunately, the principles proposed by the Government are too focussed on creating a new regulatory framework for emerging technologies and new markets and do not apportion an adequate level of attention to existing regulation on businesses. While of course it is important that any regulatory environment for emerging technologies is made as competitive as possible, the same approach must be taken for existing British businesses. The consultation on this particular framework is on-going and further commentary must be reserved for its conclusions.

The Independent Business Network believes in simplicity and would propose that the Government should have a single overarching principle when determining whether or not a regulation is required. We believe that the overarching principle ought to be **whether the particular regulation being considered promotes growth** and that **it should be informed by businesses and industry itself.** If the regulation diminishes or limits growth it should not be imposed on businesses and industry.

5. UK Government Deregulation Policy

In the last decade the Government made two substantial changes to regulators in the UK. In 2014 the Government passed the Regulators' Code[16], which provides a framework for how regulators ought to engage with those they regulate. In 2015 the Government passed the Deregulation Act 2015[17] creating a statutory growth duty[18]. This established the principle that regulators should work towards growth. Although the Act failed to define what growth is, it is broadly understood to mean the drivers of productivity growth: Investment, Skills, Innovation, Entrepreneurship, and Competition. The Conservative Government in 2015 introduced a Business Impact Target[19] with the intention of pursuing a deregulatory agenda.

The Withdrawal Agreement[20] established arrangements for the UK's withdrawal from the EU. This included a transition or implementation period during which EU law continued to apply to the UK. The Future Relationship Act 2020[21] puts into place the arrangements for the relationship between the UK and the EU after the implementation period. The Northern Ireland Protocol,[22] sets out conditions where EU law will still apply in Northern Ireland ostensibly to avoid a hard border on the island of Ireland.

Retained EU Law is a category of domestic law created at the end of the transition or implementation period and consists of EU-derived legislation that was preserved in the UK by the European Union (Withdrawal) Act 2018[23]. Retained EU Law was never intended to sit on the British statute book indefinitely. In September 2021, the then Brexit Opportunities Minister, Lord Frost[24], announced a review of retained EU law and in December 2021 provided an explanation of retained EU law concepts that still directly apply in the UK and impact UK domestic law[25]. This review would primarily deal with the unusual status of retained EU law in the UK and defining the role of UK courts in interpreting retained EU law concepts.

In January 2022, the Government published a paper entitled, *"The Benefits of Brexit: How the UK is taking advantage of leaving the EU."*[26] That paper outlines how the Government believes it has taken back control following the UK's decision to leave the EU. It also explores how an independent UK can take advantage of regulatory freedoms now that we are outside the confines

16 https://www.gov.uk/government/publications/regulators-code

17 c.20 https://www.legislation.gov.uk/ukpga/2015/20

18 https://www.gov.uk/government/publications/growth-duty

19 https://www.gov.uk/government/publications/business-impact-target-statutory-guidance

20 https://www.legislation.gov.uk/eut/withdrawal-agreement/contents/adopted

21 https://www.legislation.gov.uk/ukpga/2020/29/contents

22 https://www.legislation.gov.uk/eu-legislation-and-uk-law

23 https://www.legislation.gov.uk/ukpga/2018/16/contents/enacted

24 https://members.parliament.uk/member/4879/contact

25 https://questions-statements.parliament.uk/written-statements/detail/2021-12-09/hlws445

26 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1054643/benefits-of-brexit.pdf

of the EU Single Market[27] and Customs Union[28]. The expressed ambition of the Government is to "*set ourselves apart and deliver a bespoke UK-orientated regulation that is primarily focused on delivering growth, innovation and competition while minimizing burdens on business*."[29]

The Queen's Speech of 2022 saw the Government announce plans for a Brexit Freedoms Bill[30]. The main elements of the proposed Bill will be to create new powers to strengthen the ability to amend, repeal or replace large amounts of Retained EU Law by reducing the need to always use primary legislation. In addition, the Bill will remove the supremacy of EU law and provide a special status of retained EU to reflect the fact that much of it was passed without adequate scrutiny.

The Government has a Regulatory Policy Committee[31]. This committee is sponsored by the Department for Business, Energy and Industrial Strategy[32] and is responsible for examining how regulatory proposals impact on business and civil society organisations.

Each Government department has a Better Regulation unit. Better Regulation units within departments are directed towards ensuring that department's comply with the duties outlined in the Better Regulation Framework[33]. This Framework operates under the Better Regulation Executive[34], which is responsible for working with Government to monitor the measurement of regulatory burdens on business.

In June 2022 the Brexit Opportunities Minister, The Rt Hon. Jacob Rees-Mogg MP[35] published the Public Dashboard[36] of retained EU legislation. The dashboard enables businesses, consumers and other interested parties to examine all retained, amended and repealed EU legislation and to make suggestions to the Government. The publication of the dashboard triggered concern among Whitehall officials and some Cabinet colleagues, demonstrating the challenge facing those who wish to make the British economy more competitive to accelerate growth.

27 https://ec.europa.eu/growth/single-market_en

28 https://ec.europa.eu/taxation_customs/customs-4/eu-customs-union-facts-and-figures/eu-customs-union-unique-world_en

29 The Benefits of Brexit: How the UK is taking advantage of leaving the EU, pp.21

30 https://www.gov.uk/government/news/prime-minister-pledges-brexit-freedoms-bill-to-cut-eu-red-tape

31 https://www.gov.uk/government/organisations/regulatory-policy-committee/about

32 https://www.gov.uk/government/organisations/department-for-business-energy-and-industrial-strategy

33 https://www.gov.uk/government/publications/better-regulation-framework

34 https://www.gov.uk/government/groups/better-regulation-executive

35 https://members.parliament.uk/member/4099/contact

36 https://public.tableau.com/app/profile/governmentreporting/viz/UKGovernment-RetainedEULawDashboard/Guidance

The Government's stated objective is to ensure that it will work to update Retained EU Law or seek to amend, repeal or replace Retained EU Law that is no longer fit for the UK.
The Government's Retained EU Law (Revocation and Reform) Bill[37] ('Brexit Freedoms Bill') was presented to the House of Commons for its first reading on Thursday 22 September 2022. It has now reached Report stage in the House of Lords. The Bill, if passed by Parliament and enacted will:

- Sunset retained EU law – causing most, but not all, of it to expire at the end of 2023
- Enable, via statutory instrument, most retained EU law (if it takes the form of legislative instruments) to be exempted from the sunset
- Enable the sunset to be postponed (for some but not all retained EU law) until as late as 23 June 2026, via statutory instrument
- Relabel any remaining retained EU law after the end of 2023 as "assimilated law"
- Formally abolish the principle of supremacy and other general principles of EU law in the UK after the end of 2023
- Enable the effects of supremacy and general principles of EU law to be preserved or recreated in specific cases, via statutory instrument;
- Give the UK courts a new legal framework for reconciling inconsistent sources of law when they include those of EU origin, which ministers can influence via statutory instrument
- Grant a suite of delegated powers to UK ministers and devolved authorities to revoke, restate, replace or update retained EU law/assimilated law by statutory instrument
- Remove or downgrade existing forms of Parliamentary scrutiny of statutory instruments when they propose to modify or revoke law of EU origin
- Expand the permitted use of Legislative Reform Orders (LROs) so that they can revoke retained direct EU legislation
- Abolish the Business Impact Target in the Small Business, Enterprise and Employment Act 2015

[37] https://bills.parliament.uk/bills/3340

6. The Northern Ireland Protocol and Regulatory Divergence

The Northern Ireland Protocol[38] was created to accommodate the fact that Northern Ireland, a constituent part of the UK, shares a land border with the Republic of Ireland, which presently is a member of the EU, its Customs Union and Single Market. It is important to recognise that Northern Ireland has had a troubled past and contentious political history. The British Government determined from the moment the country voted to leave the EU that it would not impose a “hard border” on the island of Ireland, meaning a limited number of authorised (and physically controlled) crossing points, staffed by customs officers and police.

Northern Ireland remains part of the UK’s customs territory but effectively remains within the EU’s Single Market for the movement of goods only and meets EU product standards. As a result a regulatory sea border has been created between Great Britain and Northern Ireland and businesses are facing additional checks on goods arriving at ports in Northern Ireland[39].

In practice, Northern Ireland remains under the purview of the institutions of the EU. Notably the European Court of Justice (ECJ), which has the right to rule on matters of EU law in Northern Ireland. This essentially creates two systems of legal authority in the province. In practice this would mean that, should a dispute arise in relation to whether or not a product, regulation or standard were compatible with EU law it would fall to the ECJ to determine whether the UK was in breach of its obligations under the protocol. Within Northern Ireland at least, the British Government has therefore essentially permitted legal authority to be continued to be outsourced to a foreign power.

There is a huge risk, as a result of the Protocol settlement, that, as the UK diverges from the EU regulatory framework, the province of Northern Ireland becomes further and further removed from the UK single market, customs union and political union. The current arrangements could increasingly lead to Northern Ireland politically orientating itself towards Dublin to secure its interests in the EU, as the province continues to be subject to its authority. Businesses will focus their commercial activity towards the Republic because of the regulatory barriers erected across the Irish Sea.

Politically this is an extremely sensitive issue for the Government. If the rest of Great Britain undertakes any substantial regulatory divergence it will only highlight and exacerbate the growing different regulatory trajectory between Great Britain and Northern Ireland. This would be unacceptable for many of the Government’s supporters in the House of Commons, and would be unacceptable for many opposition members too, as well as being unacceptable to much of the UK. Therefore, until the Northern Ireland Protocol is replaced or reformed real changes in regulatory arrangements for

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[38] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840230/Revised_Protocol_to_the_Withdrawal_Agreement.pdf

[39] https://www.revenue.ie/en/customs-traders-and-agents/brexit/information-for-businesses-trading-with-ni/trade-with-ni/index.aspx

the UK economy are likely to be hampered. We will in practice remain under existing EU regulations, a vassal state in all but name.

The IBN believe that we need to deregulate for the prosperity of the nation. The best remedy for Northern Ireland is a high growth, prosperous Great Britain to which Northern Ireland will increasingly align and will enjoy the benefits of growth. With the changing political landscape in Northern Ireland it is not inconceivable that a border poll could occur. While the IBN believes strongly in the Union we do not believe that the Protocol should restrict Great Britain's drive for growth.

The Government has moved legislation through Parliament, the Northern Ireland Protocol Bill 2022, currently at Report Stage in the Lords, to enable it to override parts of the Northern Ireland Protocol. Notably, Clause 4 of the Bill removes the requirement for Northern Ireland to apply EU law on customs and goods regulation for 'qualifying movements of UK or non-EU destinated goods'. It would thus remove the regulatory barrier for goods being transported from Great Britain to Northern Ireland, provided their final destination remains in the UK. Clauses 7-11 of the Bill also provide for a dual regulatory regime, allowing companies to choose whether to comply with UK or EU law, when supplying goods to Northern Ireland.

Although the UK is unable to unilaterally change the terms of the Withdrawal Agreement, the Bill would remove the direct effect of parts of the Agreement in domestic law. This would prevent it from having supremacy over UK law, as required by article 4 of the Withdrawal Agreement, allowing the UK to override parts of the protocol contrary to the terms of the treaty itself. This means that the UK authorities, including the UK parliament, ministers and civil servants and the devolved governments, will no longer have to comply with or enforce parts of the Northern Ireland protocol.

Debate exists as to whether or not this legislation will actually be enforced or whether or not it is merely a negotiating tool to demonstrate to Brussels that the UK is prepared to take extraordinary measures to remedy the difficulties facing businesses and consumers operating between Great Britain and Northern Ireland. It is of course right and proper that the British Government should move to ensure the integrity of the UK single market, the UK customs union and the jurisdiction of UK law over its territory.

The Independent Business Network has further concerns about the **Windsor Framework**[40] which may now supplant the Northern Ireland Protocol Bill. On the face of it, the Windsor Framework is designed to address the problem of the movement of goods between the EU Single Market and the

[40] The Windsor Framework: a new way forward, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1138989/The_Windsor_Framework_a_new_way_forward.pdf

UK market in the current Northern Ireland Protocol. The Framework introduces a mechanism called the "Stormont brake", which would allow the Northern Ireland Assembly to temporarily stop any changes to EU goods regulations from applying in Northern Ireland if the Assembly feared that the changes would have "significant and lasting effects on everyday lives".

According to the agreement, the Northern Ireland Assembly can trigger the brake on any new "significantly different" rule implemented if 30 Members of the Legislative Assembly (MLAs) (one third) from two or more parties object, giving way to a 14-day consultation period before reference to the British Government for consideration. Cross-community consent (from both unionists and nationalists) is not required. However, *"the government says a decision on whether to permanently block an EU rule, once suspended and following discussion in the Joint Committee, would not happen 'in the absence of a cross-community vote'"*[41] suggests the brake might in practice never happen, leaving detrimental EU law unchallenged.

Of concern, the Windsor Framework does not sunset any part the Northern Ireland Protocol, and if anything provides an excuse for its continuance, ensuring thereby that part of the UK remains under the jurisdiction of the EU.

One MLA, Jim Allister (North Antrim), has lamented that Northern Ireland is *"increasingly bound by foreign laws we don't make and can't change".*[42] He says the Northern Ireland Department of Agriculture, Environment and Rural Affairs (DAERA) Permanent Secretary has specified:

"*45 new EU law changes which automatically apply to Northern Ireland because of the Protocol (all of which is unaffected by the Windsor Framework), with nine further changes pending… These extend across key areas, including feed regulations, medicinal products, animal disease control, fertilisers, seeds, chemicals, fisheries, pesticides, plant health and organic farming. Because, under the Protocol, these changes are mandatory there are no cost/ benefit analyses carried out, as would be normal with local regulatory changes, instead, NI farmers, colony-like, are subjected to these new EU laws, whether they are needed or are suitable to our situation."*

Mr Allister added that the importation of the EU's new Animal Health law *"widens the application of EU law in the whole field of animal health… in the TB sphere alone it makes substantial and costly changes which the Permanent Secretary says could run to a £3m burden on the industry… The imposition of a veterinary assessment of risk following every TB outbreak, not just, as now, with severe outbreaks, before restocking can take place, is a particularly irksome imposition."*

41 https://www.bbc.co.uk/news/uk-northern-ireland-64795902

42 "*Undemocratic EU noose tightening on agriculture"* - 22nd April 2023 www.farminglife.com

In addition to continued subjection to EU law, due to the Protocol, Northern Ireland is also still required to report intra-EU trade data (Intrastat[43]) on goods moving between the Province and the Republic of Ireland.

Of even greater concern is that, further to the Windsor Framework, the Northern Ireland Protocol might be used as justification by policymakers in HMG to regulatorily align GB with Northern Ireland.

[43] The Customs Miscellaneous Non-Fiscal Provisions and amendments etc (EU Exit) Regulations 2020 (S.I. 2020/1624) continues the applicability of Intrastat to trade of goods between the Republic of Ireland and Northern Ireland. Intrastat itself is governed by Commission Implementing Regulation (EU) 2020/1197 of 30 July 2020 laying down technical specifications and arrangements pursuant to Regulation (EU) 2019/2152 of the European Parliament and of the Council on European business statistics repealing 10 legal acts in the field of business statistics; Regulation (EU) 2019/2152 of the European Parliament and of the Council of 27 November 2019 on European business statistics, repealing 10 legal acts in the field of business statistics.

7. The Impact of Overregulation on SMEs in particular family businesses

All too often, SMEs including family-run and family-owned businesses face the full brunt of regulation. Many multinational firms are capable of absorbing the costs of new or amended regulations within their business. But these smaller businesses face unfair and burdensome costs as a result of new and existing regulation.

The Business Perception Survey Is conducted by the Government on a regular basis to test the views of businesses on regulation in the UK. In 2020, 37% of businesses viewed regulation as an obstacle to success[44]. However, in 2017 research undertaken by the Federation of Small Businesses[45] (FSB) showed that almost two thirds (62%) of small businesses felt that regulation brought more burdens than benefits, and as a result increased costs[46]. The FSB also called in the same paper for the establishment of an Office for Regulatory Reform (OfRR) in the Cabinet Office, which "*every two years should produce a 'state of regulation' report to Parliament".* Previous research commissioned by the FSB suggests that smaller businesses are disproportionately impacted by this regulatory burden.[47]

The negative impact of regulation is felt disproportionately by smaller firms, for whom the associated gross costs can be between 17 and 40 per cent per employee greater than for larger businesses.[48]

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44 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/944423/business-perceptions-survey-2020-technical-report.pdf

45 https://www.fsb.org.uk/join-us.html

46 https://www.fsb.org.uk/resources-page/regulation-returned---what-small-firms-want-from-brexit-pdf.html

47 Baldwin, R. '*Better Regulation Is it better for business?*' (2004).

48 "*Regulation costs are 35 per cent greater in businesses with less than 20 employees, compared to businesses with more than 50 employees."* ENSR (1995), cited in Baldwin, R '*Better Regulation: is it better for business?'* (2004); "*Businesses spend up to nearly five times more hours per person complying with regulation than businesses with 50 or more employees."* Small Business Research Trust (2000), cited in Baldwin, R '*Better Regulation: is it better for business?'* (2004); "*Businesses in this range incur compliance costs more than three times higher per employee as a result of regulation, compared to those businesses with 20 to 49 employees and up to five times greater than larger businesses."* OECD (2001); OECD (1997); Hopkins, T.D. (1995) and Beale, H and Kin, H. (1988) cited in Baldwin, R '*Better Regulation: is it better for business?'* (2004); "*It costs about 36 per cent more per employee for small firms to comply than their larger businesses."* Crain, N. V and Crain, W M. *'The Impact of Regulatory Costs on Small Firms'* (2010); "*Cost per employee of regulation is at around 40 percent higher in smaller businesses compared to medium-sized and large businesses."* Crain, W. W. '*The Impact of Regulatory Costs on Small Firms'* (2005); *"Compliance costs fall disproportionately on small businesses incurring per employee costs of around $11,700 per employee per year. This is 17 per cent more per employee per year than the average business."* 'Crain, W. M and Crain N. V. '*The Cost of Federal Regulation to the US Economy, Manufacturing and Small Business'* (2014).

The Department for Business found in 2020 that the biggest impact of regulation on businesses was in costs and time[49]. The Government has acknowledged that regulation does have a direct economic impact on businesses. In January 2022 the Government acknowledged the cost of red tape for businesses and pledged to cut £1billion worth of regulatory costs for businesses[50].

Professor Patrick Minford has said:

"The costs to business of regulation include widely-reported compliance costs; however, even without these, businesses' costs can be raised by regulation – the essence of which is a hidden tax on business to provide benefits to particular groups, such as certain workers or consumers, for social or political reasons. The effects of such actions to the economy come through rises in business costs which impact on jobs and productivity, reducing employment and GDP. If the Government wishes to provide gains to any group in society, it is best done transparently and intelligently through benefits paid for out of general taxation, whose cost is spread widely across the economy and so does much less damage to business.[51]"

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[49] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/944520/challenges-businesses-face-when-complying-with-regulations.pdf

[50] https://www.theguardian.com/politics/2022/jan/31/government-plans-to-cut-1bn-in-red-tape-with-new-post-brexit-legislation

[51] https://conservativehome.com/2018/02/05/patrick-minford-more-compliance-lower-productivity-reduced-growth-why-we-must-free-ourselves-from-eu-regulation/

8. The Impact of the Covid-19 Pandemic and Lockdowns

Small businesses were particularly heavily impacted by the Covid-19 pandemic in 2020-22 and the impact of government-imposed lockdown policies. The Covid-19 shock imploded cash flows for many businesses, but it was small businesses with low turnovers and capital reserves operating in particular sectors that bore the brunt most intensely. Within a month of suspending trading many small businesses were left unable to pay their bills and other overheads and were forced to cease trading permanently.

Between 2020 and 2022 the number of small businesses in the UK declined from 5.9 million to 5.5 million, a significant fall of 6.6%[52].

As pointed out by the Bank of England[53] smaller businesses were also more likely than larger businesses to operate in the sectors that were most affected by pandemic, such as accommodation, hospitality and food, construction, the arts and entertainment and recreation.

A June 2021 report from simplybusiness.co.uk [54] was damning:

"Last year, our data said that small businesses and the self-employed expected total Covid-19 costs to reach £69 billion. But nearly 12 months later, our latest report reveals that the total anticipated cost will be upwards of £126.6 billion – nearly double the initial estimated amount. Beyond the total cost, our headlines also reveal further business challenges:

- *81 per cent of small businesses said they haven't had enough support from the Government*
- *24 per cent said there should have been greater communication and transparency about the impact on small businesses and the self-employed*
- *regions across the UK have been impacted differently, with London, Scotland and the North East the hardest hit areas"*

The stark reality is that HMG lost the trust of many small businesses during the pandemic. With the spectre of rising inflation and higher borrowing costs on the horizon, and the number of UK businesses facing bankruptcy in thefirst three months of 2023 almost reaching a 13-year high[55], the Government now has its work cut out to regain that trust.

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52 https://www.gov.uk/government/statistics/business-population-estimates-2022/business-population-estimates-for-the-uk-and-regions-2022-statistical-release-html

53 https://www.bankofengland.co.uk/bank-overground/2020/how-has-covid-19-affected-small-uk-companies

54 https://www.simplybusiness.co.uk/knowledge/articles/2021/06/the-impact-of-covid-19-uk-small-business-2021/

55 https://inews.co.uk/news/business/going-bust-more-uk-businesses-go-wall-inflation-wreaks-havoc-2307321

9. Our Priority Opportunities for Deregulation

Outside of the EU the British Government has the opportunity to make the British economy the most streamlined in the world, attracting investment, driving productivity, using technology and driving up living standards.

The Independent Business Network has examined 100 EU regulations and directives affecting British businesses in a broad range of policy areas owned by 11 central Government departments and their agencies, now adopted onto the UK statute book as Retained EU Law (REUL). We have carried out a RAG assessment of each piece of REUL according to its impact on SME businesses, and businesses generally, as well as the political and practical deliverability of repeal or reform. We believe that HMG should immediately repeal or reform 33%, at a minimum, of the REUL we have assessed (which we have rated green to go for deregulation). This is REUL which we believe imposes greatest redundant and unnecessary financial and administrative burden for small businesses. We believe the Government should give further careful consideration to repealing or reforming a further 20% pieces of REUL that have assessed as amber rated for deregulation and consider these further in section 9 of this paper. It is important to recognize that counting the number of regulations reformed or repealed is far less meaningful than measuring their economic impact. Some rules have a minor impact and others produce enormous costs.

Aside from the work we have undertaken, we are certain that there are many further EU regulations, directives and domestic implementing instruments that could be repealed, revoked or reformed and we are conscious of the work being presently undertaken by Government departments across Whitehall to identify REUL for deregulation. We would urge for departments to take a comprehensive, innovative and decisive approach to the task, noting the stage of the Retained EU Law (Revocation and Reform) Bill in Parliament. At present there is little sign that they are and this is a failure of government.

The following are policy areas, across a wide range of Government department remits, which we have RAG assessed as green to go, where we believe repeal or reform of REUL is most necessary and deliverable for SME businesses:

9.1 Health and Safety at Work Regulation

The Federation of Small Businesses (FSB) paper: "*Regulation Returned: What Small Businesses Want from Brexit*"[56], reported that two thirds of small businesses feel that regulation has brought more burdens than benefits, and increased costs for them. 71% of small businesses FSB respondents reported that they deal with health and safety legislation. The IBN is convinced that deregulation is critical to securing economic growth and wealth creation.

Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (89/391/EEC)[57] was a framework directive which authorised the EU Council to adopt individual directives in the areas listed in its Annex. As at present 20 directives have been adopted under Directive 89/391/EEC. Many of these implemented directives have reduced risks for workers, but some of these are, by the Government's own assessment, unnecessary and very costly for British businesses.

Artificial Optical Radiation – Directive 2006/25/EC of the European Parliament and of the Council of 5 April 2006 on the minimum health and safety requirements regarding the exposure of workers to risks arising from physical agents (artificial optical radiation) (19th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)[58], implemented by The Control of Artificial Optical Radiation at Work Regulations 2010 (S.I. 2010/1140)[59] sets out maximum exposure limits to artificial optical radiation and the obligations of employers to protect employees.

Paragraph 7.3 of the explanatory memorandum for S.I. 2010/1140[60] concedes:

"the risk from exposure to intense forms of artificial light is not a significant problem within the UK. Many businesses will only have innocuous light sources such as those found in office environments. The number of businesses using intense sources of light that can be hazardous is estimated to be 80 000. These include research and education institutes using powerful lasers, metal fabrication work using welding equipment, printing processes using ultraviolet light and industries using furnaces. However, even within these sectors, there are few if any reports of ill health or injury. In the last 15 years there are estimated to have been less than 10 injuries that required workers to take more than 3 days off work reported to HSE. There have been no cases of work-related cataracts or neoplasia (new or abnormal tissue growth) attributed to exposure to artificial light reported by general

[56] Ibid.

[57] https://www.legislation.gov.uk/eudr/1989/391

[58] https://www.legislation.gov.uk/eudr/2006/25

[59] https://www.legislation.gov.uk/uksi/2010/1140/contents/made

[60] Ibid.

practitioners or occupational physicians. There have been 19 cases of work-related neoplasia reported by consultant dermatologists through the Occupational Skin Surveillance Scheme that they attributed to exposure to artificial light. In 90% of these cases, the workers were involved in welding which generates high levels of ultraviolet light. However, it was not clear how many of these workers also worked outside or spent their leisure time outside – which would also increase their exposure to natural optical radiation (sunlight). There have also been 65 cases of heat cataracts (a prescribed industrial disease) compensated under the Industrial Injuries scheme since 1992 although no cases have been reported after 2002."

At paragraph 7.6 of the explanatory memorandum it is further conceded that *"some stakeholders have considered it to be an unnecessary piece of European legislation".*

With an annual cost to businesses of £1.5 million (best estimate with a range of £0.8m to £2.3m) (£2.2m at 2023 prices), including costs associated with risk assessments and providing information to employees, we believe there is scope to reform the implementing SI.

It appears the Directive was implemented simply because, being a member of the EU at the time the British Government had no option but to implement it (or face EU fines). Yet exposure to artificial light injuries were shown at the time to be extremely minimal and limited to welders. **The legislation could be amended to specifically protect welders and remove costs for all other businesses. protected by specific legislation designed for them if they are not already. Although some costs were reduced for businesses employing up to 20 people, the costs are still unnecessary for and impact small and family businesses disproportionately.**

Display Screen Equipment: another Directive adopted under the framework of Directive 89/391/EEC was **Council Directive 90/270/EEC of 29 May 1990 on the minimum safety and health requirements for work with display screen equipment (fifth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)**[61] implemented by The Health and Safety (Display Screen Equipment) Regulations 1992 (S.I. 1992/2792)[62]. Under this Directive employers must plan workers' activities in such a way that daily work on a display screen is periodically interrupted by breaks or changes of activity reducing the workload at the display screen. Workers are required receive information on all aspects of safety and health relating to their workstation. This includes requiring employers to ensure that employees are provided on request with an appropriate eye and eyesight test (regulation 5 of the implementing SI). This would take a very "kid-glove" approach to responsible adult employees who should be more than able to assess such risks for themselves**. With the advent of large numbers now homeworking it is almost impossible to enforce and should be repealed.**

61 https://www.legislation.gov.uk/eudr/1990/270

62 https://www.legislation.gov.uk/uksi/1992/2792/made

No explanatory memorandum or impact assessment with monetised costs were published by HMG for S.I. 1992/2792, but undoubtedly the SI could be reformed, with an exemption for eye tests and other compliance for small businesses to save considerable costs.

Another directive adopted under the framework of Directive 89/391/EEC was **Council Directive of 30 November 1989 concerning the minimum safety and health requirements for the workplace (89/654/EEC)[63].** This was implemented in the UK in the form of The Management of Health and Safety at Work Regulations 1992 (S.I. 1992/2051)[64], and the Workplace (Health, Safety and Welfare) Regulations 1992 (S.I. 1992/3004)[65]. And another of the directives made under Directice 89/391/EEC was **Council Directive 98/24/EC of 7 April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work (fourteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)[66]** implemented in the UK by The Control of Substances Hazardous to Health Regulations 2002 (S.I. 2002/2677)[67], which established minimum requirements for the protection of workers' health and safety from the presence or use of hazardous chemical agents. Again, no explanatory memorandum or impact assessment with monetised costs were published by HMG for any of these SIs, so it is difficult to assess the impact they have had on small businesses and whether they should be reformed or revoked. An immediate review should be undertaken to assess the costs and a decision on reforming or revoking the rules. Much Health and Safety legislation is gold plating via the application of guidance and overly restrictive codes of practice which allow no freedom for interpretation. **The use of codes of practice should be reviewed and the introduction of a defence in law of reasonable precautions and diligence should be introduced.**

Personal Protective Equipment: nor was an explanatory memorandum or impact assessment published by HMG alongside the **Personal Protective Equipment at Work Regulations 1992 (S.I. 1992/2966).** However, this SI, originating from the framework created by Directive 89/391/EEC, was amended in 2022 post Brexit, by the **Personal Protective Equipment at Work (Amendment) Regulations 2022 (S.I. 2022/8)**[68] to extend employer personal protective equipment (PPE) at work obligations to a wider group of workers than employees, including casual workers, costing businesses, charities and voluntary bodies £43.2 million per year. The impact assessment for S.I. 2022/8[69] states, at paragraph 157, the SI would create:

[63] https://www.legislation.gov.uk/eudr/1989/655
[64] https://www.legislation.gov.uk/uksi/1992/2051
[65] https://www.legislation.gov.uk/uksi/1992/3004
[66] https://www.legislation.gov.uk/eudr/1998/24
[67] https://www.legislation.gov.uk/uksi/2002/2677
[68] https://www.legislation.gov.uk/uksi/2022/8/memorandum/contents
[69] https://www.legislation.gov.uk/ukia/2022/5/pdfs/ukia_20220005_en.pdf

"a net present value of total costs to small and micro businesses of between £49m and £277m with a best estimate of £151m over the 10-year appraisal period, and an equivalent annual net direct cost to small and micro businesses of between £5.7m and £32.2m with a best estimate of £17.6m. Hence it is estimated that small and micro businesses will incur approximately 41% of total costs resulting from the PPER amendment."

The rationale provided in the impact assessment for the amendment to the original SI – S.I. 1992/2966 – was that in November 2020, a judgment was handed down in a judicial review High Court judgement, following an action brought by the Independent Workers Union of Great Britain (IWGB) against the Secretaries of State for Department for Business, Energy and Industrial Strategy (BEIS) and the Department for Work and Pension (DWP)[70]. IWGB successfully claimed that the Government had failed to properly transpose Directive 89/391/EEC and Directive 89/656/EEC of 30 November 1989 ("the PPE Directive") into UK law and that that '*limb workers'*, as defined by section 230(3)(b) of the Employment Rights Act 1996, should have been included in the scope of the original transposition of the Directive.

However, while the High Court ruling was correct in terms of HMG's historical obligation to implement the Directives when the UK was a member of the then EEC, latterly the EU, following Brexit there is nothing to prevent the UK Parliament from now democratically repealing or reforming the PPE Directive and implementing SIs with prospective effect to exempt small businesses. According to the impact assessment[71], small and micro businesses are disproportionately affected by the legislation (42,000 or 81% micro businesses and 7,100 or 13.8% small businesses compared with 700 or 1.4% large businesses) requiring PPE provision, assessment and administration costs as regards their limb/ casual workers.

Vibration: The Control of Vibration at Work Regulations 2005 (S.I. 2005/1093)[72] implemented **Council Directive 2002/44/EC of the European Parliament and of the Council of 25 June 2002 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (vibration)**[73], the sixteenth daughter directive of Directive 89/391/EC. S.I. 2005/1093 placed a duty on employers to reduce the risk to their employees' health from exposure to hand-arm vibration (HAV), caused by using hand-held or hand-guided powered work-equipment or by holding materials which are being processed by machines, and whole-body vibration (WBV), caused by sitting or standing on industrial vehicles or machines. In the impact assessment attached to the explanatory

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70 *R (Independent Workers' Union of Great Britain) v Secretary of State for Work and Pensions and another [*2020] EWHC 3039 (QB) (Admin) https://www.judiciary.uk/judgments/r-independent-workers-union-of-great-britain-v-secretary-of-state-for-work-and-pensions-and-another/

71 Ibid.

72 https://www.legislation.gov.uk/uksi/2005/1093/contents

73 https://www.legislation.gov.uk/eudr/2002/44

memorandum for S.I. 2005/1093[74] it was conceded, at paragraph 82, that if small firms hire external consultants in order to assess risk they *"will face higher costs compared to larger firms where the risk assessment will be carried out by an internal technician."* The impact assessment goes on to mitigate this by stating: *"however, as part of its guidance on the Regulations HSE will be listing available data on the vibration magnitudes of a range of common tools which should limit the need for small firms to hire consultants. Extra HSE guidance should significantly reduce the need to use external consultants."* The question must now be asked, now the UK is no longer obliged to follow EU law, why small businesses could not be exempted from the SI and employers instead wholly directed to HSE guidance as regards their responsibilities, not simply on the question of whether they carry any responsibilities.

Work at Height: The Work at Height Regulations 2005 (S.I. 2005/735)[75] – implemented **Directive 2001/45/EC of the European Parliament and of the Council, amending Council Directive 89/655/EEC**, **concerning the minimum safety and health requirements for the use of work equipment by workers at work**[76]

It is a common misconception that S.I. 2005/735, in implementing Directive 2001/45/EC banned the use of ladders (and rope access). However, it did place significant restrictions on the use of ladders. The exact wording of the restriction is found at article 4.12 of the Directive: *"Ladders may be used as work stations for work at a height only under circumstances in which, given point 4.1.1, the use of other, safer work equipment is not justified because of the low level of risk and either the short duration of use or existing features on site that the employer cannot alter.*" A reasonable interpretation of this would be that unless the work is either of short duration, or the location is difficult for scaffolding or mobile elevated work platforms (commonly known as "cherry-pickers") to be erected, ladders should not be used. Further restrictions are laid out at article 4.1.6: "*Temporary work at a height may be carried out only when the weather conditions do not jeopardise the safety and health of workers,"* and article 4.2 makes specific provisions regarding the use of ladders: *"4.2.1. Ladders must be so positioned as to ensure their stability during use. Portable ladders must rest on a stable, strong, suitably-sized, immobile footing so that the rungs remain horizontal. Suspended ladders must be attached in a secure manner and, with the exception of rope ladders, so that they cannot be displaced and so that swinging is prevented. 4.2.2. The feet of portable ladders must be prevented from slipping during use by securing the stiles at or near their upper or lower ends, by any anti-slip device or by any other arrangement of equivalent effectiveness. Ladders used for access must be long enough to protrude sufficiently beyond the access platform, unless other measures have been taken to ensure a firm handhold. Interlocking ladders and extension ladders must be used so that the different sections are prevented from moving relative to one another. Mobile ladders must be prevented from moving before they are stepped on.*

[74] Ibid.

[75] https://www.legislation.gov.uk/uksi/2005/735/contents

[76] https://www.legislation.gov.uk/eudr/2001/45/adopted

4.2.3. Ladders must be used in such a way that a secure handhold and secure support are available to workers at all times. In particular, if a load has to be carried by hand on a ladder, it must not preclude the maintenance of a safe handhold." Further specific provisions regarding scaffolding are found under article 4.3, and regarding rope access at article 4.4.

The absurdity of these prescriptions should be self-evident. Did EU officials when drafting this Directive give consideration to employees and contractors exercising common sense, following guidance, already using ladder stabilizing devices, receiving training, and employers and the self-employed having insurance policies in place?

While there is no blanket prohibition on the use of ladders by reason of the implemented Directive, paragraph 58 of the regulatory impact assessment for S.I. 2005/735[77] assessed that 50% of workers shifting away from ladders would switch to using mobile elevated work platforms, meaning that between 22,500 and 35,000 additional workers would use MEWPs for work at height, and at paragraph 62 that the cost of shifting from ladders to mobile elevated work platforms resulting from S.I. 2005/735 has a present value of between £106.4 and £165.5 million over the appraisal period (£171m to £266m in 2023 prices). Others would, it was assessed, switch to tower scaffolds at lesser but still significant cost. At paragraph 36 of the impact assessment, it is stated the British Ladder Manufacturing Association (BLMA) estimated that between 2.5 and 3 million workers work in a job where the use of ladders is an essential requirement. This represents a huge section of the British workforce and costs in sectors that predominantly employ SMEs, including construction, maintenance (eg. gutter and roof repairs) and steeplejacking, window cleaning, arboriculture, agriculture and manufacturing. The effective elimination of the use of the ladder is leading to a deterioration in the housing stock of repairs and refurbishments.

There is, notably, precedent for deregulation in the field of health and safety law in the UK. The Deregulation Act 2015 (Health and Safety at Work) General Duties of Self-Employed Persons) (Consequential Amendments) Order 2015 (S.I. 2015/1637)[78] amended a number of SIs made under section 15 of the Health and Safety at Work etc. Act 1974[79] (HSWA), as well as Directive 89/391/EEC, to exempt self-employed persons from health and safety regulations. Section 1 of the Deregulation Act 2015[80] amended section 3 of HSWA which had previously placed a duty on all self-employed persons to protect themselves and others from risks to their health and safety. The amended section 3(2) and the new sub-section (2A) of HSWA provide that only those self-employed persons who conduct certain undertakings (that are prescribed in regulations) are under that duty. The amendment followed one of the key recommendations made by Professor Ragnar Löfstedt in his report that informed the amendment: *"Reclaiming health and safety for all: An independent review of health and safety*

[77] https://www.legislation.gov.uk/uksi/2005/735/pdfs/uksiem_20050735_en.pdf
[78] https://www.legislation.gov.uk/uksi/2015/1637/resources/made
[79] c.37 https://www.legislation.gov.uk/ukpga/1974/37/contents
[80] c.20 https://www.legislation.gov.uk/ukpga/2015/20/contents/enacted

regulation,"[81] Professor Löfstedt's recommendation was to exempt from health and safety law those self-employed people whose work activities pose no potential risk of harm to others. According to the impact assessment for S.I. 2015/1637[82] the deregulation achieved £65,000 annual savings (2009 prices) for individuals newly setting up as self-employed, who might otherwise have spent time familiarising themselves with their obligations under health and safety law and further annual cost savings of £870,000 (2009 prices) for established self-employed individuals from not having to keep up-to-date with health and safety requirements. At a minimum SMEs and the self-employed should be exempt from the Working at Height Directives.

S.I. 2015/1637 made consequential amendments exempting self-employed persons posing no potential risk of harm to others to a number of Directive 89/391/EEC derived regulations including:

- The Manual Handling Operations Regulations 1992 (S.I. 1992/2793)[83];
- The Provision and Use of Work Equipment Regulations 1998 (S.I. 1998/2306)[84];
- The Lifting Operations and Lifting Equipment Regulations 1998 (S.I. 1998/2307)[85];
- The Management of Health and Safety at Work Regulations 1999 (S.I. 1999/3242)[86];
- The Control of Noise at Work Regulations 2005 (S.I. 2005/1643)[87];
- The Control of Vibration at Work Regulations 2005 (S.I. 2005/1093)[88];
- The Personal Protective Equipment at Work Regulations 1992 (S.I. 1992/2966)[89]; as well as
- The Work at Height Regulations 2005 (S.I. 2005/735)[90].

Some of these Directives we have considered in detail above. S.I. 2015/1637 also made parallel amendments to other EU derived health and safety regulations, including The Control of Substances Hazardous to Health Regulations 2002 (S.I. 2002/2677)[91].

We believe that this precedent of deregulation should be taken further to exempt small and micro business employers from EU mandated health and

81 Reclaiming health and safety for all: An independent review of health and safety legislation, Professor Ragnar E Löfstedt November 2011 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/66790/lofstedt-report.pdf

82 https://www.legislation.gov.uk/ukia/2015/267/pdfs/ukia_20150267_en.pdf

83 https://www.legislation.gov.uk/uksi/1992/2793/made

84 https://www.legislation.gov.uk/uksi/1998/2306/contents/made

85 https://www.legislation.gov.uk/uksi/1998/2307/contents/made

86 https://www.legislation.gov.uk/uksi/1999/3242/contents/made

87 https://www.legislation.gov.uk/uksi/2005/1643/contents

88 https://www.legislation.gov.uk/uksi/2005/1093/contents/made

89 Ibid.

90 Ibid.

91 https://www.legislation.gov.uk/uksi/2002/2677/contents

safety regulatory overreach where there is a low to non-existent risk of harm to employees. It should be added here that was noted in a report by the Forum of Private Business' Health and Safety Panel[92] at the time of the self-employed exemption to the HSWA that the savings created by the exemption would give the self-employed a competitive edge over small businesses who are employers. This situation has never been remedied but HMG has the opportunity to do so now post Brexit.

As sensibly suggested by The Institution of Occupational Safety and Health (IOSH)[93] in an article dated February 2023 Health and Safety Executive (HSE) prescriptive burdensome and costly health and safety legislation is not always necessary, and could be replaced with guidance:

"It seems likely... regulatory principles that would disappear in law but would remain in HSE guidance. In some areas it may provide businesses the opportunity to develop a more tailored approach to looking at risk, for example in the area of ergonomics and display screen equipment, where the current regulations are highly prescriptive and don't work well in the new hybrid working environment."

9.2 Data Protection Regulation

In the FSB paper: "*Regulation Returned: What Small Businesses Want from Brexit"*[94]*,* 59% small businesses responding to the FSB, who felt that regulation brought more burdens than benefits, reported that they deal with data protection legislation. In addition, data protection requirements are seen by many as burdensome to consumers.

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector – the General Data Protection Regulation (GDPR)[95] was implemented in the UK by the Data Protection Act 2018[96].

GDPR changes some of the definitions that set the scope of data protection law. Like Directive 95/46/EC before it, GDPR applies to "personal data" but GDPR's definition is more detailed and makes it clear that information such

[92] Forum of Private Business – Health and Safety Panel Report, May 2012 http://www.fpb.org/images/PDFs/research/HS_Panel_3_report.pdf

[93] What impact will the UK Retained EU Law Bill have on business requirements around health and safety? – 24th February 2023, by Mary Lawrence, partner at Osborne Clarke LLP https://iosh.com/news/what-impact-will-the-uk-retained-eu-law-bill-have/

[94] https://www.fsb.org.uk/resources-page/regulation-returned---what-small-firms-want-from-brexit-pdf.html

[95] https://www.legislation.gov.uk/eur/2016/679/contents

[96] c.12 https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted

as an online identifier, for example a computer's IP address, can be personal data. This more expansive definition expressly allows a wider range of personal identifiers to constitute personal data, reflecting changes in technology and the way organisations collect information about people. Personal data that has been pseudonymised, for example key-coded data, can fall within the scope of GDPR if it is still possible to attribute the pseudonym to a particular individual.

Directive 95/46/EC had provided additional safeguards for "sensitive personal data" which included personal data relating to race, political opinion, trade union membership, health, sex life and criminal records. GDPR refers to sensitive personal data as "special categories of personal data". It extends the additional safeguards to specifically include genetic data, and biometric data, where processed to uniquely identify an individual. Directive 95/46/EC sets out eight data protection principles and these are largely carried over to GDPR. GDPR also provides a new accountability principle. Article 6 of GDPR sets out the different legal bases under which personal data can be lawfully processed. A common way of acquiring a lawful basis to process personal data under GDPR is to obtain the consent of the individual to whom the data relates. Consent under GDPR must be a freely given, specific, informed and unambiguous indication of the individual's wishes. There must be some form of clear affirmative action. Consent cannot be inferred from silence, pre-ticked boxes or inactivity. Consent must also be separate from other terms and conditions, and it is also a requirement to provide simple ways for people to withdraw consent.

GDPR has come at a huge and disproportionate cost to British SME businesses, many of whom have had to hire consultants or specialists to advise on compliance with the Regulation. The risk of not doing so is even more prohibitive: the Data Protection Act 2018 levies fines that can bankrupt those who break privacy and security standards. While there are defences under the Act if the person charged with an offence acted in the reasonable belief that they had the right to do so, the burden of proof of reasonable belief is on the person charged.

According to a 2020 study commissioned by privacy specialist Guardum (now part of Donnelley Financial Solutions)[97] UK businesses are spending £1.59 million and 24 person-years annually on processing data subject access requests in compliance with Article 15 of GDPR. Another study from 2022 by researchers Carl Benedikt Frey and Giorgio Presidente at the Oxford Martin School found that GDPR has cost businesses an 8.1% decline in profit and a 2.2% drop in sales[98]. The researchers had hypothesised that GDPR might impact businesses in two ways: firstly by increasing compliance costs, and secondly by dampening e-commerce demand. The fact that the impact on profits was larger, they argue, indicates that the former is more pronounced. "*The effect on profits is much larger than the effect on sales,*"

97 https://betanews.com/2020/05/18/gdpr-data-access-costs/

98 *"GDPR cost businesses 8% of their profits, according to a new estimate"* https://techmonitor.ai/policy/privacy-and-data-protection/gdpr-cost-businesses-8-of-their-profits-according-to-a-new-estimate

explains Frey. *"That means most of [the negative impact] comes from the costs of adjusting to GDPR."*

The research found that GDPR has not affected all companies equally. Frey and Presidente's study found that the drop in both profits and sales was greater for small businesses. This discrepancy was especially pronounced in the IT sector: large IT firms suffered a 4.6% drop in profits since GDPR's introduction, compared to a 12% drop for small IT firms. This suggests that, whatever its impact on Big Tech's use of personal data, GDPR is likely to have added to the tech giants' dominance of the digital economy. *"Regardless of the benefits are to consumers, it seems that [GDPR] has led to greater market concentration. It has benefitted bigger technology companies at the expense of smaller ones,"* stated Frey. Big Tech firms already had the resources and technical skills to be GDPR compliant, Frey says, and there is evidence that they are more adept at securing their customers' consent to use their personal data. Furthermore, the Big Tech firms lobbied the EU heavily when it was shaping GDPR. *"Smaller companies are generally not at the table when new technology regulations are being devised,"* he says.

This conclusion on the severe impact of the GDPR on SMEs including start-ups in the tech sector is corroborated by other research. For example, a working paper by the US National Bureau of Economic Research, headquartered in Cambridge, Massachusetts: *"GDPR and the Lost Generation of Innovative Apps"*[99] found that:

"Using data on 4.1m apps at the Google Play Store from 2016 to 2019 we document that GDRP induced the exit of about a third of available apps; and in the quarters following implementation, entry of new apps fell by half. We estimate a structural model of demand and entry in the app market. Comparing long-run equilibria with and without GDPR, we find that GDPR reduces the consumer surplus and aggregate app usage by about a third. Whatever the privacy benefits of GDPR, they come at substantial costs in foregone innovation."

While some of these new apps may have been data harvesting apps, and their removal is beneficial for data privacy, undoubtedly GDPR acts as a huge barrier to entry for *bona fide* entrepreneurial app developers.

It appears that a large proportion of the public also believes that GDPR places an excessive administrative burden on organisations. In a survey of data protection and compliance officers conducted in Ireland in December 2021[100], 69% surveyed agreed that GDPR has been beneficial for

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[99] Rebecca Janßen, Reinhold Kesler, Michael E. Kummer and Joel Waldfogel NBER Working Paper 30028, May 2022 https://www.nber.org/system/files/working_papers/w30028/w30028.pdf

[100] General Data Protection Regulation – A survey of the impact of GDPR and its effect on organisations in Ireland, Issue 6, January 2022, The International Association of Privacy Professionals (IAPP) https://iapp.org/media/pdf/resource_center/survey_gdpr_impact_ireland_2022.pdf

individuals, down from 83% in 2020. The same proportion (69%) believe that compliance with GDPR *"places an excessive administrative burden on organisations",* up from 53% the year before.

We therefore believe the GDPR and Data Protection Act 2018 must be repealed and replaced, or at the very least significantly reformed. And we further believe there is political will to do so. Speaking at the Conservative Party Conference in 2022, Michelle Donelan, then Secretary of State for Digital, Culture, Media, and Sport (now Secretary of State for Science, Innovation and Technology) announced the scrapping of GDPR in the UK, to be replaced with new regulations. Ms Donelan stated that GDPR and its bureaucratic nature is limiting the potential of UK businesses. Specifically, on its impact on small businesses she said:

"Many of these smaller organisations and businesses only employ a few people each. They don't have the resources or money to navigate the regulatory minefield that GDPR puts in their way. And yet right now, in the main, they're forced to follow the same one-size-fits-all approach as a multinational corporation."[101]

We believe that, at a bare minimum and starting point, Information Commissioner Office (ICO) data protection registration fees for small and micro businesses under the Data Protection Act should be waived entirely. All organisations including businesses and sole traders must presently pay data protection fee to the Information Commissioner's Office (ICO) processing personal data, unless exempt. The fee is £40 or £60 for most organisations, including charities and SMEs.

However, we believe that the GDPR should be wholescale reformed as regards its application to British SMEs and SMEs exempted from compliance with certain onerous forms of data compliance, such as personal data that has been pseudonymised, IP addresses and limited forms of data subject consents. The GDPR is an extremely costly EU regulation for SMEs which has the potential, now the UK is outside the EU, to be simplified, at the very least where data originating in the UK is not shared with individuals or entities resident in the EU.

9.3 Ports Services Regulation

The aim of **Regulation (EU) 2017/352 of the European Parliament and of the Council of 15 February 2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports**[102] – the Port Services Regulation (PSR) – was to encourage competition between ports in EU member state countries by establishing a framework for the provision of port services, common rules on

[101] What the scrapping of the GDPR means for UK businesses – by Alice Cumming, 12th October 2012 https://www.businessleader.co.uk/what-the-scrapping-of-the-gdpr-means-for-uk-businesses/

[102] https://www.legislation.gov.uk/eur/2017/352/contents

financial transparency and on port service and port infrastructure charges. The port services covered by the PSR are bunkering (provision of fuel), cargo-handling, mooring, passenger services, collection of ship-generated waste and cargo residues, pilotage, and towage. Dredging is only covered to the extent that the PSR requires ports to keep separate accounts of public funding received for dredging.

Chapter II of the PSR provides that access to the market for the provision of port services in maritime ports may be subject to: minimum requirements for the provision of port services; limitations on the number of providers; public service obligations and restrictions related to internal operators. Chapter III of the PSR sets out requirements for transparency of public sector funding of ports and port services, and requires member states to ensure that ports impose charges for the use of infrastructure, facilities and services. Chapter IV sets out general requirements for the training of staff; consultation with port users and other stakeholders; and the handling of complaints, appeals and penalties.

The problem with the PSR is that it applies a one-size-fits-all approach that is ill-suited to the UK, where ports are in private rather than public ownership – so already operate competitively – and receive extremely limited public funding. Indeed, it can be argued the PSR was one of a catalogue of failings of the EU to implement their subsidiarity principle[103] and the position of HMG is that all the areas covered by the PSR are already covered by domestic law. For example, the Harbours Act 1964[104] contains (s.30) requirements for the publication of charge tariffs and (s.31) provisions for objecting to ship, passenger and goods dues. Nonetheless, as a member of the EU the UK was forced to implement the PSR, by means of The Port Services Regulations 2019 (S.I. 2019/575)[105].

Whereas the PSR has very limited direct impact on small businesses, we include it in this paper as there has been significant political will to repeal the PSR and revoke S.I. 2019/575.

While still an EU member, the UK voted against adoption of the PSR – the only EU member state to do so. The UK argued that, while the PSR was significantly less onerous than originally proposed, its provisions (other than those promoting transparency of public funding) were unnecessary and largely inappropriate for promoting investment and efficiency at European ports, and particularly those in the UK. John Hayes MP, the then relevant Transport Minister, gave evidence to the European Scrutiny Committee on 14 December 2016[106]. He confirmed the Government's intention to vote against the adoption of the PSR. He subsequently wrote to the Committee and to the House of Lords European Union Committee in December 2014 to

[103] The subsidiarity principle maintains that matters should be handled by the smallest, lowest, or least centralised competent authority possible

[104] c.40 https://www.legislation.gov.uk/ukpga/1964/40

[105] https://www.legislation.gov.uk/uksi/2019/575/made

[106] Parliament TV – European Scrutiny Committee, 14th December 2016 at 2.14pm https://parliamentlive.tv/Event/Index/858a3543-5075-420f-8604-67d5627c9597

confirm the Government's intention. The UK duly voted against the Regulation and entered a minute statement. However, all other Member States voted in favour so the Regulation was carried.

The Department for Transport announced in March 2022 a consultation regarding the repealing of the PSR which ran until April 2022[107]. We note the results of this consultation are yet to be published by HMG. This followed on from Lord Frost, then Minister of State at the Cabinet Office informing the House of Lords on September 2021:

"We also intend to repeal the EU's Port Services Regulation – which is a very good example of a regulation that was geared heavily towards EU interests and never worked properly for the UK."[108]

The Independent Business Network believes HMG should immediately repeal the PSR, freeing up British ports from the financial and time costs of red tape compliance with an unnecessary and inapplicable set of additional regulations.

9.4 Agriculture and Fisheries Regulation

Agriculture: the basic objectives of the EU's Common Agricultural Policy (CAP)[109] since its creation by the Treaty of Rome in 1957 have been to:

- increase agricultural productivity;
- ensure a fair standard of living for farmers;
- stabilise markets;
- ensure the availability of supplies; and
- ensure reasonable prices for consumers.

However substantial reforms over the years have moved the CAP away from a production-oriented policy since it was first created and towards a focus on environmental protection and sustainability.

Agriculture policy in the UK is devolved, so post-Brexit the nations of the UK are now responsible for setting their own regimes for agricultural support after Brexit. The new regime was set out in the Agriculture Act 2020[110].

[107] https://www.gov.uk/government/consultations/repealing-the-eu-port-services-legislation

[108] UK Government, Lord Frost statement to the House of Lords: 16th September 2021, https://www.gov.uk/government/speeches/lord-frost-statement-to-the-house-of-lords-16-september-2021

[109] The latest operational iteration of CAP is laid down in Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008

[110] c.21 https://www.legislation.gov.uk/ukpga/2020/21/contents/enacted

England has made the most progress in establishing a post-Brexit agricultural subsidy regime. The new regime is being ‘co-designed’ with farmers, land managers and other interested parties, whereby these groups work with officials from the Department for Environment, Food and Rural Affairs (Defra) to develop the new schemes. The Agriculture Act, passed in November 2020, sets out a legislative framework for the new subsidy regime in England, including a list of ‘public goods’ for which subsidies may be paid. Shortly afterwards, Defra published an updated plan, “*The Path to Sustainable Farming: An Agricultural Transition Plan 2021 to 2024”*[111]. This set out plans for a range of schemes, including initiatives to increase biodiversity, restore landscapes, promote animal welfare and increase productivity through investment in new equipment and technology. Central to the new regime is the Environmental Land Management Scheme (ELMS). The ELMS has three components. Firstly, the Sustainable Farming Incentive (SFI) - SFI will pay 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. A pilot scheme was launched in October 2021 with 1,000 participants, with full rollout in 2025 and farmers able to apply from 2024.

Secondly, the Local Nature Recovery Programme will pay for actions that support natural recovery in local areas, such as creating, managing and restoring natural habitats, peat or wetland areas, and hedgerows. It will encourage co-ordination between different farmers. A limited rollout of the scheme will begin this year, before full rollout by the end of 2024.

Thirdly, the Landscape Recovery Scheme will support long-term changes to land use, such as large-scale tree planting and peatland restoration projects (which would involve either massive reductions to or complete cessation of farming on the affected land). It will be open to projects for land areas of between 500 and 5000 hectares, with proposals sent in by individuals or groups and Defra selecting those with most potential.

A national pilot of up to 15 projects began in 2022 – starting with a two-year development phase – and the programme will be scaled up from 2024. Defra published more information on the new schemes in December 2021 and January 2022.To meet the Government’s environmental goals, Defra is aiming for at least 70% of farmers, covering at least 70% of farmland, to take part in SFI, and ‘significant numbers’ to participate in the Local Nature Recovery scheme.

In terms of farm subsidies, England ministers are moving to a system of ‘payment for public goods’ but have said they will maintain current payment levels (CAP Basic Payments) to the end of the current parliament. The new regime will be introduced gradually over a seven-year ‘agricultural transition period’ from 2021–2028. Over this period, components of the current subsidy regime will be phased out. The biggest change will be the gradual

[111] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/954283/agricultural-transition-plan.pdf

reduction of direct payments under the Basic Payment Scheme (BPS). This will occur in two stages: Between 2021 and 2024, payments are gradually reduced, with farmers who receive the most money facing the sharpest cuts. Greening requirements have already been removed from the BPS. From 2024, direct payments will be 'delinked', which will mean recipients will no longer need to farm the land to receive remaining BPS payments. This is intended to simplify administration of the system and signal the end of subsidies paid only for farming land.

99.5% of UK's farms are small businesses employing fewer than 50 people, of which 96.7% are micro businesses employing fewer than 10 people[112]. Further Census data reveals that the total number of people working in agriculture in England was 297,000 on 1 June 2021. Farmers, business partners, directors and spouses account for over half (60%) of the total agricultural workforce[113].

The Independent Business Network is particularly concerned with proportionality and fairness for small and micro farming family businesses. While we welcome the fact that the UK is able to design its own agricultural policy to replace the EU's CAP, which was designed for French farmers and has a chequered past that led to the creation of butter mountains and milk quotas in the 1970s, we are concerned that industry groups initially expressed concern that the Government's initial proposals have paid too little regard for food production, and do not give enough certainty over long-term funding, and provision for farmers. In response, in autumn 2020, HMG amended its then Agriculture Bill to refer to food production explicitly.

Nevertheless, concerns have continued to be expressed about the speed of the transition period. In October 2021, the National Farmers' Union (NFU) called for an urgent review of the future farming programme and the postponement of reductions to the Basic Payment Scheme planned for 2022 and 2023. They have argued that Defra's new schemes "simply aren't ready", with more time needed to ensure the schemes are a success[114].

Given the fragile landscape of a farming industry, on which we are dependent for locally and sustainably sourced food, as well as food security for the UK, being staffed overwhelmingly by small businesses, it is essential that our farmers continue to receive the financial support they need and deserve. **One option for policymakers might be to revisit Deficiency Payments, which is how HMG supported the farm sector between 1947 and 1973 before the UK joined the European Single Market. Deficiency**

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[112] Figures for 2021 – The Office for National Statistics – Agriculture by employment size, turnover size and region, 2019 to 2021, published February 2022 https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/adhocs/14236agriculturebyemploymentsizeturnoversizeandregion2019to2021

[113] https://www.gov.uk/government/statistics/farming-statistics-land-use-livestock-populations-and-agricultural-workforce-as-at-1-june-2021-england

[114] https://www.agriland.co.uk/farming-news/nfu-calls-for-bps-reductions-to-be-postponed-for-2022-and-2023.

Payments were annual payments from the Government to farmers, making up the difference between actual market prices and guaranteed prices on total quantities sold by farmers.

Having said this care should be taken to ensure that subsidizing food production does not prejudice the market in food, especially the provision of good quality food from overseas at cheaper prices enabled through trade arrangements, where production is lower in cost than in the UK. A balance needs to be struck between food security and reducing inflation. Farming is in a unique and privileged position enjoyed by no other industry of receiving taxpayer funded subsidies.

Plant Reproductive Material Marketing : we believe this can be reformed to save money for small farming businesses. Under EU law before certain consumable plant seed varieties can be legally marketed, the variety must be listed on the EU Common Catalogue and the seed must have attained minimum certification standards prescribed in EU law. A number of EU directives cover the marketing of plant reproductive material of agricultural, vegetable, forest, fruit and ornamental species and vines. The EU directives[115] relate to: beet seed; oil and plant fibre seed; cereal seed; fodder plant seed; seed potatoes; fruit propagating material; vegetable propagating material; vegetable seeds; vine propagating material; ornamental plant propagating material and forest reproductive material. The most relevant to UK legislation are: fodder plant seed; cereal seed; beet seed; vegetable seed; and oil and plant fibre seed.

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[115] Council Directive 2002/54/EC of 13 June 2002 on the marketing of beet seed https://www.legislation.gov.uk/eudr/2002/54, Council Directive 2002/57/EC of 13 June 2002 on the marketing of seed of oil and fibre plants https://www.legislation.gov.uk/eudr/2002/57, Council Directive 66/402/EEC of 14 June 1966 on the marketing of cereal seed https://www.legislation.gov.uk/eudr/1966/402, Commission Implementing Directive (EU) 2016/2109 of 1 December 2016 amending Council Directive 66/401/EEC as regards the inclusion of new species and the botanical name of the species *Lolium x boucheanum* Kunth https://www.legislation.gov.uk/eudr/2016/2109, Council Directive 2002/56/EC of 13 June 2002 on the marketing of seed potatoes https://www.legislation.gov.uk/eudr/2002/56, Council Directive 2008/90/EC of 29 September 2008 on the marketing of fruit plant propagating material and fruit plants intended for fruit production https://www.legislation.gov.uk/eudr/2008/90, Council Directive 2008/72/EC of 15 July 2008 on the marketing of vegetable propagating and planting material, other than seed https://www.legislation.gov.uk/eudr/2008/72, Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed https://www.legislation.gov.uk/eudr/2002/55, Council Directive 68/193/EEC of 9 April 1968 on the marketing of material for the vegetative propagation of the vine https://www.legislation.gov.uk/eudr/1968/193, Council Directive 98/56/EC of 20 July 1998 on the marketing of propagating material of ornamental plants https://www.legislation.gov.uk/eudr/1998/56, Council Directive 1999/105/EC of 22 December 1999 on the marketing of forest reproductive material https://www.legislation.gov.uk/eudr/1999/105; and Commission Directive 2009/145/EC of 26 November 2009 providing for certain derogations, for acceptance of vegetable landraces and varieties which have been traditionally grown in particular localities and regions and are threatened by genetic erosion and of vegetable varieties with no intrinsic value for commercial crop production but developed for growing under particular conditions and for marketing of seed of those landraces and varieties https://www.legislation.gov.uk/eudr/2009/145

National Listing is also a legal requirement for new varieties of the main agricultural and vegetable species. It seeks to ensure that no new variety can be marketed unless it is recognisably different from other varieties and, for agricultural species, an improvement on varieties already being sold. To be added to a National List, a variety must be distinct, sufficiently uniform and stable (DUS) and have satisfactory value for cultivation and use (VCU).

The Seed Marketing Regulations 2011 (S.I. 2011/463)[116] implements Commission Directive 2009/145/EC[117], which amends, *inter alia*, the Seeds (National Lists of Varieties) Regulations 2001 (S.I. 2001/3510)[118], to facilitate the acceptance of conservation and amateur vegetable varieties on to the UK National List. Commission Directive 2009/145/EC while adding conservation and amateur vegetable varieties to the UK and other National Lists, also allowed member states to provide a less prescriptive framework for their addition, than for other varieties. The EU Exit SIs – The Marketing of Seeds and Plant Propagating Material (Amendment) (England and Wales) (EU Exit) Regulations 2019 (S.I. 2019/131)[119] and The Animals, Aquatic Animal Health, Invasive Alien Species, Plant Propagating Material and Seeds (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1388)[120] essentially maintain the status quo.

According to the impact assessment for S.I. 2011/463[121] the costs in 2011 were: "*Conservation Varieties: £175 National Listing Application fee to cover assessing application and registering variety by Fera staff. Estimated £50 incurred by applicant to cover providing a description, seed sample submission and minor admin costs. Amateur Varieties: £100 National Listing Application fee to cover assessing application and registering variety by Fera staff. Estimated £50 incurred by applicant to cover providing a description, seed sample submission and minor admin costs… Informal consultations with industry suggested that the four medium sized enterprises, representing 70- 80 % of direct retail sales to the amateur market would account for 35-40 new applications per year. The remaining 10–15 applications would come from small to micro-sized enterprises.”*

It is noted that the former Food and Environment Research Agency (Fera) to which application fees are sent for assessment, a former Defra agency is now, since 2015 a joint private/public sector venture between Capita plc and Defra: Fera Science Ltd[122]. It is further noted that the fees have now increased to: *“a one off administration fee of £450, plus a distinct, uniform and stable (DUS) testing fee per year of testing - this will depend on the crop you are testing; a technical management fee of £165 for a value for cultivation and use test (VCU) for each year of testing; plus a VCU testing*

[116] https://www.legislation.gov.uk/uksi/2011/463
[117] Ibid.
[118] https://www.legislation.gov.uk/uksi/2001/3510
[119] https://www.legislation.gov.uk/uksi/2019/131
[120] https://www.legislation.gov.uk/uksi/2020/1388
[121] https://www.legislation.gov.uk/ukia/2011/525/pdfs/ukia_20110525_en.pdf
[122] https://www.fera.co.uk/

fee for each year of testing for agricultural crops – the British Society of Plant Breeders (BSPB) will tell you the fee."[123]

It is further noted that section 11 of the explanatory memorandum for S.I. 2011/463[124] provides: *"this Directive could have an impact on competition and inadvertently limit the number and range of amateur vegetable seed suppliers by raising costs for micro and small-sized not for profit organisations and new entrants to this market. This Directive could also limit completion, and consumer choice, by making it more costly to introduce new amateur varieties. Larger companies are more likely will to be able to absorb these costs and to list more of their currently marketed varieties."*

<u>We can only conclude that if £150-£225 fees could "</u>*impact competition and inadvertently limit the number and range of amateur vegetable seed suppliers by raising costs for micro and small-sized not for profit organisations and new entrants to this market, limit completion, and consumer choice"* in 2011, fees well in excess of £600 would certainly have triple that impact in 2023. **The Independent Business Network believes that to improve competition and curb barriers to plant breeding entry for micro and small businesses, the National Listing application fee should be scrapped altogether or at the very least reduced or stepped commensurate to the size of the applicant's business.**

Fisheries: it is arguable that nothing emotively caught the attention and empathy of the public to the unfairness of EU policies quite to the extent of the plight of British fishermen regulated by the EU's Common Fisheries Policy. The Common Fisheries Policy (CFP)[125] has been replaced in the UK by the Fisheries Act 2020[126]. The Fisheries Act begins by listing 8 fisheries objectives (2 of which are that British registered fishing vessels have access to all UK fishing waters and that the fishing activities of British registered vessels bring economic and social benefit to UK communities. However, the Act fails to set out the specifics of how these objectives will be achieved. Rather, it creates a legal requirement for the UK's four national fisheries policy authorities (Marine Management Organisation (MMO), Scottish Ministers, Welsh Ministers, and the Northern Ireland department) to produce a Joint Fisheries Statement (JFS) that will lay out how these objectives will be met. The Act requires these authorities to produce the JFS within two years of the Fisheries Act being passed. A JFS was published in November 2022[127] but does not contain specific policies and fails to address many issues. For example, paragraph 2.1.20 of the JFS provides that UK fishing authorities recognise that any vessels registered and licensed in the UK

[123] Updated 10th March 2023 – https://www.gov.uk/guidance/fees-for-national-listing-and-plant-breeders-rights

[124] https://www.legislation.gov.uk/uksi/2011/463/pdfs/uksiem_20110463_en.pdf

[125] The latest operational iteration of the CFP is laid down in Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy

[126] c.22 https://www.legislation.gov.uk/ukpga/2020/22/contents/enacted

[127] https://www.gov.uk/government/publications/joint-fisheries-statement-jfs

have an equal right to fish in UK waters, neglecting the fact that vessels can be UK registered but foreign owned.

The scale of the asymmetry between the treatment of the UK compared with most other EU member states as regards fishing waters access and rights, while the UK was a member of the EU, is extraordinary. Britishseafishing.co.uk reported[128] that in 2015 EU vessels caught 683,000 tonnes of fish worth £484 million in UK waters, but UK vessels only caught 111,000 tonnes worth £114 million in EU member states' waters. When Britain was still a member state of the EU it was pointed out by critics of the CFP that in parts of the Celtic Sea (which prior to the CFP would have been controlled by the UK) French fishermen had the right to catch three times more Dover sole and four times more cod than British fishermen. Furthermore, around 40 per cent of the Danish fishing fleet's total catch comes from the 200-mile zone which Britain would control if it was not in the CFP, and some Danish fishing communities relied entirely on catching fish within the bounds of what would have been Britain's territorial waters. The CFP and its shared Economic Exclusive Zone (EEZ) have been immensely beneficial to some member states at the cost of others.

As with agriculture, the Independent Business Network is concerned with the fishing sector, as it is characterised by a higher-than-average proportion of businesses with under 5 employees: 90% of fishing businesses have fewer than 5 employees, and are family run or family owned, compared to 78% in the UK economy as a whole. However, numbers of UK fishermen have been reducing steadily from 47,647 in 1948 to 10,724 in 2021[129]. Research has also found that although there are many small businesses involved in the fishing industry, over two thirds of the UK's fishing quotas are controlled by 25 companies. Fishermen of course also support onshore processing centres, and the small businesses and economies of small UK coastal towns and communities. There were 348 fish processing sites in the UK in 2020 and there has been considerable consolidation in the industry since 2008 when there were 560 fish processing sites. In 2020, UK fish processing businesses had a turnover of around £3.5 billion[130].

We believe there is much scope for further specific reform, now that the UK has regained control of its fishing waters, rather than simply the vague objectives of the Fisheries Act 2020. The UK could, for example, impose quota restrictions on the numbers of, or restrictions on the size of foreign owned fishing vessels registering in the UK (and thereby masquerading as British, despite being foreign owned) but has not done so yet.

We are, however glad that The Sea Fish Licensing (England) (EU Exit) Regulations 2019 (S.I. 2019/513) has been revoked. S.I. 2019/513 had

128 https://britishseafishing.co.uk/common-fisheries-policy-cfp/

129 House of Commons Library – UK fisheries statistics – 11 October 2022, by Elise Uberoi, Georgina Hitton, Matthew Ward and Elena Ares https://researchbriefings.files.parliament.uk/documents/SN02788/SN02788.pdf

130 Ibid.

extended the list of countries whose fishing vessels are permitted to fish in English waters to all EU Member States pending the coming into force of the Fisheries Act. It was made in response to a 6,200 ton Lithuanian super trawler, the *Margiris*, 14 times the size of British trawlers, which spent a week plundering fish in the English Channel off the coast of Weymouth in 2019. That ship was described as a *'vast floating fishing factory'* capable of netting and processing 250 tonnes of fish each day[131]. It had been banned from Australian waters in 2013 and environmentalists also feared it could be endangering stocks of short beaked common dolphins and bluefin tuna. Nonetheless, when the *Margiris* was boarded by UK MMO officials it was found to be operating legally under EU law. Far from banning the *Margiris,* and other foreign supertrawlers from British waters, Defra drafted an SI to allow this plundering of British waters to continue pending the enactment and coming into force of the Fisheries Act. A charitable assessment would be that as the UK remained a member of the EU until 31st January 2020, the hands of the Department were tied.

9.5 Value Added Tax (VAT) Rate Regulation

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax[132]; as amended by Council Directive 2009/162/EU of 22 December 2009 and Council Directive (EU) 2018/912 of 22 June 2018 is a complex directive but among other things sets out EU common VAT rate categories. EU member states are able to set VAT rates within the bounds set by the Directive. Under article 98 of the Directive *"Member States may apply either one or two reduced rates… The reduced rates shall apply only to supplies of goods or services in the categories set out in Annex III... The reduced rates shall not apply to electronically supplied services with the exception of those falling under point (6) of Annex III."*

The goods and services for which reduced rates are permitted are listed at Annex III of the Directive. Certain goods and services benefiting businesses are zero rated. These include:

- the construction and sale of new domestic buildings;
- building services for disabled people;
- protective boots and helmets (industrial);
- sewerage (domestic and industrial);
- shipbuilding (for ships 15 tonnes or larger);
- energy saving materials (permanently installed in residential/charity premises);
- aircraft (sale/charter);
- books, maps & charts (including ebooks);

and a whole range of different essential goods.

131 *The Telegraph*, 4th October 2019 https://www.telegraph.co.uk/news/2019/10/04/trawler-14-times-size-uk-fishing-boats-plundering-fish-british/

132 https://www.legislation.gov.uk/eudr/2006/112/contents

However, there are currently standard rated VAT goods and services which cost a great deal for small businesses and their clients and customers, which could be zero rated, now that the British Government has free reign to do so and is no longer bound by the Directive. These include:

- electrical goods;
- electricity and gas;
- heating oil & solid fuel for businesses;
- stationery;
- postal services (Royal Mail/ other licensed operators);
- taxi fares;
- CDs and DVDs; and
- Renovations and extensions;
- food and drink supplied for consumption on the premises (at restaurants, cafés etc.)[133]

The Independent Business Network does greatly welcome the fact the UK VAT registration threshold is currently set at £85,000 and higher than anywhere else in the EU or indeed in the world. This is of great benefit to British micro businesses including sole traders with low turnovers. Having said that there is immense potential for reforming VAT rates. VAT is often seen as a regressive tax in that it can disproportionately penalise the lowest earners as well as small businesses[134]. This is why certain goods deemed essential such as food and children's clothing are VAT zero-rated.

There is already a Brexit-driven precedent to reduce VAT rates. In the March 2020 budget HMG announced (as it had promised in the 2016 budget) that it would move the sale women's sanitary products in the UK into the VAT zero-rated group of products from 1st January 2021[135] - the first date possible after EU VAT law ceased to apply to the UK.

However, there is no reason why, now the UK is outside of the EU and no longer subject to Council Directive 2006/112/EC, HMG could not zero-rate or apply a reduced rate to goods and services acquired and provided by small businesses in the UK.

The EU also prohibits the standard rate from being reduced below 15% and the reduced rate below 5%. While the UK has slightly lower rates than most EU countries (with exception to Germany (19% standard rate), Romania (19% standard rate), Cyprus (19% standard rate), Malta (18% standard rate), and Luxembourg (16% standard rate) outside the EU the UK could reduce the standard rate to become further fiscally competitive. This is incredibly important for Global Britain outside the EU to be competitive success. Switzerland has a standard VAT rate of 8%, Japan 8%, Singapore

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133 Food and drink supplied for consumption on the premises were temporarily permitted to be levied at a reduced rate of 5% during COVID-19 pandemic from 15 July 2020 to 30 September 2021 and then at 12.5% from 1 October 2021 to 30 March 2022

134 For example, https://www.telegraph.co.uk/news/election-2010/7582869/VAT-a-brief-history.html

135 https://www.gov.uk/guidance/vat-on-womens-sanitary-products-notice-70118

7%, Taiwan 5%, Australia 10%. These are some countries whose sales taxes the UK, outside the EU, should aspire to, to help the UK to lead from the front and become one of the most pro-growth jurisdictions for small businesses globally.

9.6 Waste Management Regulation

The most recent EU Waste Framework Directive is **Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives**[136]. This builds on three predecessor Directives: (i) the Waste Framework Directive (2006/12/EC); (ii) the Waste Oils Directive (75/439/EEC as amended); and (iii) the Hazardous Waste Directive (91/698/EEC as amended. Directive 2008/98/EC was implemented in England, Scotland and Northern Ireland, respectively by: The Waste (England and Wales) Regulations 2011 (S.I. 2011/988)[137]; The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226)[138]; and The Waste Regulations (Northern Ireland) 2011 (S.R. 2011/127)[139].

Directive 2008/98/EC introduced some additional administrative burdens and costs for SMEs. Under the subheading Small Firms Impact Test in the impact assessment for S.I. 2011/988[140]: *"the costs of application of the waste hierarchy and the requirement for registration as a lower tier carrier will result in a small increase in costs for new businesses",* and total additional ongoing costs for businesses were estimated to range from £1.2m to £4.6m p.a. (£1.6 to £6.3m at 2023 prices). It is noted that the rationale for this was a judgment made by the European Court of Justice (ECJ) in 2005 on the interpretation of Article 12 of the previous Waste Framework Directive. The ECJ found that the registration of professional waste carriers must include all those who *"normally and regularly transport waste, whether that waste is produced by them or others"*[141]. It is further noted that with the repeal of the European Communities Act 1972[142], the UK is no longer bound, post Brexit, to comply with, and may instead diverge from ECJ decisions, as well as EU regulations and directives.

While the Independent Business Network believes there should be lower waste tier carrier registration costs for small and micro businesses, we are more broadly concerned that Directive 2008/98/EC, as indeed many other EU regulations and directives, does not include provisions enabling Member States to exclude small businesses as such from its requirements. Outside the EU there is no obstacle for HMG, should it wish to, to create derogations

136 https://www.legislation.gov.uk/eudr/2008/98/contents
137 https://www.legislation.gov.uk/uksi/2011/988/contents/made
138 https://www.legislation.gov.uk/ssi/2011/226/contents/made
139 https://www.legislation.gov.uk/nisr/2011/127/contents/made
140 https://www.legislation.gov.uk/uksi/2011/988/pdfs/uksiem_20110988_en.pdf
141 Case C-270/03 involving infraction proceedings by the European Commission against Italy. https://www.edie.net/water-framework-directive-case-c-270-03-commission-v-italy/
142 c.68 https://www.legislation.gov.uk/ukpga/1972/68/enacted

exempting or reducing responsibilities, costs and red tape for small businesses.

A similar situation is found with **Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE)**[143] implemented by The Waste Electrical and Electronic Equipment Regulations 2013 (S.I. 2013/3113)[144]. Directive 2012/19/EU provides that producers of electrical and electronic equipment ("EEE") are financially responsible for managing the waste that arises from products they place on the market in the EU. The policy was intended to promote greater efficiencies in the management of waste from this type of equipment. Producers were also required to be registered with the national authorities in any member state where they place EEE onto the market either directly or by appointing an authorised representative to act on their behalf. The Directive added solar photovoltaic (PV) panels to the list of EEE from 2014. According to 2010/11 K-Matrix3 estimates[145], the Solar PV industry had a turnover of approximately £5.3bn (£7.2bn in 2023 prices) and consisted of around 2,000 companies including all associated activity in the supply chain.

Unlike the implementation of Directive 2008/98/EC HMG took some steps to minimise the impacts of implementing Directive 2012/19/EU for SMEs. In section 11 of the explanatory memorandum for S.I. 2013/3113[146] – under the subheading Regulating Small Business BIS (now BEIS) stated *"in accordance with the work undertaken in response to the feedback received by the Government as part of the environmental theme of the Red Tape Challenge and to minimise the impact of the requirements on small businesses employing up to twenty people, the approach taken is to provide an exemption to small producers from complying with some of their financial and administrative obligations which are met by third parties on their behalf to ensure that the UK complies collectively with the requirements of the Directive."* This was achieved, for example, by providing for alternative methods of take-back, so that small retailers did not need to take-back WEEE in store. S.I. 2013/3113 allowed SMEs to become members of producer compliance schemes (PCSs) so that they would only have to bear the cost of recycling the EEE which they had placed onto the market in line with their market share. Furthermore, the then Government department, BIS (now BEIS) also ensured SMEs are not prevented from joining a PCS scheme by disproportionate costs. During the Recast (Directive 2008/98/EC) negotiations, the UK also sought to ensure that the impacts on SMEs were not disproportionately high by seeking to introduce a *de minimis* exemption for distance seller SMEs placing very small amounts of EEE on the market. Consequently, the additional retailers' obligations from Directive 2008/98/EC

[143] https://www.legislation.gov.uk/eudr/2012/19/contents

[144] https://www.legislation.gov.uk/uksi/2013/3113/contents/made

[145] https://webarchive.nationalarchives.gov.uk/ukgwa/20121204192352/http://www.bis.gov.uk/policies/business-sectors/green-economy/market-intelligence/market-data

[146] https://www.legislation.gov.uk/uksi/2013/3113/pdfs/uksiem_20133113_en.pdf

impact on small firms was minimised by the requirements not applying to retailers with a floor space relating to EEE of less than 400m.

One of the enduring costs on small producers of EEE under the current UK system that we are concerned about is the Environment Agency registration fees. There are thresholds by which producers of EEE pay different fees depending on their annual turnover and whether they are VAT registered or not. But the thresholds are such that a firm with an annual turnover much greater than £1m will pay the same registration fee as a firm that has an annual turnover widely greater than £1m. What is more is that the turnover of the firm is not necessarily related to sales on EEE. This situation can mean that small firms with a turnover of slightly greater than £1m will have to pay the highest EA registration fees.

BIS (now BEIS) and the Environment Agency committed at the time to reviewing registration fees to explore if a standard approach on fees can be adopted across all the producer responsibility regimes (including WEEE). This would seek to continue to reflect the cost recovery basis on which the fees are based, but to streamline and simplify the process and to provide a proportionate cost recovery rate. However, a more effective approach for small businesses does not appear to have been implemented. “Small producer” is defined in regulation 2 of The Waste Electrical and Electronic Equipment Regulations 2013 (S.I. 2013/3113)[147] as *“a producer and who places less than 5 tonnes of EEE onto the market in a compliance period”* I.e. the fees payable are based on the volume of EEE produced by the business not by its size (calculated by turnover or number of employees). **We believe that Environment Agency fees should be staggered fairly based on the size of the EEE producing business rather than simply the volume of EEE the business produces.**

The Independent Business Network is also concerned with the European Commission "Circular Economy" proposal[148]. This has been in the pipeline for some years and received criticism in a Policy Exchange report from 2017[149]:

"there are also some significant shortcomings in the EU’s approach towards waste. The objectives of European waste policy have evolved over time, and are now rather muddled. This is particularly true of the Commission’s proposed “Circular Economy” package, which appears to be justified as an end in itself, rather than a means to achieving a particular set of economic, environmental or social outcomes. Fails to reflect UK context: it is clear that the EU is designing waste policies that are not in the interest of the UK. The European Commission’s own analysis shows that adopting the proposed “Circular Economy” package would cost UK businesses and households an additional £2 billion. European waste policies fail to reflect the economic

[147] https://www.legislation.gov.uk/uksi/2013/3113/regulation/2/made

[148] https://www.europarl.europa.eu/pdfs/news/expert/2021/2/story/20210128STO96607/20210128STO96607_en.pdf

[149] *“EU Waste Diktat Could Cost Britain £2 billion”* – 1st March 2017 by Richard Howard - https://policyexchange.org.uk/blogs/eu-waste-diktat-could-cost-britain-2-billion/

fundamentals. For example, commodity prices have fallen sharply since the Great Recession, undermining the economics of recycling and leading to a number of notable company failures in the recycling sector in recent years. Waste policy suffers from some serious issues regarding definitions, measurement, and data quality, making it difficult to develop effective policies... Given these shortcomings, it is clear that the UK Government should not simply accept current and proposed European policies concerning waste. Instead, following Brexit there is an opportunity for the UK to define an approach which suits us better."

The report continues:

"[The UK] *Government should provide more clarity on the environmental objectives we want to achieve through waste policy, and should develop a carbon-based metric to manage the total greenhouse gas emissions from waste management. Waste policy should focus far more on waste prevention and reuse, to reduce the amount of waste we generate in the first place. Household Waste and Recycling Centres (or 'tips' as they are commonly referred to) should be used as a collection point for reusable items, which can then be sold or redistributed to local charities. This approach is technically illegal under current waste rules. Local Authorities should use one of three standardised systems for collecting waste and recycling – simplifying the more than 400 systems which currently operate across England. Government should encourage innovation in the recycling and reuse of materials, and help to develop markets for scrap materials. Government should also promote efficient forms of energy from waste – for example using black bag waste to create 'green gas' which can then be used for heating or as a transport fuel. Last year the UK spent £280 million exporting waste overseas (mainly to the Netherlands) where it was used to generate energy. We could be generating energy from this waste in the UK.*
The vote to leave the EU provides an opportunity for the UK to re-examine waste and other environmental policies from first principles. The UK Government needs to grasp this opportunity, and develop a more coherent and effective set of policies which is smarter, greener, and cheaper."

The economic and environmental cost of recycling should be reviewed
We concur, and strongly believe HMG policy officials should think innovatively about the opportunities Brexit provides to diverge from EU groupthink, as opposed to gold plating EU rules by transposition as if Brexit had never happened.

9.7 Food Information Labelling Regulation

Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of

the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (the FIC Directive)[150] sets common definitions, general principles, requirements and responsibilities to provide a clear framework and a common basis for EU and national measures governing food information, and in particular food labelling. It requires mandatory particulars on food labels such as: name of food, ingredients list, quantitative indication of ingredients (QUID), allergen information, nutrition information, country of origin, date marks, storage conditions. It was implemented in the UK by The Food Information Regulations 2014 (S.I. 2014/1855)[151]

According to the impact assessment for S.I. 2014/1855[152] many of the costs to businesses were up front – regulation familiarisation costs, and in particular reformulation and relabelling costs for beef minced meat producers[153]. However, the impact assessment also found average annual costs, excluding transition costs to businesses of £3.89m (about £5m in 2023 prices).

Small businesses face the brunt of these costs. According to paragraph 11.2 of the explanatory memorandum for S.I. 2014/1855[154] *"the vast majority of firms in the food industry are small businesses, though both the retail and food manufacturing sectors are dominated by a few very large businesses."* This is corroborated in the impact assessment at paragraph 12.2*: "In 2010, 161,095 businesses were operating in the food and drink manufacturing, wholesaling, retailing or catering sectors in England, of which over 99 per cent were identified as having SME status. Only 1.5% of FBOs* [food business organisations] *are medium and large companies."*[155]

We believe food products sold online by SME businesses should not require physical product labelling, where the food information is provided in full online to the purchaser. This leads to unnecessary costs for small business producers and distributors.

We also believe the, presently extremely prescriptive, regulations on the disclosure of information regarding the content of **olive oil** should be deregulated for small businesses when the olive oil originates in the UK. At present **Commission Implementing Regulation (EU) No 29/2012 of 13 January 2012 on marketing standards for olive oil**[156], implemented in the

150 https://www.legislation.gov.uk/eur/2011/1169

151 https://www.legislation.gov.uk/uksi/2014/1855/contents/made

152 https://www.legislation.gov.uk/ukia/2014/228/pdfs/ukia_20140228_en.pdf

153 Provided for specifically in The Beef Labelling (Enforcement) (England) Regulations 2000 (S.I. 2000/3047), which implemented Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97

154 https://www.legislation.gov.uk/uksi/2014/1855/memorandum/contents

155 Ibid.

156 https://www.legislation.gov.uk/eur/2012/29

UK by The Olive Oil (Marketing Standards) Regulations 2014 (S.I. 2014/195)[157] sets out that anyone placing olive oil on the market must: detail the characteristics of the different categories of olive oil, enabling the consumer to distinguish between these categories, including the higher value extra virgin unrefined products and the lower value refined oils; and detail the methods of analysis to determine the characteristics of the oil. S.I. 2014/195 provides powers to enforce, within the UK, new and amended EU regulations on marketing standards for olive oil. It provides powers to allow for inspections and enforcement, provides for penalties and specifies an appeals mechanism and includes a requirement to review the SI, in relation to England, at least every five years. It also specifies detailed requirements for the entry and withdrawal registers which all operators up to the bottling stage must keep for each category of olive oil they hold.

According to section 10 of the explanatory memorandum for S.I. 2014/195[158] *"there will be an impact on business of approximately £83,000 per year.* [£106,500 in 2023 prices] *This will include staff time to host inspection visits of £1,000 to £1,300. There will be costs associated with the olive oil which will be collected for official sampling of £1,900. There will be a cost to operators who bottle olive oil to keep registers of oil passing through their premises of approximately £72,800. There will also be a cost to industry of the appeals process estimated to be £6,600."*

It appears the HMG itself sought an exemption for micro businesses to Regulation (EU) No 29/2012, so there is no reason, post Brexit why micro and small businesses should not be exempted. The UK is in fact a net exporter of olive oil. The annual growth of British olive oil in value between 2015 to 2019 was 21%[159] so this is a growing industry for the UK. Yet the UK does not have the cultural problems of Italy, where Mafia operations mean olive oil is regularly mixed with other oils and supposed Extra Virgin olive oil is regularly mixed with lower grade olive oil. It's reliably reported that 80% of the Italian olive oil on the market is fraudulent[160]. **For these reasons the UK does not need, post Brexit, to be subject to the same one-size-fits-all approach rules as the rest of the EU, when it comes to olive oil marketing.**

9.8 Employment Regulation

The Independent Business Network believes employee rights should be fair and non-discriminatory but that they should also be proportionate for small businesses. According to the Federation of Small Businesses paper: Regulation Returned: What Small Businesses Want from Brexit[161], two thirds of small businesses feel that regulation brought more

157 https://www.legislation.gov.uk/uksi/2014/195/made
158 https://www.legislation.gov.uk/uksi/2014/195/memorandum/contents
159 https://www.selinawamucii.com/insights/market/united-kingdom/olive-oil/
160 https://www.forbes.com/sites/ceciliarodriguez/2016/02/10/the-olive-oil-scam-if-80-is-fake-why-do-you-keep-buying-it/
161 Ibid.

burdens than benefits, and as a result increased costs and 62% of small businesses deal with employment legislation. We therefore believe there is demand from small businesses and certainly from the IBN, for employment law reform and rebalance, and scope for some employment carve outs for small and micro businesses. Equally given the polarity of views expressed, and the strength of Union voices, we also acknowledge the political challenges involved in delivering meaningful reform.

Temporary Agency Work: Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work[162] implemented in the UK by The Agency Workers Regulations 2010 (S.I. 2010/93)[163] sought to guarantee those working temporarily through employment agencies equal pay and conditions with directly employed employees in the same business doing the same work. Though the Directive was first proposed in 2002, the British, German, Danish and Irish governments blocked its enactment until 2008. Article 4 of the Directive sets clear limits to prohibitions and restrictions that may be imposed on the use of temporary agency work. These are only justified on grounds related to the protection of temporary agency workers, to ensure that the labour market functions properly and that abuses are prevented. EU member states are obliged to regularly review these prohibitions and restrictions on temporary agency work until and to report to the European Commission. Article 5 establishes the principle of equal treatment for temporary agency workers. It sets out that the basic employment and working conditions shall be – for the duration of the assignment – equal to those of a worker employed directly by that company occupying the same position. Article 5 allows for derogations from this principle for open-ended contracts providing pay between assignments (Article 5(2)), to uphold collective labour agreements (Article 5(3)) or based on agreements of social partners (Article 5(4)). **Arguably these rules increase labour market inefficiencies, are too rigid for temporary and seasonal work, and ultimately raise unemployment levels and zero hour contracting, reducing business output, and eventually lead to lowered living standards for those in temporary agency positions in the labour market.**

According to section 7 of the explanatory memorandum for S.I. 2010/93[164] "*the agency sector is a crucial part of the UK labour market, which includes around 1.3m agency workers (about 5% of the work force), performing a wide variety of roles in a huge variety of organisations, and supplied through about 16,000 agencies.*" According to section 10, *"based on a 12-week qualifying period, the overall annual cost to businesses, as hirers of agency workers, of providing equal treatment is estimated to be up to £1,516m. Estimated costs to agencies are up to £32m."* These are 2010 prices. The annual cost according to Open Britain in 2015 was £2.1 billion[165]. According

[162] https://www.legislation.gov.uk/eudr/2008/104/contents
[163] https://www.legislation.gov.uk/uksi/2010/93/contents/made
[164] https://www.legislation.gov.uk/uksi/2010/93/memorandum/contents
[165] https://www.cityam.com/open-europe-reveals-100-eu-regulations-cost-britain-33bn/

to the then BERR (now BEIS) public consultation, undertaken for S.I. 2010/93[166], at para 8.3:

"the CBI and businesses... generally said Government must focus on minimising the costs of the regulations as far as possible; there are many requirements imposed by the Directive which, if not addressed correctly, could increase the costs of taking on agency workers significantly. The Government should assist SMEs with genuine administrative costs by providing good clear guidance, and on-line forms for documenting working hours, etc."

and, at para. 2.2:

"*for businesses, the CBI wanted the statutory minimum holiday entitlement to suffice for the Directive's purposes: varying holiday entitlements would impose significant complexity and administrative burdens. They argued that that most firms offer extra leave to recruit and reward long term employees, and that any minimum level of holiday benefit foregone would be more than made up for by that entailed by increased work availability as the workers would be more competitive... Other trade and business organisations like British Chambers of Commerce, the British Retail Consortium, Engineering Employers Federation Federation of Small Businesses and the Institute of Directors agreed.”*

According to section 11 of the explanatory memorandum for S.I. 2010/93[167] “*The Department* [BERR, now BEIS] *has liaised closely with small business bodies throughout the consultation process. The Directive does not permit a differentiated approach on the basis of size of agency or hirer, but the Government has sought always to take account of the requirements of small firms in the development of its approach, in particular as regards administrative burdens."* Yet, due to the Directive not making exemptive accommodation for SMEs, with the UK being part of the EU and having its hands tied, HMG was not able to reduce administrative burdens for small businesses. It has the opportunity to do so now.

Despite there being a qualifying period of 12 weeks employment before the equal pay and conditions take effect, holiday pay for temporary agency workers is required to be, under S.I 2010/93 for the duration of their assignment, at least the same that would apply if they had been recruited directly by that hirer to occupy the same job. This is despite concerns raised by business and small business representative organisations such as the FSB raising concerns about the administrative burden of calculating holiday pay, rather than simply applying the statutory minimum holiday pay.

For these reasons, we would support the Directive and S.I. 2010/93 being reformed so that SMEs are only required to apply statutory minimum holiday pay for temporary agency workers. We would also

[166] https://webarchive.nationalarchives.gov.uk/ukgwa/20090609003228/http://www.berr.gov.uk/files/file53185.pdf
[167] Ibid.

welcome any other reforms to the regulations to liberate small businesses from costly and time-consuming burdens that HMG considers achievable.

The Working Time Directive: Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time[168] implemented by The Working Time Regulations 1998 (S.I. 1998/1833)[169] (as amended) updated earlier versions from 22 June 2000 and originally 23 November 1993. The Directive gives EU workers the right to: at least 28 days (four weeks) in paid holidays each year; rest breaks of at least 20 minutes in a 6-hour period; daily rest of at least 11 hours in any 24 hours; restrictions on excessive night work; at least 24 hours rest in a 7-day period; and a right to work no more than 48 hours per week, unless the member state enables individual opt-outs.

After the 1993 European Council Negotiations, when the Directive was agreed to after an 11–1 vote, with the UK the only vote against among the then 12 members of the EU, the then UK Employment Secretary David Hunt commented: "*it is a flagrant abuse of Community rules. It has been brought forward as such simply to allow majority voting – a ploy to smuggle through part of the Social Chapter by the back door. The UK strongly opposes any attempt to tell people that they can no longer work the hours they want."*[170]

HMG successfully negotiated an amendment to the Directive to allow workers to opt out of the 48-hour maximum working week by individually signing an opt out form. However, according to a report by Open Europe published in 2009[171]: "*There are currently over 3 million people in the UK working more than 48 hours a week. The right to choose flexible working hours is seen as fundamental part of the British economy, and now paramount to help businesses, the public sector and individuals to cope with the recession.*" The report goes on to say: "*we estimate that the Working Time Directive as it currently applies in the UK is already costing the economy between £3.5 billion and £3.9 billion every year. Through a series of unfortunate amendments and court cases, the cost of this Directive has risen steadily year-on-year since its introduction in 1998.*"

Another report by Open Europe in 2015 estimated the annual cost of the Working Time Directive to have risen to £4.2 billion per year[172]. It appears Open Europe accounted for inflation, and if we accounted for inflation again the cost of the Working Time Directive to the UK economy, assuming Open Europe was correct in its initial calculations, would be £5.4 billion in 2023.

[168] https://www.legislation.gov.uk/eudr/2003/88/contents/adopted

[169] https://www.legislation.gov.uk/uksi/1998/1833/contents

[170] *Au Revoir Europe, What if Britain Left the EU?* by David Charter

[171] *"TIME'S UP! The case against the EU's 48 hour working week"* – Open Europe, March 2009 https://web.archive.org/web/20110128121305/http://www.openeurope.org.uk/research/wtdoptout2.pdf

[172] https://www.cityam.com/open-europe-reveals-100-eu-regulations-cost-britain-33bn/

The Independent Business Network believes the Working Time Directive, like EU employment regulations generally, proportionally imposes greater costs for small businesses than large businesses. Large businesses have the financial resources to absorb employee downtime and the HR resources to administer the Directive. Some of the legal requirements are quite onerous for small businesses. For example, the European Court of Justice (ECJ) held in 2006 that employers are under a duty to guarantee that workers take the rest they are entitled to under the Directive, ensuring merely that workers *can* take their rest is not sufficient[173]. In another ECJ judgement employers gave their employees 'rolled up' holiday pay, by adding a so-called 'premium' to wages if holidays were not taken. The ECJ held that giving rolled-up holiday pay was not permissible, because it could create a disincentive for workers to take holidays[174]. It is noted that the three defendant employers in that case were all SMEs – one a construction firm, one a redevelopment agency, and one a clay-making factory.

Large businesses also generally have a large enough pool of employees to provide cover when other employees are absent from work by virtue of exercising their Working Time Directive rights. Small businesses on the other hand are more likely to struggle. However, we would not prescribe how the Working Time Directive should be reformed.

Part-Time Work: Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC[175] was implemented in the UK by The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (S.I. 2000/1551)[176] Its aim was to ensure that people who have not contracted for permanent jobs would nevertheless be guaranteed a minimum level of equal treatment compared to full-time permanent staff. Article 4(1) of the Directive provides *'in respect of employment conditions, part-time workers shall not be treated in a less favourable manner than comparable full-time workers solely because they work part time unless different treatment is justified on objective grounds.'*

Because the large majority of part-time workers are female[177], the Directive was also an important attempt to combat sex discrimination.

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[173] ***Commission v United Kingdom*** (2006) C-484/04. The DTI (now BEIS) had stated in guideline to employers on the Working Time Regulations 1998 that '*Employers must make sure that workers can take their rest, but are not required to make sure that they do take their rest.*' The ECJ held that HMG's guidance advocated a breach of the article 4 of the Directive. There is a duty to guarantee that the right to rest is in fact observed.

[174] ***Robinson-Steele v RD Retail Services Ltd*** (2006) C-131/04. The ECJ held that article 7 of the Directive states that annual leave must be taken, and only if the employment relationship terminates may there be a pay *in lieu*.

[175] https://www.legislation.gov.uk/eudr/1997/81/contents

[176] https://www.legislation.gov.uk/uksi/2000/1551/contents/made

There was no explanatory memorandum or impact assessment published by HMG alongside S.I. 2000/1551, so it is difficult to assess the impact of the implementation of the Directive in monetary terms, it will certainly have cost businesses, especially those relying on casual labour, a great deal in extending their employment terms and benefits to part time workers. The largest part-time employee employers in 2021 by category were retail (21% of part-time employees) and accommodation and food services) (17% of part-time employees)[178], categories which are made up, respectively of 98% and 97% small and micro businesses[179].

Since its coming into force, the Directive has been interpreted in a way by the courts that is onerous for small businesses. In the leading case, *Matthews v Kent & Medway Towns Fire Authority* the then judicial House of Lords found that a group of part-time and full-time firefighters were comparable, even though the part-time fire fighters did not do the administrative work of the full-time staff[180].

We believe Directive 97/81/EC, should be reformed or repealed to reduce costs and burdens for SMEs, while at the same time retaining and strengthening safeguards to prevent employer discrimination on the grounds of sex (or any other protected characteristic).

Parental Leave: Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC[181] was implemented in the UK by The Parental Leave (EU Directive) Regulations 2013 (S.I. 2013/283)[182]

Council Directive 2010/18/EU repealed an earlier Framework Agreement on Parental Leave[183] and implements a cross-sectoral agreement between EU social partners (representing both employers and employees). Directive 2010/18/EU sets out minimum requirements for parental leave to support the

177 Office for National Statistics, release date 18th April 2023 Full-time, part-time and temporary workers (seasonally adjusted) https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/fulltimeparttimeandtemporaryworkersseasonallyadjustedemp01sa

178 Office for National Statistics, release date 13th October 2022 w.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/broadindustrygroupsicbusinessregisterandemploymentsurveybrestable1

179 Office for National Statistics, SME by size and section, release date 29th August 2019 https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/adhocs/10412smebysizeandsection

180 [2006] UKHL 8 http://www.bailii.org/uk/cases/UKHL/2006/8.html The House of Lords held by a majority, rather onerously for businesses, that the two requirements for comparability are that there is the same type of contract being used (not the same terms) or a broadly similar kind of work being done.

181 https://www.legislation.gov.uk/eudr/2010/18

182 https://www.legislation.gov.uk/uksi/2013/283/made

183 Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC (repealed) https://www.legislation.gov.uk/en/eudr/1996/34

reconciliation of parental and professional responsibilities for working parents. It differs from the previous Directive in two respects. Firstly, it extends the minimum period of parental leave from 3 to 4 months of leave per child. Secondly, it provides that the rights in the Directive apply to all employees regardless of their type of contract.

According to the impact assessment for S.I. 2013/283[184] the Equivalent Annual Net Cost to Business (EANCB) of the SI is £17.1m. The EM for S.I. 2013/283 states, at section 11, *"the legislation applies to small business. It would not be appropriate for employees of small businesses to have different access to unpaid parental leave than employees of businesses with more than 20 employees."* We disagree. The legislation imposes burdens which affect small businesses significantly more than large businesses. **We believe the Directive and implementing SI should be reformed to return the parental leave period for small businesses to 3 months.**

Further, according to the BIS (now BEIS) Consultation on the Administration of Shared Parental Leave and Pay[185] *"40% of respondents did not consider the two week discussion period as sufficient time to agree leave requests. Of these, 58% were employers and 42% non-employers. They commented that they were concerned that employers need more time to consider business needs, iron out any issues and make changes to accommodate the employee's absence. A small number of business representatives and trade unions/staff associations argued that a two-week discussion period would be easier for larger businesses but more difficult for smaller businesses and those who employ specialist and highly qualified staff where arranging temporary cover may not be easy."*

We believe small businesses should have longer than large businesses to consider leave requests from their employees, as they have fewer employees, so each member of their headcount that goes onto leave has a greater proportional impact for small businesses, and it is harder for small businesses to recruit temporary replacement cover.

Mobile Workers on Inland Waterways: Council Directive 2014/112/EU of 19 December 2014 implementing the European Agreement concerning certain aspects of the organisation of working time in inland waterway transport, concluded by the European Barge Union (EBU), the European Skippers Organisation (ESO) and the European Transport Workers' Federation (ETF)[186] was implemented in the UK by The Merchant

[184] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/290066/bis-14-657-modern-workplaces-shared-parental-leave-impact-assessment.pdf

[185] November 2013 – https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/262149/bis-13-1167-consultation-on-the-administration-of-shared-parental-leave-and-pay-response.pdf

[186] https://www.legislation.gov.uk/eudr/2014/112

Shipping (Working Time: Inland Waterways) (Amendment) Regulations 2017 (S.I. 2017/1149)[187]

Directive 2014/112/EU1 implements the European Sectoral Social Partners' Agreement (SPA) on Working Time for Mobile Workers in Inland Waterway Transport (IWT). The SPA contains sector specific rules on: daily, weekly and annual work limits; rest periods; rest days; night work; annual leave; patterns of work; health assessments and record keeping. The objectives of the SPA are: to allow more flexibility for the operations in IWT: to balance between periods of high and low work load; to ensure minimum health and safety protection for all mobile workers in the sector; and to facilitate enforcement of working time rules in particular in cross-border situations.

Section 10 of the explanatory memorandum[188] states: *"costs would primarily impact employers. Some workers may be limited as to the hours they can work and therefore may lose earnings. Costs would arise from: the possible need for additional crew member where minimum hours of rest might otherwise be breached in tidal rivers; the larger pool of crew needed for vessels to ensure compliance with prescribed patterns of work days and rest days; the larger pool of crew needed for those operating at night to keep individual night work below limits; health assessments for all mobile workers; and record keeping."*

The impact assessment for S.I. 2017/1149 estimates annual costs to businesses to be £1.9m[189]. Paragraph 8.3 of the impact assessment however provides: "*small and micro businesses are also not exempted from the gold-plated regulations for increasing statutory annual leave as it would not be fair to employees to reduce their leave entitlement simply because they work for a smaller company*. *Given that there are no exclusions, it is likely that these regulations could affect significant numbers of small and micro businesses, as they make up the majority of the inland waterways sector. Research from BEIS15 lists only 5 medium or large firms within the inland passenger and freight water transport sectors."* Paragraph 5.2 of the impact assessment states: "*recruitment of additional staff was estimated to cost £100,000 - £210,000 per operator for medium and large operators. Small operators were thought unlikely be able to afford additional staff and so could be forced to stop operating one day a week (which could lead to a 12% decrease in turnover)."*

Section 11.2 of the explanatory memorandum provides: *"to minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is make maximum use of any flexibility to minimise the impacts on any business where there is a low risk to health and safety from patterns of work. There is little scope for specific measures to reduce the impact of the requirements on firms employing up to 50 people because working time legislation is required to be applied to all workers irrespective of the size of the company employing them."*

187 https://www.legislation.gov.uk/uksi/2017/1149/contents/made

188 https://www.legislation.gov.uk/uksi/2017/1149/memorandum/contents

189 https://www.legislation.gov.uk/ukia/2017/163/pdfs/ukia_20170163_en.pdf

In other words, HMG acknowledged at the time the Directive was implemented that small businesses would be disproportionately affected and might reduce their turnovers by 12% by not being able to recruit additional cover staff and being forced to reduce their operating hours. It was acknowledged that there should be flexibility for small businesses but it is not explained what the "flexibility" for small businesses might be - and indeed the next sentence contradicts the first stating that all businesses must comply with the legislation, irrespective of size.

This is a common repeated thread – HMG recognised that small businesses would be disportionately affected by the EU legislation but could not offer mitigation as the EU legislation ruled out exceptions for small businesses. Outside the EU the UK is now able to create exceptions to the rules for small and micro businesses.

Seafarers – Directive (EU) 2015/1794 of the European Parliament and of the Council of 6 October 2015 amending Directives 2008/94/EC, 2009/38/EC and 2002/14/EC of the European Parliament and of the Council, and Council Directives 98/59/EC and 2001/23/EC, as regards seafarers[190], was implemented by The Seafarers (Transnational Information and Consultation, Collective Redundancies and Insolvency Miscellaneous Amendments) Regulations 2018 (S.I. 2018/26)[191]

Directive (EU) 2015/1794 was made pursuant to an EU Commission task force finding a number of EU labour law Directives containing derogations from employment rights for seafarers and recommending that should be repealed. These derogations allowed land-based workers greater employment rights than those at sea if member States chose to apply those derogations. Directive (EU) 2015/1794 removed the derogations by amending:

a) Directive 2008/94/EC relating to the protection of employees in the event of the insolvency of their employer (the Insolvency Directive)[192];
b) Directive 2009/38/EC on the establishment of a European Works Council (the EWC Directive)[193];
c) Directive 2002/14/EC establishing a general framework for informing and consulting employees (the Information and Consultation Directive)[194];
d) Directive 98/59/EC on the approximation of the laws of the member States relating to collective redundancies (the Collective Redundancies Directive)[195]; and

[190] https://www.legislation.gov.uk/eudr/2015/1794/contents
[191] https://www.legislation.gov.uk/uksi/2018/26/made
[192]https://www.legislation.gov.uk/eudr/2008/94
[193] https://www.legislation.gov.uk/eudr/2009/38/
[194] https://www.legislation.gov.uk/eudr/2002/14
[195] https://www.legislation.gov.uk/eudr/1998/59

e) Directive 2001/23/EC relating to the safeguarding of employees' rights in the event of transfers of undertakings (the Transfer of Undertakings Directive)[196].

The UK had made limited use of the derogation in relation to the 2009 Directive (EWC) in the Transnational Information and Consultation Regulations 1999 (S.I. 1999/3323)[197]. The UK had left it to the discretion of the employing company as to whether a long-haul crew member could be a member of a special negotiating body or (pre-Brexit) of a European Works Council, or an information and consultation representative. The mandation of long-haul crew members to become members of special negotiating bodies would almost certainly add additional costs for businesses who had opted out of S.I. 1999/3323 on costs grounds, but who might now face costly negotiations with employees. The UK had also made use of the derogation in relation to the 2008 Directive (insolvency) in relation to share fishermen (employed as master, or as a member of the crew, of a fishing vessel) as it considered them to be self-employed.

The Independent Business Network believes the options and derogations for businesses that were terminated by Directive (EU) 2015/1794 should be revisited and reconsidered now that the UK has left the EU.

9.9 Artists' Resale Rights Regulation

Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art[198] was implemented by The Artist's Resale Right Regulations 2006 (S.I. 2006/346)[199]

Directive 2001/84/EC creates a right under EU copyright law for artists to receive royalties on their works when they are resold. This right, often known by its French name *droit de suite*, appears in the Berne Convention for the Protection of Literary and Artistic Works[200] and already existed in many, but not all, EU member states. As a result, there was a tendency for sellers of works of art to sell them in countries without *droit de suite* provisions (e.g. the UK) to avoid paying the royalty.

The heterogeneity of the law on *droit de suite* between EU member states was deemed by the EU to be a distortion of the internal market (paras. 8–11 of the preamble to the Directive), leading to the Directive.

The introduction of *droit de suite* in the UK has proven rather costly for the London art market, which has lost its international competitive advantage as

[196] https://www.legislation.gov.uk/eudr/2001/23

[197] https://www.legislation.gov.uk/uksi/1999/3323/contents/made

[198] https://www.legislation.gov.uk/eudr/2001/84/adopted

[199] https://www.legislation.gov.uk/uksi/2006/346/contents/made

[200] https://www.wipo.int/edocs/pubdocs/en/wipo_pub_berne_birpi

a result. The regulatory risk assessment, annexed to the EM for S.I 2006/346[201] states *"based on the figures for the year 2003/2004 from the Art Sales Index, sales of art in the UK auction houses amounted to approximately £460 million, of which approximately £165 million would have been eligible for resale royalty...."* Bizarrely, while the loss to the competitiveness of the UK art market by the implementation of Directive 2001/84/EC is recognised at section 7 of the explanatory memorandum, the memorandum also states that the SI goes beyond the minimum price threshold at which resale rights apply (setting it at 1,000 EUR rather than 3,000 EUR), which is a very low threshold, as if this is not extremely detrimental to the UK art market's competitiveness:

"the purpose of the Directive is to reduce distortions in competition resulting from the fact that resale right presently exists in only some Member States (and exists in different forms), while enabling artists to share in the economic success of their works. However, in response to concerns as to the effect of the Directive on the United Kingdom art-market, in implementing the Directive full advantage has been taken of the exceptions and derogations allowed. In two respects only the Regulations go beyond the minimum required by the Directive, namely as regards (1) the minimum price threshold for a sale to be liable to resale royalty (1,000 rather than 3,000 euro), and (2) the provision made for joint liability of the seller and an art-market professional involved in the sale".

The regulatory risk assessment, annexed to the explanatory memorandum[202] identifies that the Directive's purpose is to help small business artists in the UK and uses this as a rationale for the low 1,000 EUR threshold: *"Set a threshold of €1,000 - Including sales of between €1,000 and €3,000 would considerably increase the number of artists benefiting from resale payment. This option would significantly increase the number of UK artists benefiting from resale royalties (85% of works sold in this price range are by British artists) and it is also this price bracket that has the highest proportion of living artists. These are likely to be low earning artists who would most benefit from additional income and are the group the Directive is primarily intended to assist."*

However, this disregards that emerging British artists would be more competitive and would thus find it easier to break into the art sale market – i.e. to get onto, the notoriously exclusive and hard to gain a foothold in, art market ladder – in the UK if they did not have the rights to royalties on resale.

The regulatory risk assessment acknowledges that: *"it is possible that some sales will be diverted from the UK to countries which do not apply a resale right; primarily Switzerland or the USA, the UK's main competitors in the art market. This was recognised when the Directive was being negotiated, prior to acceptance, and the cap on royalty payments to €12,500 is intended to*

[201] https://www.legislation.gov.uk/uksi/2006/346/pdfs/uksiem_20060346_en.pdf
[202] Ibid.

reduce the scale of likely diversion. It is difficult to predict the value of sales which may be lost due to diversion of trade."

Artists' right of resale or *droite de suite* is identified in Policy Exchange's 2021 report: *"Post Brexit Freedoms and Opportunities for the UK"*[203] as an area of regulation in need of reform: "*to safeguard the London art markets' competitiveness relative to other jurisdictions where the right does not apply, such as New York and Switzerland."*

9.10 Energy Efficiency Regulation

Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency - as amended by Directive (EU) 2018/2002 of the European Parliament and of the Council of 11 December 2018 amending Directive 2012/27/EU on energy efficiency[204] was implemented in the UK by The Energy Efficiency (Encouragement, Assessment and Information) Regulations 2014 (S.I. 2014/1403)[205]

Directive 2012/27/EU established a common framework of measures for the promotion of energy efficiency within the EU in order to ensure the achievement of the EU's 2020 20% headline target on energy efficiency and to pave the way for further energy efficiency improvements beyond that date. The EU has since set a new headline EU energy efficiency target for 2030 of at least 32.5%[206]. Article 4 of the Directive states: "*member states shall establish a long-term strategy for mobilising investment in the renovation of the national stock of residential and commercial buildings, both public and private".*

S.I. 2014/1403 imposes a duty, transposing article 8(2) of the Directive, on the UK Secretary of State, Scottish Ministers, Welsh Ministers and Northern Ireland departments to develop programmes to encourage SMEs to undergo energy audits and make available to SMEs examples of how energy management systems could be beneficial to their business. It also imposes other requirements on government: to undertake an assessment of the potential for the application of high-efficiency cogeneration and efficient district heating and cooling by 31st December 2015; ensure that information on energy efficiency mechanisms is accessible and widely disseminated to relevant market actors; to encourage the provision of information to banks and other financial institutions about the possibilities of financing measures; and to promote the provision of suitable information, training and other awareness-raising initiatives to inform individuals of the benefits of energy efficiency; and where necessary, to take action to remove barriers to energy efficiency etc.

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203 https://policyexchange.org.uk/wp-content/uploads/2021/03/Post-Brexit-freedoms-and-opportunities-for-the-UK.pdf

204 https://www.legislation.gov.uk/eudr/2012/27/contents

205 https://www.legislation.gov.uk/uksi/2014/1403

206 https://energy.ec.europa.eu/topics/energy-efficiency/energy-efficiency-targets-directive-and-rules/energy-efficiency-targets_en

We note that EU Exit SI The Renewable Energy, Energy Efficiency and Motor Fuel Emissions (Miscellaneous Amendments) (EU Exit) Regulations 2021 (S.I. 2021/1115)[207] did not change the substantive requirements of the Directive, but simply made the law operable post-Brexit. The definition of the Directive in regulation 2 of S.I. 2021/1115 is fixed so that it refers to the Directive as it stood immediately before the Transition Period ended. The reference to euros in regulation 3(1) definition of SMEs, used for the purposes of determining which enterprises should be encouraged to undergo energy audits, is converted to pounds sterling. The amendments to regulations 4(1), (3), (5), (6) and (7) by S.I. 2021/1115 mean the Secretary of State will be required to continue to update and publish an assessment of the potential for high-efficiency cogeneration and efficient district heating and cooling. The requirement to notify the European Commission of the assessments was removed because this would be inappropriate now the UK is no longer in the EU. The ability of the European Commission to request updates of assessments is likewise removed and replaced by a requirement for the Secretary of State or devolved ministers as the case may be to carry out an update by 31st December 2025 and every 5 years thereafter.

While the implemented Directive does not make it mandatory for SMEs to undergo energy audits, it does place a duty on government to “encourage” the energy audits, and we are concerned that HMG may try to extend the requirement, currently imposed on enterprises that are **not** SMEs, to SMEs to carry out an energy audit *“by qualified and/or accredited experts or implemented and supervised by independent authorities”* set out at article 8(4) of the Directive. Under article 8(4) member states must ensure that enterprises that are not SMEs are subject to an energy audit every four years carried out *“by qualified and/or accredited experts or implemented and supervised by independent authorities”.* We strongly feel extending this requirement to SMEs would be costly, burdensome and unnecessary for SMEs.

We are also concerned that while the implemented Directive places a duty on government to “encourage” energy audits, “*the UK does not plan to set up a specific new support scheme for SMEs; this is an optional requirement”*[208]*.* This is a further indicator that SMEs are expected to meet costs themselves.

Energy Performance Certificates: Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (recast) (the EPC Directive)[209] was implemented in the UK by The Energy Performance of Buildings (England and Wales) Regulations 2012 (S.I. 2012/3118)[210]

207 https://www.legislation.gov.uk/uksi/2021/1115/contents/made

208 See the impact assessment for S.I. 2014/1403 https://www.legislation.gov.uk/ukia/2014/160/pdfs/ukia_20140160_en.pdf

209 https://www.legislation.gov.uk/eudr/2010/31

210 https://www.legislation.gov.uk/uksi/2012/3118/contents/made

The EPC Directive is a recast directive, designed to increase the energy efficiency of buildings and reduce their CO^2 emissions. This complements the Climate Change Act 2008[211] which requires a reduction in CO^2 emissions by 80% on 1990 levels by 2050. As emissions from buildings account for 40 - 45% of all CO_2 emissions in the UK, this legislation aims to make existing buildings more energy efficient, and ensures that new buildings are designed and built to a high standard of energy efficiency.

The previous Directive[212], and the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (S.I. 2007/991)[213] which implemented it in the UK, introduced the requirement for energy performance certificates (EPCs) to be produced when a building is constructed, sold or rented out. This was later deregulated by The Energy Performance of Buildings (England and Wales) Regulations 2012 (S.I. 2012/3118)[214] so that residential building owners are no longer required to produce EPCs, reducing costs for landlords.

The EPC shows the energy efficiency of a property and includes recommendations on how it can be improved. The original Directive also required energy certificates showing the running costs of a building to be produced and clearly displayed in public buildings larger than 1000m². These were termed Display Energy Certificates (DECs) in the 2007 Regulations. It also required that large air conditioning units must be inspected regularly. S.I. 2012/3118 removed the requirement for residential buildings but introduced the following additional requirements arising from the EPC Directive: property advertisements must include details of the EPC rating where available; DECs are required in public buildings larger than 500m² that are frequently visited by the public; and an EPC must be displayed in commercial premises larger than 500m² that are frequently visited by the public.

According to section 10.1 of the explanatory memorandum for S.I. 2012/3118[215] *"the impact on business, charities and voluntary bodies is a net present value benefit of around £130m, equivalent to an average annual net benefit of around £14m. Businesses, charities and voluntary bodies will benefit from cost savings from historic buildings being exempt from requirements to have an Energy Performance Certificate. These benefits will be slightly offset by the costs of meeting EU minimum requirements to consider the feasibility of low carbon energy systems. Overall, these impacts result in a net benefit."*

According to section 11.2 of the explanatory memorandum: "*the requirements on firms employing up to 20 people are minimal as the*

[211] c.27 https://www.legislation.gov.uk/ukpga/2008/27/contents

[212] Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings (repealed) https://www.legislation.gov.uk/eudr/2002/91/contents

[213] https://www.legislation.gov.uk/uksi/2007/991/made

[214] https://www.legislation.gov.uk/uksi/2012/3118/contents/made

[215] https://www.legislation.gov.uk/uksi/2012/3118/memorandum/contents

requirement to produce an EPC only applies when a property is constructed, sold or rented out." According to section 11.4: *"these regulations will have a positive impact on many small businesses through the creation of jobs. For example, the extension of DECs to cover buildings between 500-1000m2 will result in increased demand for assessments. In addition, the requirement to display EPC ratings in advertisements is expected to result in higher levels of compliance, which will in turn create work in the industry."*

We believe the Government's economic justification for EPCs (producing EPCs will create more work and jobs for people) is spurious and self-justifying, however we do agree encouraging businesses to improve insulation and increase the energy efficiency of their building stock makes environmental and economic sense, including financial savings through less expenditure on heating. However, it could be argued that the same objectives could be achieved through more constructive measures than punitive measures such as penalty charge notices that can be issued under regulation 36 of S.I. 2012/3118. **More constructive measures might include the creation of insulation grants and other such schemes, currently only available to residential homeowners[216].**

9.11 Road Transport Regulation

The EU directive on **road charging**: **Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of vehicles for the use of road infrastructures; as amended by Directive 2006/38/EC of the European Parliament and of the Council of 17 May 2006 amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures[217]** was implemented (unusually, 10 years later) in the UK by The Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the Trans-European Road Network) Regulations 2009 (S.I. 2009/1914)[218]. Prior to Directive 2006/38/EC, HMG had taken the view that no legislative action was required as regards the transposition of Directive 1999/62/EC. However, following the amendments introduced by Directive 2006/38/EC, the British Government decided that legislative action was required.

Directive 1999/62/EC relates to tolls and charges for lorries using parts of the Trans-European Road Network. In the UK this means mainly motorways and some trunk roads. The Directive does not require EU member states to levy tolls and charges for lorries (and by-and-large the UK does not do so) but where member states do choose to charge they must respect the rules in the Directive. Broadly speaking, the Directive seeks to harmonise the

[216] https://www.gov.uk/government/news/government-joins-with-households-to-help-millions-reduce-their-energy-bills

[217] https://www.legislation.gov.uk/eudr/1999/62

[218] https://www.legislation.gov.uk/uksi/2009/1914

calculation of tolls and user charges and the levying and collection of them. This is intended to "address distortions of competition" between transport undertakings in different member states, by at least partial harmonisation of the way that infrastructure costs are charged to hauliers.

The EU Exit SI – The Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the Trans-European Road Network) (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1352)[219] retained the status quo but removed obligations on HMG to report to the European Commission, and to seek the views of the European Commission.

Motorway and trunk roads with tolls are the exception rather than the norm in the UK and rather limited, Britain does have a number of motorway and trunk road tolled bridges and tunnels. Our tolls include:

- The M6 Toll - West Midlands;
- M25 - Dartford River Crossing;
- M4 - Second Severn Crossing;
- M48 - Severn Bridge;
- A4 - Batheaston Bridge;
- A15 - Humber Bridge;
- A19 - Tyne Tunnels;
- A38 - Tamar Bridge;
- A41 - Mersey Tunnels - Queensway;
- A57 - Dunham Bridge;
- A59 - Mersey Tunnels - Kingsway;
- A477 - Cleddau Bridge;
- A533 - Mersey Gateway; and
- A3025 - Itchen Bridge.

According to the explanatory memorandum for S.I. 2009/1914[220] "*the legislation does not apply to small business.*" However, this does not factor into potential cost savings for small businesses that are frequent toll road users. At present, the legislation somewhat arbitrarily limits "*frequent user discounts to 13% and variation of charges must be within specified bounds"* (paragraphs 4 and 10 of the impact assessment attached to the explanatory memorandum).

Rather than fossilising arbitrary limitations onto the UK statute book, why not make Britain's toll roads more competitive? Costs could be reduced for frequent users, including businesses that regularly need to use toll roads. We recognise that any legislation favouring motorists might be politically challenging, given the Government's commitment to Net Zero, yet there is no reason why small businesses using electric vehicles could not additionally benefit from reduced frequent user charges[221].

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[219] https://www.legislation.gov.uk/uksi/2018/1352/made

[220] https://www.legislation.gov.uk/uksi/2009/1914/pdfs/uksiem_20091914_en.pdf

[221] We note with interest and concern on potential costs for long distance small business EV drivers that in February 2022, the Transport Committee published a report on road pricing, which explored, *inter alia*, the issue arising from the fact that electric vehicles pay neither fuel duty nor vehicle excise duty, and as sales of these increase to meet the

The current EU regulation on **commercial drivers' working hours and in-vehicle recording equipment – Regulation (EC) No 561/2006, (as amended by Regulation (EU) 2020/1054), lays down rules on driving times, breaks and rest periods for drivers of lorries, coaches and buses in order to improve working conditions and road safety; Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport**[222] was implemented by The Community Drivers' Hours and Recording Equipment Regulations 2007 (S.I. 2007/1819)[223]

Previously, Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities[224] – had set the rules regarding working time for drivers carrying out road transport activities in the EU from the point of view of improving road safety, health and safety of drivers and ensuring fair competition among transport operators. Regulation (EC) 561/2006 complemented Directive 2002/15/EC by setting driving times, breaks and rest periods required to be taken by professional drivers of vehicles carrying goods or passengers in international or national transport operations.

Regulation EC) 561/2006 provides that cumulative driving time must not exceed 4.5 hours. After 4.5 hours of driving the driver must take a break period of at least 45 minutes. However, this can be split into 2 breaks, the first being at least 15 minutes, and the second being at least 30 minutes in length. Total daily driving time shall not exceed 9 hours. The daily driving time may be extended to at most 10 hours not more than twice during the week. The weekly driving time may not exceed 56 hours. In addition to this, a driver cannot exceed 90 hours driving in a fortnight. Within each period of 24 hours after the end of the previous daily rest period or weekly rest period a driver must take a new daily rest period. An 11-hour (or more) daily rest is called a regular daily rest period. Alternatively, a driver can split a regular daily rest period into two periods. The first period must be at least 3 hours of uninterrupted rest and can be taken at any time during the day. The second must be at least 9 hours of uninterrupted rest, giving a total minimum rest of 12 hours. A driver may reduce his daily rest period to no less than 9 continuous hours, but this can be done no more than three times between any two weekly rest periods; no compensation for the reduction is required. A daily rest that is less than 11 hours but at least 9 hours long is called a reduced daily rest period. When a daily rest is taken, this may be taken in a vehicle, as long as it has suitable sleeping facilities and is stationary.

desired goal of no new diesel vehicles sold by 2030, tax revenue from these taxes would decrease. One of the Committee's recommendations was: *"…a road pricing mechanism that uses telematic technology to charge drivers according to distance driven, factoring in vehicle type and congestion"* – House of Commons Transport Committee, Road Pricing: Fourth Report of Session 2021–22 HC 789, 4 February 2022, https://committees.parliament.uk/publications/8754/documents/88692/default/

222 https://www.legislation.gov.uk/eur/2006/561/contents

223 https://www.legislation.gov.uk/uksi/2007/1819/contents/made

224 https://www.legislation.gov.uk/eudr/2002/15/pdfs/eudr_20020015_adopted_en.pdf

Regulation (EC) 561/2006 applies to the carriage by road of goods by vehicles with a total mass exceeding 3.5 tonnes and to the transport by road of passengers by vehicles that are adapted to carry more than nine people (including the driver). It applies, irrespective of the country of registration of the vehicle, to carriage by road in the EU and between EU countries, Switzerland and EEA countries.

Under the IA, attached to the EM for S.I. 2007/1819, under the Small Firms Impact Test: *"there were no responses to the consultation paper from any companies specifically identifying themselves as a small business. However, a number of trade associations responded, including those which have small firms as members. Some respondents commented on the impact on individuals and small businesses of the extra cost of fitting tachographs to those vehicles that will no longer be exempt from the EU drivers' hours rules..."* We imagine that certain vehicles may now be pre-fitted with tachographs, which was not the case previously, as a direct result of the legislation. **However, we believe HMG should, post Brexit, revisit the scope of tachograph exemption criteria with a view to easing restrictions on certain categories of struggling small businesses.**

As regards driver hours, the Regulation exempts from its scope of application ten categories of carriages (article 3), but article 13 of the Regulation allows member states to also make specific national derogations, although EU countries have to inform the European Commission of those specific national derogations. Post Brexit, informing the Commission is no longer required. The full list of derogations is listed in the Regulation, articles 13(1)(a) to (p) and also in the Transposition Note at Annex A of the explanatory memorandum to S.I. 2007/1819[225]. However, we believe, again, **HMG should now revisit and review the derogations to assess whether they can be extended and reformed to benefit certain categories struggling small businesses.**

9.12 Habitats Licensing Regulation

According to the Policy Exchange's 2021 report: "*Post Brexit Freedoms and Opportunities for the UK"*[226] the Habitats Directive is identified as an opportunity "*to reduce delays and costs currently imposed on development projects. Reforms could reflect UK's unique environmental circumstances, rather than a one-size-fits-all EU model."* The Independent Business Network believes in maintaining high environmental standards, including protecting habitats and biodiversity. However, the right balance must be struck between environmental protection standards unreasonable costs and delays to business growth and development.

Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild

[225] https://www.legislation.gov.uk/uksi/2007/1819/pdfs/uksiem_20071819_en.pdf
[226] Ibid.

fauna and flora[227] aimed to protect biodiversity through the conservation of natural habitats and species of wild fauna and flora by laying down rules for the protection, management and exploitation of such habitats and species. It was first implemented by The Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. 1994/2716)[228] which amended the Wildlife and Countryside Act 1981[229]. S.I. 1994/2716 was then amended 30 times. The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490)[230] consolidated the amendments. S.I. 2010/490 was then amended several further times, and The Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012)[231] consolidated those further amendments. For simplicity, we shall refer to these SIs collectively as the "Habitats Regulations".

Directive 92/43/EEC provides that organisations that carry out routine activities that affect one or more species protected by the Habitats Regulations must obtain an organisational licence. In a Defra consultation dated May 2018[232] on charging fees for survey licences, 130 respondents commented that obtaining survey licences impacted on operating costs for individual ecologists and ecological consultancy businesses. Over 70% said that the charges for survey licences were not reasonable. Respondents were concerned that charges would have a disproportionate impact on small consultancies, self-employed consultants and trainee consultants, particularly if the consultant held multiple licences and where costs could not easily be passed on to customers or employers.

Other views not supportive of the proposal to introduce charges were: charges would lead to more people not applying for a licence or risking a fine rather than paying for a licence, particularly if the fine is cheaper than the cost of the licence; risks to wildlife from illegal acts will increase; charges should not be introduced as the taxpayer should continue to fund the service; the charges for licences were too high.

The current situation is that Natural England, the Defra agency that processes applications for habitats related licences such as disturbing a protected species charges fees in some cases[233]. This can be extremely costly for anyone required to make such an application. For example, say a small business that wanted to convert a loft space or simply use it for additional storage in a building it owns found bats nesting in the loft. To remove the bats they would need to apply for a Bat Mitigation Licence (A13) with likely costs being: "*new licences between £500 and £2000; modifications between £100 and £1800; and resubmissions between £500*

[227] https://www.legislation.gov.uk/eudr/1992/43

[228] https://www.legislation.gov.uk/uksi/1994/2716

[229] https://www.legislation.gov.uk/ukpga/1981/69

[230] https://www.legislation.gov.uk/uksi/2010/490

[231] https://www.legislation.gov.uk/uksi/2017/1012

[232] https://consult.defra.gov.uk/natural-england/wildlife-licence-charges/results/wildlifelicenceconsultationresponsefinal17may2018.pdf

[233] https://www.gov.uk/guidance/wildlife-licences

and £1500".[234] The application fees would be the same to remove hazel dormice. The application to interfere with badger setts for development purposes (A24 and LR24) for whatever reason is more reasonable: "*most licences are likely to cost between £300 and 800, including the compliance check charge. Most replacement licences are likely to cost between £200 and £400".*[235]

From analysing the Defra 2018 consultation responses on licence charges, there appears to be demand and scope for the reduction of survey licence fees.

9.13 Boatmasters Licensing Regulation

Council Directive 96/50/EC of 23 July 1996 on the harmonization of the conditions for obtaining national boatmasters' certificates for the carriage of goods and passengers by inland waterway in the Community[236] was implemented in the UK by The Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006 (S.I. 2006/3223)[237] and The Merchant Shipping (Local Passenger Vessels) (Crew) Regulations 2006 (S.I. 2006/3224)[238], and were then re-enacted by The Merchant Shipping (Boatmasters' Qualifications, Crew and Hours of Work) Regulations 2015 (S.I. 2015/410)[239]. Council Directive 96/50/EC was then repealed and replaced by **Directive (EU) 2017/2397 of the European Parliament and of the Council of 12 December 2017 on the recognition of professional qualifications in inland navigation and repealing Council Directives 91/672/EEC and 96/50/EC**[240]

Directive (EU) 2017/2397 set up a new harmonised system for the certification and recognition of the qualifications of crew members working on inland waterways (canals, rivers, lakes and some estuaries) in the EU. This replaced the previous harmonised system introduced by Council Directive 96/50/EC. Regulations 27 to 31 of S.I. 2015/410 make rules relating to applications for different tiers of boatmasters' qualification certificates. These certificates were previously valid throughout the EEA. Post Brexit UK-issued boatmasters' certificates are no longer recognised by EEA States so EU Exit SI, The Merchant Shipping (Inland Waterways) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/808)[241] removed the

234 https://www.gov.uk/government/publications/bats-apply-for-a-mitigation-licence

235 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1082604/A24-interfere-badger-sett-application-form.pdf

236 https://www.legislation.gov.uk/eudr/1996/50/introduction

237 https://www.legislation.gov.uk/uksi/2006/3223

238 https://www.legislation.gov.uk/uksi/2006/3224

239 https://www.legislation.gov.uk/uksi/2015/410/made

240 https://www.legislation.gov.uk/en/eudr/2017/2397

241 https://www.legislation.gov.uk/uksi/2019/808

ability for the Secretary of State to issue certificates applying across the EEA[242].

According to a 2007 Transport Select Committee report[243], respondents expressed concerns about the cost of acquiring the new licence. The examination fee for a new licence in 2015 was £141, plus a £22 fee for issuing the licence. Each examination for an endorsement costs a further £100. This means the total fees payable in respect of a BML with general cargo endorsement (the equivalent of the EU Certificate) was £263, or £363 if a local endorsement is added. The costs now (last updated in 2018) are £241 for an examination, and examination for endorsement £109[244].

However, the cost of training courses and time off work must also be taken into account. The Commercial Boat Operators Association argued, before the Transport Select Committee[245] that the dispersed nature of the inland shipping industry means that few masters live near to a training provider and many will therefore face additional travel and accommodation costs. The Inland Waterways Association also expressed about the potential training costs faced by its volunteer teams working on restoring and maintaining the inland waterways. Witnesses from the trade unions also expressed some concerns about the possible training cost, noting that there would be a "significant increase" which might act as a barrier to entry.

The Transport Select Committee report goes on to say: "*it is too early to say with certainty what the average cost of training courses is likely to be, but we were quoted figures between £600 (for the basic classroom training for a Tier 2 licence) and £7,500. The industry's recruitment difficulties mean that there are few economies of scale enjoyed by those training new entrants, further increasing the cost of training and thereby exacerbating the recruitment problem. Mr Hugman of the Commercial Boat Operators' Association went so far as to suggest that the additional training costs could be enough to destroy the industry outside the Thames. For many operators it is not just the cost of the training itself that is a problem but the cost of associated travel, accommodation and replacement crew cover.*"

Because S.I. 2019/808 removed the ability for the Secretary of State to issue certificates for use on inland waterways in the EEA and certificates are now only being issued for UK inland waterways, obtaining UK certificates should, at least in theory, cost less as they no longer need to meet EEA standards

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242 Although it appears there was never any demand for this. Section 7.3 of the explanatory memorandum for S.I. 2015/410 states: "*since the implementation of Directives 91/672/EEC and 1996/50/EC, the Secretary of State has not received any applications for boatmaster's certificates from UK boatmasters wishing to operate on inland waterways in EEA States; had any EEA State boatmasters seeking recognition of EEA-issued certificates to operate on UK inland waterways or had any applications from those with EEA certificates seeking additional certification to operate on UK waterways with local knowledge requirements.*"

243 https://publications.parliament.uk/pa/cm200607/cmselect/cmtran/320/32004.htm

244 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748455/Maritime___Coastguard_Agency_fees_2018.pdf

245 Ibid.

compliance. The Explanatory Memorandum to S.I. 2015/410[246] claimed at section 10.1 that *"this instrument is expected to significantly reduce the regulatory and cost burden on business, charities or voluntary bodies. This is achieved through increasing the scope of qualification under the boatmasters' licensing system and the provision of a licence that is appropriate to the operational needs of those operating exclusively in one local tidal area."* However we believe there is scope for EU/ EEA regulatory divergence and further cost savings for applicants.

9.14 Pensions Governance Regulation

Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORP II)[247] was implemented in the UK by The Occupational Pension Schemes (Governance) (Amendment) Regulations 2018 (S.I. 2018/1103)[248] and The Occupational Pension Schemes (Cross-border Activities) (Amendment) Regulations 2018 (S.I. 2018/1102)[249]

IORP II relates to workplace pension scheme governance. IORP I (Directive 2003/41/EC[250]) occupational pension scheme governance requirements were implemented in 2005. Article 14(1) of IORP I required national regulators to ensure IORPs have sound administrative and accounting procedures, and adequate internal control mechanisms. This was implemented by the insertion of section 249A into the Pensions Act 2004[251]. Internal controls are the systems and processes put in place by those running an occupational pensions scheme to make sure that the administration of the scheme operates adequately and in accordance with the law. IORP II placed more emphasis on scheme governance than IORP I, and therefore represented a position closer to the UK's and aligned with UK domestic policy priorities. Scheme governance requirements in IORP II are set out across 10 articles (in Title III, Chapter 1) outlining what comprises an effective system of governance for occupational pension schemes.

In a nutshell, an effective system of governance means occupational pension schemes must: ensure those in charge have ultimate responsibility for compliance; have managers fit with adequate qualifications, knowledge, experience; have a sound remuneration policy; undertake risk management; have an internal audit function; have an actuarial function; carry out their own risk assessment; publicly disclose annual accounts and reports; and prepare and, at least every three years, reviews a written statement of investment-policy principles. In reality most financial services providers in the UK, including those who provide private personal pensions, were

246 https://www.legislation.gov.uk/uksi/2015/410/memorandum/contents
247 https://www.legislation.gov.uk/eudr/2016/2341
248 https://www.legislation.gov.uk/uksi/2018/1103
249 https://www.legislation.gov.uk/uksi/2018/1102
250 https://www.legislation.gov.uk/eudr/2003/41
251 c.35 https://www.legislation.gov.uk/ukpga/2004/35

already, prior to the transposition of the Directive, legally required to demonstrate an effective system of governance. The impact assessment for S.I. 2018/1103[252] states that: "*the UK is largely compliant with IORP II and will therefore be able to transpose without imposing much additional burden on industry. Nevertheless, there will be costs associated with these changes. The cost estimates are: £5.1 million in year 1; and £2.7 million every subsequent third year (years 4, 7, 10)".* Allowing for inflation, that's £3.26 million every third year in 2023 prices.

Further, the explanatory memorandum for S.I. 2018/1102[253], in relation to cross-border schemes states, at para. 12.1 "*to date, there has been little market interest in the cross-border authorisation regime, with fewer than 25 UK occupational pension schemes seeking authorisation in a market of approximately 40,000."*

Given the lack of market interest in cross-border scheme pension authorisations, and thus little to no requirement for EU harmonisation, and further with occupational pension providers already said to have been compliant before Directive (EU) 2016/2341 was implemented in the UK, the question is: was the Directive necessary at all, and did it duplicate previous compliance with overregulation and unnecessary additional costs for businesses? We recommend that it be revoked.

9.15 Environmental Impact Regulation

Environmental Impact Assessments: Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (the EIA Directive)[254] was implemented in the UK by The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (S.I. 2017/571)[255] and The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (S.I. 2017/572)[256].

S.I.s 2017/571 and 2017/572 transpose changes made to EU Directive 2011/92 (the EIA Directive)[257] by **Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment[258].** They relate to certain development

[252] https://www.legislation.gov.uk/uksi/2018/1103/pdfs/uksiod_20181103_en_001.pdf
[253] https://www.legislation.gov.uk/uksi/2018/1102/memorandum/contents
[254] https://www.legislation.gov.uk/eudr/2011/92
[255] https://www.legislation.gov.uk/uksi/2017/571
[256] https://www.legislation.gov.uk/uksi/2017/572
[257] Directive 2011/92 had previously been transposed by The Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2012 (S.I. 2012/787) but this was revoked
[258] https://www.legislation.gov.uk/eudr/2014/52

given planning permission through the town and country planning system, regulated by the Town and County Planning Act 1990[259] (as amended).

The EIA Directive prohibits the granting of consent for development which is likely to have a significant effect on the environment unless an EIA has been carried out. EIA is a process. It involves:

(a) the preparation of an environmental statement by or on behalf of the developer;
(b) public consultation on the application for planning permission or development consent, the environmental statement and any other relevant information;
(c) examination by the relevant authority of the information presented in the environmental statement and other relevant information including that received through the consultation;
(d) the authority coming to a reasoned conclusion on the significant effects of the proposed development on the environment; and
(e) the authority integrating the reasoned conclusion into the decision on whether to grant consent for the development.

The amendments to the EIA Directive aimed to simplify the rules for assessing the potential effects of projects on the environment in line with the drive for smarter regulation; to lighten unnecessary administrative burdens; and to improve the level of environmental protection, with a view to making business decisions on public and private investments more sound, predictable and sustainable in the longer term. The most significant changes introduced by the amending Directive 2014/52/EU were:

- The introduction of joint and/or co-ordinated procedures for projects which are subject to assessment under Directive 92/43/EEC[260] ("the Habitats Directive") or under Directive 2009/147/EC[261] ("the Wild Birds Directive") and the EIA Directive. Provision was made in both SIs for coordinated procedures as this would, it was envisaged, provide flexibility for developers and enable them to phase the various assessments where considered appropriate.
- To add to the list of environmental factors to be considered as part of the EIA process. The term 'human being' was replaced by the term 'population and human health'; the term 'fauna and flora' was replaced by 'biodiversity' and was a new requirement to consider, where relevant, the effects on the environment deriving from the vulnerability of the development to risks of major accidents and/or disasters.
- A new requirement to use competent experts. The developer must ensure that their environmental statement is prepared by competent experts, while the consenting authority must ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental statement.

[259] c.8 https://www.legislation.gov.uk/ukpga/1990/8
[260] https://www.legislation.gov.uk/eudr/1992/43
[261] https://www.legislation.gov.uk/eudr/2009/147

- A new article elaborating on information to be given in decision notices and during the decision-making procedures.
- That the the decision to grant development consent should going forward include, where appropriate, monitoring measures.

According to section 7 of the explanatory memorandum for S.I.s 2017/571 and 2017/572[262]: *"there are around 500 - 600 environmental statements submitted each year in England through the planning system, representing about 0.1% of all planning applications. There are between 10 - 20 applications for a development consent order under the nationally significant infrastructure planning regime subject to EIA each year. There are no alternatives to legislation to implement the Directive. However, in line with the Government's Better Regulation agenda we have sought to minimise any additional regulatory burden by copying out the text of the Directive except where an alternative approach was considered beneficial."*

HMG appeared to have listened at the time to business stakeholders in considering alternative approaches and tailoring the Directive accordingly. For example, in response to Question 7 of a December 2017 consultation undertaken by HMG: *"Government response to the technical consultation on Environmental Impact Assessment (regulations on planning and nationally significant infrastructure)"*: *"do you agree that the competent authority, informed where appropriate through the consultation process, is best placed to determine whether those preparing an environmental statement have sufficient expertise for that purpose?"* There were 64 responses to this question, 27 agreeing with the proposal, 28 disagreeing and a joint letter from nine organisations, most of which also provided separate responses, highlighting their shared concerns relating to the proposed approach to transposing the 'competent expert' requirements. There were concerns expressed that it would be difficult (and unnecessary and inappropriate) to identify any single accreditation given the wide range of expertise needed to conduct a robust EIA process and that the competent authority must also have the appropriate level of competence to be able to determine whether those preparing the environmental statement had sufficient expertise. Others considered that requiring local planning authorities to confirm the competence of environmental professionals that prepare environmental statements for developers would act to gold-plate the EU requirements and add new risks to efficient consenting. It was seen as an additional burden on the consenting regimes and would introduce considerable risk. This included: increasing local authority workloads; generating delay and additional cost to developers; and opening a new avenue for legal challenge.

In light of the responses from consultees, and in particular the view that as drafted, the regulation providing for competent experts could have potentially gold-plate the Directive, HMG decided amend the implementing SIs to provide that the responsibility for ensuring the competence of those preparing environment statements rests with the developer.

According to section 10 of the explanatory memorandum: *"the impact on*

[262] https://www.legislation.gov.uk/uksi/2017/572/pdfs/uksiem_20170572_en.pdf

business is anticipated to be positive. There may be small overall savings through fewer, and in some cases shorter, environmental statements."

According to section 11 of the explanatory memorandum: *"small businesses will not be exempt from EIA where their projects are likely to have significant environmental effects, but they will have more opportunity to demonstrate to the local planning authority how proposed mitigation measures will avoid otherwise significant effects - thereby avoiding the need to undertake an EIA."*

However, it appears that when the implemented Directive was reviewed in the last year[263], the picture that emerged was far less rosy for developers than anticipated. The Post Implementation Review (PIR) was published on 21st March 2023[264] and is damning. The Review found that the policy objectives had been to transpose the EIA Directive into UK law *"in a way that lightens administrative burdens on business without weakening environmental safeguards"* but that there was no certain evidence for reduced costs and *"the administrative burden is still high: A review of recent projects accepted for examination on the PINS website shows a range of 56-267 for the number of documents submitted in the corresponding environmental statements, compared to 55-96 documents for projects submitted before 2017".* The IBN supports the introduction of a streamlinedThe recommendation of the PIR is to replace the regulations: *"The administrative burden and high costs for producing an EIA has led DLUHC to begin developing a streamlined system of environmental assessment. Powers to repeal and replace the existing EU system are being sought in the Levelling Up and Regeneration Bill and new regulations will be laid through secondary legislation using the affirmative procedure. The new system will introduce an efficient process that secures high standards of environmental outcomes, tailored to the UK context."*

[263] A post implementation review provision was included in each of the sets of SIs (regulation 71 of S.I. 2017/571 and regulation 2 of S.I. 2017/572). Both provisions require that a report setting out the conclusions of the review be published before 16th May 2022. The review was required to assess, by considering relevant data, whether the objectives of the SIs remain appropriate, and whether they could be achieved in another way which involves a less onerous regulatory provision.

[264] https://www.gov.uk/government/consultations/environmental-outcomes-reports-a-new-approach-to-environmental-assessment/post-implementation-review-infrastructure-planning-environmental-impact-assessment-regulations-2017

10. Our Secondary Considerations for Deregulation

In section 8 of this Paper we looked in-depth at some policy areas the International Business Network has examined and has green rated as the strongest contenders for deliverable deregulation, primarily benefiting small businesses.

The following are policy areas which we have RAG assessed as amber rated, where we believe repeal or reform of REUL should be considered, but which do not directly affect small businesses and are therefore less of a priority for us. We also include policy areas where we recognise the case for reform is less clear, and where we anticipate there might be considerable political challenges to delivering reform.

10.1 Financial Regulation

Capital Requirements – Regulation (EU) No 575/2013 of the European Parliament and the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012[265] was implemented in the UK by The Capital Requirements Regulations 2013 (S.I. 2013/3115)[266]

Regulation (EU) No 575/2013 established a single set of harmonised prudential rules, which banks throughout the EU must respect. This 'single rule book' aimed to ensure the uniform application of global standards (Basel III[267]) in all of the EU member states. The main innovations of Regulation (EU) No 575/2013 include: a) Higher and better capital requirements. Banks must have a total amount of capital that corresponds to at least 8% of their assets, measured according to their risks. (The current minimum requirement of the capital-to-risk weighted assets ratio, under Basel III, is 10.5%, including the conservation buffer.) For example, some assets, such as cash, are considered safe and do not attract a capital requirement; other assets – such as loans to other banks, businesses or consumers – are considered more risky, and thus have a capital requirement. The more risky the assets an institution holds, the more capital it must have. b) Liquidity measures. To ensure banks have sufficient liquidity, the regulation introduces two liquidity requirements: the liquidity coverage ratio, which aims to ensure that banks have enough liquid assets (e.g. cash or other assets that can be quickly converted into cash with little or no loss of value) in the short term; and the net stable funding requirement, which aims to ensure that banks do not rely too much on short-term funding to fund their medium- and long-term assets. c) Limiting leverage. The regulation sets out a binding leverage ratio, which aims to limit banks from financing too large a portion of their activities with debt.

265 https://www.legislation.gov.uk/eur/2013/575

266 https://www.legislation.gov.uk/uksi/2013/3115

267 Capital rules: https://www.bis.org/publ/bcbs189.pdf and liquidity rules: https://www.bis.org/publ/bcbs188.pdf

In the impact assessment for S.I. 2013/3115[268], which establishes a Financial Policy Committee to direct the Financial Conduct Authority (FCA) and/ or Prudential Regulation Authority (PRA) to implement Regulation (EU) No 575/2013, annual costs of £1,100m (£1,430m in 2023 prices) are cited for the recommended policy option: *"imposing macro-prudential capital requirements on financial institutions will impose costs on them. It is assumed for the purpose of this impact assessment that these costs will be passed on to consumers of bank lending in the form of higher lending spreads. The higher cost of borrowing has knock-on impacts on output, which is a cost to the UK as a whole. These costs are estimated in this impact assessment".*

Is the Capital Requirements Regulation necessary or is it detrimental? On the one hand, Policy Exchange has argued, in its 2021 report, "*Post Brexit Freedoms and Opportunities for the UK"*[269] *"the EU (CRD IV, CRR) elected to apply the same Basel capital rules to all banking and investment firms. The US, in contrast, has not. It applies the Basel rules only to its international banks. There is scope for a more flexible and proportionate approach post-Brexit."*

While capital requirements apply to large financial lending institutions, rather than SMEs directly, it can be argued that more oversight regulation creates more compliance costs that are passed on to banking customers, including small businesses who use business banking services. Higher capital requirements also increase the price of credit which reduces consumption funded by borrowing, which has a negative impact on GDP. And finally, greater regulation also means greater barriers to entry and tends to work in favour of greater banking consolidation, meaning less competition and higher prices for banking customers.

On the other hand, we understand that HMT is understandably risk-averse, and further being seen to deregulate the banking sector will not be a popular vote winner, particularly at a time of possibly continuing interbank lending hesitancy in the wake of the demise of US community banks and Credit Suisse in early 2023. Secondly, there is evidence that the Bank of England would impose the same, or even higher capital requirements independently of Basel III. In its Financial Stability Paper No. 35 dated December 2015: "*Measuring the macroeconomic costs and benefits of higher UK bank capital requirements"*[270] the Bank of England states, at page 23 of their Paper that *"our central view is that the optimum range of capital requirements is 10-14% of risk-weighted assets."* And on page 26: *"The models we have used, combined with the judgements that we have made, suggest there should be positive net benefits from increasing the minimum Tier 1 capital requirement for UK banks to 10-14% in typical risk environments."*

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[268] https://www.legislation.gov.uk/ukia/2013/1156/pdfs/ukia_20131156_en.pdf

[269] Ibid.

[270] https://www.bankofengland.co.uk/-/media/boe/files/financial-stability-paper/2015/measuring-the-macroeconomic-costs-and-benefits-of.pdf

Solvency II – Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (Recast)[271] was implemented in the UK by The Solvency 2 Regulations 2015 (S.I. 2015/575)[272]

The Solvency II Directive re-established the framework for the prudential supervision of insurance undertakings and reinsurance undertakings in the EU. It replaced a number of previous directives[273] collectively known as "Solvency I". Previous EU insurance directives aimed to create an effective single market for insurance whilst increasing consumer protection. However, EU minimum standards were not risk-sensitive, and did not incentivise pro-active management of risk, which led member states to supplement them with their own domestic regimes (e.g. the Individual Capital Adequacy Standards or "ICAS" regime in the UK). This resulted in a "patchwork" of regulatory requirements for insurers across the EU hampering, in the view of the EU, the functioning of the single market. The Solvency II Directive aimed to build on previous insurance directives to create risk-sensitive, harmonised requirements for EU insurers.

Responsibility for implementation in the UK was split with HMT creating the regulatory structure and the PRA and FCA regulating insurance and reinsurance undertakings. HMT implemented provisions of the Solvency II Directive for which it is responsible through the Financial Services and Markets Act 2000 (FSMA)[274]. The PRA and FCA implemented the provisions of the Solvency II Directive for which they were responsible by means of rules made under FSMA. Together with FSMA, S.I. 2015/575 established the regulatory system for implementing the Solvency II Directive. It imposed duties on the PRA and FCA and gave insurance undertakings and reinsurance undertakings the right to apply to the PRA for specified approvals relating to the Solvency II Directive (for example, the right to modify their risk assessment process).

According to section 10 of the explanatory memorandum for S.I. 2015/575[275] *"the impact of the Solvency 2 Directive on business is approximately £2.7 billion in one-off implementation costs and £200 million ongoing yearly costs (for the next ten years)."* (£256m per annum in 2023 prices). However, the memorandum then states: "*to place the costs on business in context, the UK insurance industry is estimated to receive approximately £188 billion in*

[271] https://www.legislation.gov.uk/eudr/2009/138

[272] https://www.legislation.gov.uk/uksi/2015/575

[273] The adoption of the first non-life insurance Directive (Directive 73/239/EEC) in 1973 and of the first life assurance directive (Directive 79/267/EEC) six years later were the first steps towards harmonisation of insurance supervision in the then EEC. Implementation of the Directives resulted in harmonised solvency requirements across the EEC. The supervisory regime Solvency I was perfected by the second and third Directives (Directives 88/357/EEC, 90/619/EEC, 92/49/EEC and 92/96/EEC), which *inter alia* implemented the freedom to provide services in the insurance sector.

[274] c.8 https://www.legislation.gov.uk/ukpga/2000/8

[275] https://www.legislation.gov.uk/uksi/2015/575/memorandum/contents

written insurance premium annually. There are also expected benefits to the UK insurance sector from the Solvency 2 Directive, which are estimated at almost £500 million per year (for the next 10 years). Monetised benefits include a reduced cost of capital, improved efficiency of risk and capital management and additional investment income. The Treasury cost/benefit analysis for the Solvency 2 Directive estimates a net cost of approximately £33 million per year (for the next 10 years). However, there will be additional benefits which are not possible to monetise. Such benefits include improvements in insurance firms' risk modelling and governance, increased competition leading to a more efficient insurance market for consumers and averted losses resulting from more stable insurance undertakings."

According to the Policy Exchange's 2021 *"Post Brexit Freedoms and Opportunities for the UK*" report[276], on the other hand: "*the EU's Solvency II regulations do not allow UK regulators sufficient flexibility and are not particularly well tailored to the features of the UK's insurance sector. Reform could unlock more long-term investment, such as in infrastructure."*

Yet, while there may be significant financial and administrative benefits to large insurance companies from deregulating Solvency II and returning to the UK ICAS regime alone, in this case the EU applied proportionality rather than a *"one-size-fits-all"* approach, meaning Solvency II does not apply to small businesses. According to section 11 of the explanatory memorandum for S.I. 2015/575[277] "*insurance undertakings with less than €5 million yearly premium income or insurance obligations (liabilities) of less than €25m are excluded from the scope of the Solvency 2 Directive. This means that undertakings that employ less than 20 people are very likely to be excluded from the scope of the directive."* The very smallest firms with premium income less than €5m and technical provisions (liabilities plus a risk margin calculated according to prescribed rules) of less than €25m are exempted by *de minimis* criteria.

Finally, despite compliance costs being inevitably passed on to consumers, insurance providers increasing their capital requirements benefits minimises risk for consumers, which includes small businesses: there is a greater likelihood that insurance providers will be able to meet their liabilities as they fall due and avoid bankruptcy in a crisis. Further Solvency II did not introduce any exemptions from general competition law. Nor did it impose minimum contract periods or notice periods and so did not directly affect the cost to consumers of switching between products.

10.2 Agriculture Related Regulation

Nitrates – Council Directive of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (91/676/EEC)[278] was implemented in the UK by The

[276] Ibid.

[277] Ibid.

[278] https://www.legislation.gov.uk/eudr/1991/676

Protection of Water Against Agricultural Nitrate Pollution (England and Wales) Regulations 1996 (S.I. 1996/888)[279]. The amendments to S.I. 1996/888 were then consolidated by The Nitrate Pollution Prevention Regulations 2015 (S.I. 2015/668)[280].

Directive 91/676 aims to reduce water pollution from nitrates used for agricultural purposes and to prevent any further pollution. It does so by identifying land that drains to nitrate-polluted waters, and by requiring farmers on that land to adopt farming practices designed to reduce the risk of causing such pollution. The practices include:

- carefully planning when and how to use manufactured and organic fertilisers (including manures), and matching the amount of fertiliser applied to how much each crop needs;
- avoiding using manufactured fertilisers and the most polluting organic manures at high-risk times or in high risk places – broadly, in autumn and early winter and, for example, when the ground is waterlogged or too close to watercourses;
- safely storing any manures that cannot be used in autumn and early winter until conditions are right for their use;
- limiting the total amount of manure used on farm, and ensuring it is carefully applied when it is used;
- keeping records of what has been done on farm, so that compliance can be checked efficiently.

There is no impact assessment published with the implementing SI so there is no data on costs but the Summary of Responses to the Defra Consultation on The Implementation of the Nitrates Directive in England 2013-2016[281] identifies numerous costs that were flagged by farmers in their consultation responses in 2012, prior to S.I. 2015/668 being made. Particular concerns were expressed by farmers over plans to make cover crops[282] obligatory across England, and changing fertiliser spreading periods. However, the regulation affects both crop (arable) farmers and livestock farmers.

Arguably the Environment Agency, who are able to impose fines as sanctions on farmers for regulatory non-compliance, have engaged in micro-management. The consultation responses appear to show that this level of intervention was not welcomed by many farmers.

Further, given the very recent electoral success of the Farmer-citizen movement (*BoerBurgerBeweging* or BBB) in the Netherlands[283], Defra and the Environment Agency should take note. The BBB was set up in 2019 in the wake of widespread farmers' protests to EU-imposed nitrogen targets

[279] https://www.legislation.gov.uk/uksi/1996/888/made

[280] https://www.legislation.gov.uk/uksi/2015/668

[281] https://www.legislation.gov.uk/uksi/2015/668/pdfs/uksiod_20150668_en.pdf

[282] crops, such as winter rye or clover, planted between periods of regular crop production to prevent soil erosion and provide humus or nitrogen

[283] BBC – Farmers’ protest party win shock Dutch vote victory – 16th March 2023 https://www.bbc.co.uk/news/world-europe-64967513

that have been devastating for Dutch farmers. Nitrogen (like phosphates which had been previously targeted) is critical for agriculture and is required for plant, animal and soil health. While the Netherlands, an extremely agriculturally intensive country might be an exceptional case, the situation in the Netherlands epitomises the level of intransigence, refusal to concede and inflexibility of the EU. As reported in Brussels Report: *"a third of the electorate voted for anti-establishment parties that radically oppose the kind of technocracy that is often emanating from the EU, with its nitrogen measures, massive subsidies to shut down farms, and prohibitively expensive new energy requirements for housing…"*[284]

The Independent Business Network does not believe this is a deregulatory priority for HMG or would create considerable cost savings for farming businesses. However, the BBB in the Netherlands succeeded in winning 15 of the Dutch Senate's seats with almost 20% of the vote. On a smaller scale, perhaps, this issue has the clear potential to spread to the UK, if HMG were to simply to copy and paste punitive EU environmental targets, without having regard to the particular circumstances and needs of British agriculture.

Transmissible Spongiform Encephalopathy (TSE) Control – The Transmissible Spongiform Encephalopathies (England) Regulations 2018 (S.I. 2018/731)[285] amends arrangements for administering and enforcing Regulation (EC) No 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies[286].

The key elements of the SI are:

- Transferring the cost of taking samples for bovine spongiform encephalopathy (BSE) testing from fallen cattle (animals which die, or are killed, other than for human consumption) aged over 48 months from the taxpayer to industry. The intended effect is a more equitable sharing of the cost of BSE surveillance between the farmer and the taxpayer

- Amending the provisions in English TSE legislation for the payment of compensation for sheep and goats killed as TSE suspects or following the confirmation of classical scrapie. This is intended to give a fairer balance of cost between the farmer and the taxpayer

- To remove the legal requirement for a Required Method of Operation (RMOP) signed by the Secretary of State for cattle slaughtered at abattoirs which require BSE testing. Instead, abattoir operators would be expected to agree a Standard Operating Procedure (SOP) with the Food Standards Agency FSA which would mirror the RMOP

284 https://www.brusselsreport.eu/2023/03/17/the-victory-of-the-dutch-farmers-party-is-a-warning-signal-to-the-eu/

285 https://www.legislation.gov.uk/uksi/2018/731

286 https://www.legislation.gov.uk/eur/2001/999

- A statutory mechanism by which food business operators can apply for approval to use an alternative safe method (other than carcase splitting) of spinal cord removal for small ruminants aged over 12 months of age

- Seven changes to the EU TSE Regulation since 2010 that relax controls to reflect the worldwide decline in BSE and the reduction in the risk posed by the disease. This is intended to enable the English feed, farming and animal by-products industries to trade on the same terms as their counterparts in other EU Member States

While the measures in the SI reflecting the lower incidence of BSE are welcome, we are concerned about the transfer of costs from the state to farmers, who are overwhelmingly small businesses. According to section 10 of the explanatory memorandum for S.I. 2018/731[287] "*the proposal to transfer from Government to industry the cost of sampling fallen cattle aged over 48 months (see 7.1(i) above) is expected to cost the cattle farming industry in England approximately £473,000 per year.*" (This amounts to £570,000 in 2023 prices). The memorandum continues: *"…however, we have calculated that the average cost per holding is expected to be around £30.00 per year, and is likely to be lower for small holdings. No additional costs are expected for sampling sites. The government will still bear the costs of carrying out the testing of the samples taken...*"

Despite the low costs for small holding farmers, considering the economic pressures for small farmers, we believe HMG should exempt small holding farmers from sampling costs or reimburse farmers accordingly. However, we do not think this is a deregulatory priority given the small bosts involved.

Plant Passports: Regulation (EU) 2016/2031 of the European Parliament of the Council of 26 October 2016 on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC[288] was implemented in the UK by The Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 (S.I. 2019/1517)[289]

Regulation (EU) 2016/2031 established controls and restrictions including plant passports applying to the import of certain plants, plant pests and other material from third countries (countries which are not EU member states), and the internal movement of these within and between EU member states. The objective was to strengthen the plant health regime and to protect the environment from the spread of harmful pests and diseases. From December 2019 professional sellers of plants, off and online, including importers and exporters of plants have been required to issue plant

[287] https://www.legislation.gov.uk/uksi/2018/731/memorandum/contents
[288] https://www.legislation.gov.uk/eur/2016/2031
[289] https://www.legislation.gov.uk/uksi/2019/1517

passports, and also need to be registered with authorities. Randomised inspections of registered plant sellers take place. This also enables official controls relating to the deliberate release into the environment of genetically modified organisms ("GMOs") for the purposes of food and feed production, to be carried out in accordance with the EU Official Controls Regulation[290].

According to section 10 of the explanatory memorandum for S.I. 2019/1517[291] *"there has been no formal consultation on this instrument as it only makes minor changes to current practice with a total impact to all businesses of less than £3m per year. With regard to GMOs, there has been no formal consultation on this instrument as it makes no significant changes to current official control practices."* (£3m per year equates to £3.5m per year at 2023 prices). At section 12 of the memorandum: *"The impact on businesses is estimated at an overall cost of £2.8m per year on average over a 10-year period, which falls below the £5m per year threshold which would require the need for a full Impact Assessment. It reflects costs to businesses expected to need to familiarise themselves with criminal sanctions and the costs of additional plant passport requirements..."*

With regard to small businesses, section 13 of the memorandum[292] states: *"familiarisation costs are expected to be low (up to £34 per firm, based on £17 per hour cost). As such, although costs may affect small businesses relatively more, the costs are still small per business. Additionally, the costs of additional plant passports as a result of the new more tightly defined close proximity threshold are expected to mainly affect the larger-scale businesses in the sector. The legislation applies equally to all businesses importing controlled plant health material, including small businesses. The risk of introducing harmful organisms is not mitigated by the size of the business."*

The requirement for small businesses selling plants online or elsewhere to issue plant passports is burdonsome. The information that the legislation requires to appear on the EU Plant Passport includes:

- An EU ("GB/NI" following regulation 2 of EU Exit S.I. 2021/79[293]) logo on the top left corner of the passport. Either in colour or black and white

- The written word "Plant Passport" in at least English and most likely also in other European languages. It needs to be placed in the upper-right corner;
- the letter "A" followed by the botanical name of the plant. The name of the variation is optional

[290] Regulation (EU) 2017/625 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products https://www.legislation.gov.uk/eur/2017/625/contents

[291] https://www.legislation.gov.uk/uksi/2019/1517/pdfs/uksiem_20191517_en.pdf

[292] Ibid.

[293] https://www.legislation.gov.uk/uksi/2021/79/regulation/2/made

- the letter “B” followed by the two-letter country code for the Member State hyphen the and the registration number of the professional operator

- the letter “C” followed by the traceability code of the plant. This may be in addition to a barcode, data matrix or chip)

- the letter “D” followed by the two-letter country code of the country of origin and, where applicable, the name of the third country.

We would argue that where plants are sold online this information could be simply published online saving businesses the cost of replicating the information in printed label format. However, we do not think this is a deregulatory priority given the small costs involved.

We do, however, consider that the application of the EU precautionary principle[294] weighs heavily on many areas. This includes the abandonment of genetically modified (GM) plants and crops in which the UK has a potential to lead as a global competitor. We believe this is an entirely disproportionate and a protectionist, anti-science measure, despite GM foods having been applied widely overseas for decades and the fact that animal feed in the UK has been GM for decades. **We believe, if the UK took a less rigorous application to being overcautious and abandoned the EU precautionary principle, crops and plants could be designed to have higher yields, use less water and less chemicals, thus becoming more ecologically friendly.**

10.3 Driver Licensing Regulation

Driver Licensing: Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences[295] was implemented in the UK by The Motor Vehicles (Driving Licences) (Amendment) Regulations 2012 (S.I. 2012/977)[296] which amended: The Road Traffic Act 1988[297]; The Road Safety Act 2006[298]; and The Motor Vehicles (Driving Licences) Regulations 1999 (S.I. 1999/2864)[299]

Directive 2006/126/EC made further changes to the driver licensing and testing regime, so as to achieve greater harmonisation across the EU. The changes impacted on:

- definitions of vehicle sub-categories

294 Consolidated Version of the Treaty on the Functioning of the European Union, Part Three – Union Policies and Internal Actions, Tittle XX – Environment – Article 191 https://www.legislation.gov.uk/eut/teec/article/191

295 https://www.legislation.gov.uk/eudr/2006/126/contents

296 https://www.legislation.gov.uk/uksi/2012/977

297 c.52 https://www.legislation.gov.uk/ukpga/1988/52

298 c.49 https://www.legislation.gov.uk/ukpga/2006/49

299 https://www.legislation.gov.uk/uksi/1999/2864/contents/made

- progressive access to larger categories of motorbike

- the rules on the duration of the administrative validity period (AVP) of a licence

- mandatory medical checks on the renewal of a Group 2 (bus or lorry) licence

- minimum standards for driving examiners

- steps to ensure that no one can at any one time possess more than one licence issued by an EEA state and that where a licence has been cancelled or withdrawn in an EEA state where the holder resided, other EEA states cannot issue a licence to that person

According to the EM for S.I. 2012/977[300], at section 11.1, "*The cost to business is the cost to drivers, either employed of self-employed, to complete a self-declaration at a total estimated cost of £1.6 million in total over a period of 10 years."* £1.6 million over 10 years equates to £213,000 per annum in 2023 preices. However, there are greater costs for drivers than simply self-declarations. "*Mandatory medical checks on the renewal of a Group 2 (bus or lorry) licence"* and "*minimum standards for driving examiners"* imposes costs on businesses.

While we expect there will be low political will to reform the legislation, we would urge HMG to consider how costs for self-employed and small business drivers can be reduced, now the UK is no longer part of the EU and thus able to diverge from the directive.

Driver Certificates of Professional Competence – Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, amending Council Regulation (EEC) No 3820/85[301] was implemented in the UK by The Vehicle Drivers (Certificates of Professional Competence) Regulations 2007 (S.I. 2007/605)[302]. The Directive introduced a Driver Certificate of Professional Competence (CPC) across the EU. With some exceptions, all professional drivers of lorries and buses must pass an initial CPC test, valid for five years and then undergo 35 hours of periodic training every five years.

The explanatory memorandum incorporating an impact assessment for S.I. 2007/605[303] calculated the savings potential of implementing the legislation on the basis of road traffic deaths avoided, which was valued as £204m.

[300] https://www.legislation.gov.uk/uksi/2012/977/pdfs/uksiem_20120977_en.pdf
[301] https://www.legislation.gov.uk/eudr/2003/59
[302] https://www.legislation.gov.uk/uksi/2007/605
[303] https://www.legislation.gov.uk/uksi/2007/605/memorandum/contents

At the time, two options on an either/ or basis were presented by the EU:

- Option 1 involved EU imposed regulation of both training and testing. The regulated training must cover the syllabus and incluide a minimum period of 280 hours of initial training and is subject to other conditions, followed by a test. The cost of that would be £349m (at 2007 prices); or

- Option 2 (which was opted for by HMG) involved just the assessment of competence, involving tests totalling six hours. A four-hour, two-part theoretical test, of multiple-choice and/or direct answer questions and case studies, plus a two-hour, two-part practical test, of 90 minutes driving and 30 minutes vehicle safety/documentation checks. The cost of that would be £28m (at 2007 prices).

The rules apply to all professional drivers, whether they drive as self-employed, contractors or salaried employees, and whether they drive on their own account or for hire or reward. The explanatory memorandum incorporating the IA for S.I. 2007/605[304] found, at section 6.2: *"the Small Business Federation responded to the November 2005 consultation. They acknowledged that added burdens would arise whichever of the two options was chosen. However, they recognised that the Directive had been agreed at European level and agreed that Option 2 would mean less training regulation on small business."*

Again, we realise this implemented directive might be difficult for HMG politically to revisit, however, we would urge HMG to consider how costs for self-employed and small business drivers can be reduced, now the UK is no longer part of the EU and thus able to diverge from the directive.

10.4 Consumer Product Safety Standards Regulation

Cosmetic Products – Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products[305] applies to the cross-border trade of cosmetic products.

The EU Exit SI, The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696)[306] transposes the same obligations existing under EU law onto UK administrative bodies. It also means that from 1st January 2021 UK businesses that bring cosmetic products into GB from an EU Member State will become 'importers' where they were previously 'distributors'. The importer of a cosmetic product, whether from the EU or another country, becomes a "Responsible Person" applying the terms of Regulation (EC) No 1223/2009 by default (although the Responsible Person can be assigned to an agent). This means GB importers must ensure the product is safe for human health. It is the duty of the Responsible Person to notify the authorities of new cosmetic products

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[304] https://www.legislation.gov.uk/uksi/2007/605

[305] https://www.legislation.gov.uk/eur/2009/1223

[306] https://www.legislation.gov.uk/uksi/2019/696

being placed in GB and to ensure compliance with the Regulation. While some of the requirements may not be directly undertaken by the Responsible Person, such as the safety assessment, it is their responsibility to ensure that all the requirements of the Regulation are fulfilled. If a Responsible Person has reason to believe that a cosmetic product is non-compliant, it is the duty of the Responsible Person to take corrective actions to bring the product back into compliance, withdraw it from the market or undertake a product recall.

The impact assessment attached to S.I. 2019/696[307] calculates the costs to businesses at *"around £19.6m"* (£23.25m in 2023 prices) noting that this will affect "*around 241,000 businesses*" with a familiarisation time for economic operators calculated *"based on a corporate manager or director taking three hours to familiarise themselves with the new legislation".* The reality is likely to be far more costly for British businesses, however, including ongoing costs, given the change with UK importers becoming Responsible Persons where they were not previously.

Further, section 13.3 of the explanatory memorandum for S.I. 2019/696[308] states: "*the legal requirements on the industry do not differentiate between businesses in terms of their size, they are dependent on the type and nature of product being produced and placed on the market and therefore we are unable to take any mitigating actions to reduce burdens on small business."*

S.I. 2019/696 was made envisaging a "no deal" Brexit scenario, but there is likely to be duplication of responsibility at unnecessary cost to British importers, if a foreign manufacturer or distributor has already signed-off on the safety of the product as a "Responsible Person", but GB importers are nonetheless required do the same. We believe this should be a matter for bilateral UK-third party trade agreements or the UK-EU Trade and Cooperation Agreement (if not already addressed in the Withdrawal Agreement and/ or third-country bilaterals).

Restriction of Hazardous Substances in Electrical and Electronic Equipment: Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment[309] was implemented in the UK by The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012 (S.I. 2012/3032)[310]

Directive 2011/65/EU imposes harmonised restrictions on the use of certain listed hazardous substances in 11 categories of electrical and electronic equipment (EEE) (8/11 of which were already subject to Directive 2002/95/EC[311]). The Directive also severely restricts the use of six

[307] https://www.legislation.gov.uk/ukia/2019/108/pdfs/ukia_20190108_en.pdf
[308] https://www.legislation.gov.uk/uksi/2019/696/memorandum/contents
[309] https://www.legislation.gov.uk/eudr/2011/65
[310] https://www.legislation.gov.uk/uksi/2012/3032/
[311] https://www.legislation.gov.uk/eudr/2002/95/contents

hazardous substances (lead, cadmium, mercury, hexavalent chromium, polybrominated biphenyls and polybrominated diphenyl ethers) in the manufacture of EEE falling within 11 broad categories. The maximum concentration values for the use of these substances are 0.01% by weight in homogeneous materials for cadmium and 0.1% by weight in homogeneous materials for the other five substances.

According to the impact assessment for S.I. 2012/3032[312] the best estimate of costs for businesses of Directive 2011/65/EU was £400m (£547m in 2023 prices). This was calculated as the cost to UK manufacturers of: medical devices; monitoring and controlling products with an electric and electronic function; modifying product designs and replacing hazardous substances. Much of these costs were one-off or transitional costs: R&D; approvals expenditure for medical devices; CE mark costs; and capital equipment replacement. Reoccurring costs included: compliance costs; operating costs (energy, carbon, lead solder replacement metal costs); enforcement; and exemption applications. BIS (now BEIS) ran an online public consultation during the period 12 April to 6 July 2012. Interested parties likely to be directly affected by the implementing SI were invited to comment on the proposals. These included businesses, individuals and a range of representative bodies. The consultation response[313], indicates that *"most concern was expressed in the area of costs of the newly introduced conformity assessment procedures. It was felt by some that the cost of additional documentation and retention of technical files etc would be higher than assumed in the impact assessment. Some also noted that the draft impact assessment did not reflect the costs associated with the Article 2.2 issue."*[314]

According to section 11.2 of the explanatory memorandum for S.I. 2012/3032[315] *"as a single market European measure (obligating universal application of the Directive by all member states), and one applying to environmental protection and human health, it is not possible or appropriate to make adaptations or minimise the impact of the requirements on firms employing up to 20 people. The approach taken to small businesses is therefore no different to the rest of the market."*

We recognised there is low political will to be seen to be reducing environmental standards on waste disposal. Having said that, one of the aims of the RoHS Directive was to protect and promote a ‘level playing field’ for the EU Internal Market in EEE. EEE production, however, is characterised by a large number of businesses both domestically and internationally and within the broad category of EEE there are a large number of separate markets each of which can have quite different

[312] https://www.legislation.gov.uk/uksi/2012/3032/impacts

[313] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/255813/bis-12-1005-government-response-implementation-restriction-hazardous-substances.pdf

[314] Note that article 2.2 of the Directive, which was assessed to have monetised costs of £51m according to the impact assessment for S.I. 2012/3032 – has since been revoked.

[315] https://www.legislation.gov.uk/uksi/2012/3032/memorandum/contents

characteristics. As pointed out at paragraph 174 of the impact assessment for S.I. 2012/3032[316] *"there may… be an issue in relation to UK manufacturers selling to non-EU countries where there are competitors who do not sell in the EU. Category 8 and 9 equipment is generally produced in relatively small numbers, and so it would be costly to produce more than one version of a model for the world market. For example, UK manufacturers will sell the same products in the EU, the USA and in Asia. Some US and Asian companies not exporting to Europe will not need to produce RoHS compliant versions. When this situation arises it could place UK manufacturers at a competitive disadvantage in US and Asian markets as they will have a lower cost base."* Thus, there is scope for regulatory divergence for UK manufacturers exporting to destinations outside the EU, which have different EEE waste disposal standards to the EU.

Safety of Toys: Directive 2009/48/EC of the European Parliament and of the Council of 18th June 2009 on the safety of toys[317] was implemented in the UK by The Toys (Safety) Regulations 2011 (S.I. 2011/1881)[318].

Directive 2009/48/EC has two overarching aims: the harmonisation of the requirements for the marketing of toys on the EU market and the safety of toys for use in play by children under the age of 14. It is a fundamental recast of a previous 1988 EC Directive[319]. The major areas of change between the 1988 and 2009 Directives have been designed to strengthen the safety provisions relating to toys and to align the 2009 Directive to Decision No 768/2008/EC on a common framework for the marketing of products. The 2009 Directive includes new safety provisions: chemical requirements, warnings on toys, choking and suffocation risks (including as a result of the association of toys with food), safety assessments and CE marking. The 2009 Directive brought in new obligations for businesses, the use of new definitions in common with other EU harmonisation legislation, new requirements for market surveillance and requirements for the notification of conformity assessment bodies (known as Notified Bodies) to the European Commission and EU member states.

According to section 10 of the explanatory memorandum for S.I. 2011/1881[320] *"the impact on business, charities or voluntary bodies is expected to be average annual costs of £11m and best estimate transitional costs of £66m over a 2-year period."* (This translates to £15m average annual costs in 2023 prices).

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316 https://www.legislation.gov.uk/uksi/2012/3032/impacts

317 https://www.legislation.gov.uk/eudr/2009/48/

318 https://www.legislation.gov.uk/uksi/2011/1881/

319 Council Directive 88/378/EEC of 3 May 1988 on the approximation of the laws of the Member States concerning the safety of toys https://www.legislation.gov.uk/eudr/1988/378/

320 https://www.legislation.gov.uk/uksi/2011/1881/memorandum/contents

The impact assessment for S.I. 2011/1881[321] states, at paragraph 31, "*gross value added of the toy manufacturing industry in the UK was approximately £233 million in 2009, which amounted to 0.17% of total UK manufacturing GVA. In addition, the UK toy manufacturing industry has a total turnover of £550 million (0.1% of total manufacturing turnover). This comprises of approximately 565 businesses which employ roughly 6,000 people. The market structure of the UK toy manufacturing industry is almost entirely made up of Small Medium Sized Enterprise (SMEs), 86% of its enterprises having fewer than 9 employees.*" At paragraph 49 of the impact assessment, *"although consumers are likely to be the main beneficiaries of the revision of the Directive, it is unclear to what extent the increase in costs will be passed on to them. Manufacturers pointed to the fact that retailers have target price ranges and toys which do not fall within the price range would not be stocked, or the manufacturer would have to accept a cut in their margin. Alternatively, retailers may have to adjust their target price ranges due to the increased costs, which would then mean consumers would bear the costs of the Directive. The Commission estimate the degree of pass-through to result in SMEs increasing their prices by 5%."*

Given that the UK has a sizeable toy manufacturing industry and, as outlined in the impact assessment, 70% of toy imports come from outside the EU, the UK could diverge from EU Directive 2009/48/EC post Brexit, and set its own toy safety standards compliance regime, at a lower potential cost for British manufacturers and importers, while maintaining high safety standards. At paragraph 32 of the impact assessment: "*in terms of trade of toys, the UK imported £1.5 billion worth of toys in 2006, 70% of which came from outside the European Union. According to the Commission, at EU level a large majority of the toys sold are imported and the greatest proportion (up to 90%) comes from China. In addition, industry has estimated that sales were about £2.7bn in 2009.*"

10.5 Public Procurement Regulation

Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC[322] was implemented in the UK by: The Public Contracts Regulations 2015 (S.I. 2015/102); and The Public Procurement (Amendments, Repeals and Revocations) Regulations 2016 (S.I. 2016/275)[323]

Public procurement plays an very significant role in the economy of the EU. In the EU, public authorities spend around 14% of GDP (around €2 trillion per year)[324] on supplies, works and services. EU public procurement directives regulate procurement by public authorities, and have been modified several times since their inception in 1971. By guaranteeing

[321] https://www.legislation.gov.uk/ukia/2011/381/pdfs/ukia_20110381_en.pdf

[322] https://www.legislation.gov.uk/eudr/2014/24

[323] https://www.legislation.gov.uk/uksi/2015/102

[324] https://single-market-economy.ec.europa.eu/single-market/public-procurement_en

transparent and non-discriminatory procedures, these directives principally aim to ensure that economic operators from across the EU Single Market benefit in competing for public contracts. S.I. 2015/102 implements Directive 2014/24/EU which provides modernised rules for the procurement of goods, services and works above certain thresholds by public authorities. S.I. 2015/102 also re-enacts the relevant provisions of the Remedies Directives (Directive 89/665/EEC[325] as amended by Directive 2007/66/EC[326]), on remedies and review procedures for public procurement, as implemented by the UK in the Public Contracts Regulations 2009 (S.I. 2009/2992)[327].

According to the impact assessment for Directive 2014/24 (when still a proposal)[328] *"between 2005 and 2009, the value of contracts awarded by UK public purchasers and utilities was some 420.44bn EUR (~£370bn). Contracting authorities and utilities purchase a wide variety of works, supplies and services and there are a large number of economic operators who would be interested in bidding for these contracts. In 2010/12, some 216,000 different economic operators supplied to central government. These include all sizes of firms, although because the thresholds for covered contracts start at about the £100,000 level, it is less likely that micro enterprises will be interested in these opportunities. Between 2006 and 2008 at the EU level, SMEs won 34% by value and 60% by number of the contracts covered by the Directives. However, the Commission's impact assessment does not give a breakdown of the cost-reductions arising from individual rule easements, so it is not possible at this stage to estimate such figures for the UK. "*

According to section 11 of the explanatory memorandum for S.I. 2015/102[329]: *"the legislation imposes procedural obligations on the public sector, not the business sector, so small businesses are not directly affected. Moreover, the modifications in this instrument set out to improve and simplify the public procurement process, which should be of general benefit to small business, and many of the modifications have been designed with the specific intention of encouraging SMEs to participate."* This, however, conflicts with the thresholds for contracts starting at £100,000 – meaning they are out-of-reach for most small businesses. While small and micro businesses might be subcontracted by principal contractors they are simply not large enough to compete for £100,000 principal contracts, however medium sized businesses may be.

While costs mainly fall on the shoulders of contracting public authority procurers, however, there are some administrative costs for tenderers. This is addressed in the impact assessment: *"one of the main aims of the new Directives is to simplify the rules. This should reduce costs for both public purchasers and economic operators alike, which is important because for low value contracts costs of awarding contracts can amount to between 18-*

[325] https://www.legislation.gov.uk/eudr/1989/665/adopted

[326] https://www.legislation.gov.uk/eudr/2007/66

[327] https://www.legislation.gov.uk/uksi/2009/2992

[328] https://www.legislation.gov.uk/uksi/2015/102/pdfs/uksiod_20150102_en.pdf

[329] https://www.legislation.gov.uk/uksi/2009/2992/memorandum/contents

29% of the value. The proposed changes include a shortening of the minimum timescales for procurement process by about one third, improved e-procurement procedures, which should facilitate cross border bidding, and a reduction in administrative requirements, such as providing that only the winning bidder needs to provide supporting documentary evidence. The Commission's impact assessment estimates that the reduced costs for SMEs from reduced administrative burdens could be as much as 60% across the EU, and it follows that this should apply similarly for the UK. However, the Commission's impact assessment does not give a breakdown of the cost-reductions arising from individual rule easements, so it is not possible at this stage to estimate such figures for the UK."

While administrative procedures may have been eased, in practice it is very difficult for SMEs to tender for public sector contracts – certain hurdles including turnover and contract size act as a barrier to approval, meaning there is very limited competitiveness in public sector procurement thus driving up public service costs borne by taxpayers and local rate (Council tax) payers. Brexit offers the UK the opportunity to deregulate further and make it simpler for SMEs to participate in a more competitive public procurement tender process.

10.6 Network and Information System Security Regulation

Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union[330] as amended by **Commission Implementing Regulation (EU) 2018/151 of 30 January 2018 laying down rules for application of Directive (EU) 2016/1148 of the European Parliament and of the Council as regards further specification of the elements to be taken into account by digital service providers for managing the risks posed to the security of network and information systems and of the parameters for determining whether an incident has a substantial impact**[331] was implemented in the UK by The Network and Information Systems Regulations 2018 (S.I. 2018/506)[332].

The goal of Directive (EU) 2016/1148, is to enhance cybersecurity across the EU. Its three sections relate to national capabilities, cross-border collaboration, and national supervision of critical sectors. It aims to ensure that essential services and selected digital service providers put in place adequate measures to improve the security of their network and information systems, with a particular focus on those services which, if disrupted, could potentially cause significant damage to the economy, society and individuals' welfare. It also aims to ensure serious incidents are promptly reported to competent authorities. In the UK the competent authority that was set up for this purpose was the National Cyber Security Centre (NCSC), part of Government Communication Headquarters (GCHQ).

[330] https://www.legislation.gov.uk/eudr/2016/1148
[331] https://www.legislation.gov.uk/eur/2018/151
[332] https://www.legislation.gov.uk/uksi/2018/506

According to section 10 of the explanatory memorandum for S.I. 2018/506[333] *"at least 432 businesses will be affected by these Regulations across the five sectors of: water; digital infrastructure; energy; health; transport and digital service providers. UK energy companies are likely to face limited extra costs, provided the Directive reporting rules are relatively flexible. Administrative costs will be incurred by businesses as they familiarise themselves with the legislation and its implications for their firm. Familiarisation cost for large essential services is estimated to be £278,601 while for medium and small businesses they are £12,544 and £1,320 respectively. The estimated total cost of operating the competent authorities is £4,104,035 per year. All associated costs borne by the competent authorities will be passed to businesses.... Organisations in the UK health sector could face limited additional costs, providing the Directive reporting rules are relatively flexible. The total set-up costs for implementing these Regulations is £23,410,341 for government, and £32,483,885 for businesses, in year 1. Annual on-going costs to businesses are £21,786,176* [~ £26.2m in 2023 prices] *(from Year 2) in the best estimate..."*

According to the impact assessment[334] the net direct cost to businesses per year of the Directive is: £20.4m. We recognise, however, that the Directive does not directly impact small businesses. As stated in the impact assessment: "*there is no direct evidence that new measures under NIS regulation will have any disproportionate impact on small businesses. With one exception (in the digital infrastructure sector), no Operator of Essential Services is small or micro business, and small and micro businesses are specifically excluded from the digital service providers aspect of the Directive. According to the Breaches Survey, average spending by small businesses in cyber security is as low as £2,600."* According to the impact assessment, for micro and small businesses there are: *"one-off transition costs £1340. Ongoing annual costs (high) £2,979. Ongoing annual costs (low) £1,179. Total present value costs over 10 years £300,000".*

Arguably, digital service providers, even if deemed "*essential*", should internally implement their own cyber security and ensure their systems are protected through market incentives and existing regulation, without additional regulations and duties to report to state authorities. However, the number of small businesses directly impacted are minimal and therefore this is not a priority area of deregulation for us.

10.7 Sale of Goods Regulation

Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees[335] was replaced by: Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects

[333] https://www.legislation.gov.uk/uksi/2018/506/memorandum/contents
[334] https://www.legislation.gov.uk/uksi/2018/506/impacts
[335] https://www.legislation.gov.uk/eudr/1999/44

concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC[336]; and Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services[337].

Directive 1999/44/EC established product guarantees for consumers by requiring traders selling consumer goods in the EU to remedy defects which existed at the time of delivery and which become apparent within two years. This directive was updated in 2011 by **Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council**[338], then repealed and replaced by Directive (EU) 2019/771 and Directive (EU) 2019/770 (together, the "new Directives"), which apply to sale of goods contracts and contracts for the supply of digital content and services concluded after 1st January 2022. These new Directives do not have legislative effect in the UK for sales by UK businesses to UK consumers but UK traders selling to consumers in EU markets have to comply with the Directives, as adopted in the applicable member states' national laws. It is not possible for UK businesses to contract out of this with consumers in EU markets by reference to English law.

The rules under Directive 1999/44/EC relate to areas such as: conformity of goods with the contract to which they relate; public statements made by the trader related to the goods; the supply of updates for digital content and services; duration of time within which the trader will be liable for non-conformity of goods and the burden of proof regarding the same; and consumer remedies regarding repair, replacement and / or reduction in price.

The Consumer Rights Act 2015 (CRA)[339] replaced the Sale of Goods Act 1979[340], the Supply of Goods and Services Act 1982[341], and Unfair Terms in Consumer Contracts Regulations 1999 (S.I. 1999/2083)[342], making some changes to rights to return faulty goods for refund, replacement or repair, and adding new rights relating to the purchase of digital content. Many of the areas covered by the new Directives are currently governed in the UK by the CRA, in similar but not identical terms, and the CRA will continue to apply to sales of such goods to UK consumers. The main differences between the application of the CRA and the new Directives is summarised as follows:

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336 https://www.legislation.gov.uk/eudr/2019/771
337 https://www.legislation.gov.uk/eudr/2019/770
338 https://www.legislation.gov.uk/eudr/2011/83
339 c.15 https://www.legislation.gov.uk/ukpga/2015/15
340 c.54 https://www.legislation.gov.uk/ukpga/1979/54/
341 c.29 https://www.legislation.gov.uk/ukpga/1982/29
342 https://www.legislation.gov.uk/uksi/1999/2083

- Conformity requirements – the new Directives expressly require that accessories, instructions and updates must be delivered with the goods. There is no such requirement in CRA.

- Fitness for purpose – reliance on seller’s skill or judgement: it does not matter under the new Directives if consumer does not rely, or it is unreasonable to rely on, the seller’s skill or judgement. The CRA states that goods do not need to be fit for purpose if this is the case.
- Reverse burden of proof – difference in duration. Under the new Directives this extends to one year from delivery. Under the CRA, six months from delivery.

- Minimum claim period – difference in duration. Under the new Directives this extends to two years from delivery. Under the CRA there is a six-year limitation period.

- Short term right to reject – there no short term right to reject goods under the Directives. The CRA conversely allows a short term right to reject for 30-day period after delivery/transfer of ownership.

While Directives (EU) 2019/771 and 2019/770 are, on balance, slightly more onerous on businesses than the domestic CRA, and the CRA consolidates and arguably simplifies the law making it easier for consumers and businesses, the CRA does impose some new burdens on businesses. For example under the CRA any statement a trader makes when a consumer is either deciding to enter into the contract or making a decision about the service after entering into the contract is now a binding contractual term. Previously such terms may only have given rise to an action in the tort of misrepresentation but now a claim may be brought for breach of contract. This means that a claimant's case will generally be easier to prove in court and expectation damages may be awarded rather than simply compensation based on the principle of *restitutio ad integrum.*

The UK's non implementation of Directives (EU) 2019/771 and 2019/770 indicates that we are already successfully diverging from EU law in this area. However, while the CRA makes changes benefiting consumers that no one can reasonably contest: for example, adding to the so-called 'grey list': a non-exhaustive range of terms which are, in most cases, likely to be considered unfair by the courts including: extortionate charges when a consumer decides to cancel a contract; allowing the trader to make decisions about the characteristics of the subject matter after the contract had been concluded; and giving the trader a mandate to vary the price after the consumer is already bound – there is also some scope to rebalance the CRA to benefit small businesses.

For example, making any statement made by a trader when a consumer is either deciding to enter into the contract or making a decision about the service after entering into the contract a binding contractual term, is likely to

be hugely onerous for small businesses, particularly when they are making sales pitches to a potential customer intended to be pre-contractual.
We also note that the CRA now governs many of the areas of Directive 2011/83/EU**,** which followed from an initial proposal by the EU in 2011[343]. Following the original proposal in 2011, the Ministry of Justice and the Department for Business, Innovation and Skills (BIS, now BEIS) published a joint response to the proposal[344]. Paragraph 105 of the HMG response called the proposal *"an unbalanced proposal which is overly complex, introduces confusion and legal uncertainty and is unclear on how it interacts with other relevant EU laws. As a result, the Government severely doubts the overall benefits and cost savings presumed by the Commission and believes a closer examination of the more significant problems hampering cross-border trade for various sectors needs to be examined separately. The UK Government stands ready to assist the Commission on this front."* However, the proposal was backed by the EU's Legal Affairs Committee in 2013, and was used to supplement Directive 2011/83/EU.

10.8 Recognition of Professional Qualifications Regulation

Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System[345] was implemented in the UK by The European Union (Recognition of Professional Qualifications) Regulations 2015 (S.I. 2015/2059)[346]

Directive 2013/55/EC restates rules for the recognition of professional qualifications enabling qualified persons from EEA states to gain access to the profession in which they are qualified and to practise the profession under the same conditions as professionals in the UK where those professionals are regulated. The EU Exit SI, The Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/312)[347] did not change the effect of the Directive and a general system for recognition where UK regulators are required to recognise EEA and Swiss qualifications which are of an equivalent standard to UK qualifications in scope, content and level continues.

According to the impact assessment for S.I. 2015/2059[348] *"the main costs of the amendments are likely to be in the form of higher administrative costs for*

343 Proposal for a Regulation of The European Parliament and of the Council on a Common European Sales Law, Brussels, 11.10.2011 COM (2011) 635 final https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0635:FIN:en:PDF

344 https://consult.justice.gov.uk/digital-communications/common-european-sales-law/results/cesl-government-response.pdf

345 https://www.legislation.gov.uk/eudr/2013/55

346 https://www.legislation.gov.uk/uksi/2015/2059

347 https://www.legislation.gov.uk/uksi/2019/312

348 https://www.legislation.gov.uk/uksi/2015/2059/impacts

Competent Authorities.... the amendments reduce the burdens on professionals and provide them with greater access to other member states' labour markets. Professionals should directly benefit from the greater freedom to move between member states. The amendments should also enable better matching of services with demand help address labour market skills gaps and bring benefits to businesses. Greater mobility may also foster greater competition in the provision of services leading, over time, to innovation and better market outcomes for consumers and businesses in the form of lower prices and higher quality services."

The concern of The Independent Business Network is that while the implemented Directive undoubtedly works well to fill genuine labour gaps and some sectors, such as agricultural sector are facing low skilled labour shortages, it does little to assist UK-based professionals and sole traders. Small British businesses can be easily undercut by imported cheaper skilled labour. While the extent of this effect has been debated, it has certainly had an effect. A 2015 Bank of England study[349] found a negative impact on the wages of those in the lower skilled services sector employing millions of employees and small business contractors. Meanwhile, a report by the Resolution Foundation[350] found that immigration over the period 2009-2016 *"resulted in wages for those in skilled trades occupations* [electricians, plumbers and bricklayers] *being 2.1% lower"* (at pages 16-17 of their report). The small but appreciable reduction in wages of course does not account for the numbers of small business contract opportunities lost to competitors from overseas.

10.9 Passenger Ship Safety Regulation

Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009 on safety rules and standards for passenger ships (Recast)[351] as amended by: **Commission Directive 2010/36/EU of 1 June 2010 amending Directive 2009/45/EC of the European Parliament and of the Council on safety rules and standards for passenger ships[352]; Commission Directive (EU) 2016/844 of 27 May 2016 amending Directive 2009/45/EC of the European Parliament and of the Council on safety rules and standards for passenger ships[353];** and **Directive (EU) 2017/2108 of the European Parliament and of the Council of 15 November 2017 amending Directive 2009/45/EC on safety rules and standards for passenger ships[354]**

349 https://www.telegraph.co.uk/news/politics/12063052/Mass-migration-driving-down-wages-offered-to-British-jobseekers.html

350 Resolution Foundation: "*A brave new world – How reduced migration could affect earnings, employment and the labour market*" by Stephen Clarke, August 2016 https://www.resolutionfoundation.org/app/uploads/2016/08/A-brave-new-world.pdf

351 https://www.legislation.gov.uk/eudr/2009/45

352 https://www.legislation.gov.uk/eudr/2010/36

353 https://www.legislation.gov.uk/eudr/2016/844

354 https://www.legislation.gov.uk/eudr/2017/2108

Directive 2009/45/EC was implemented in the UK by The Merchant Shipping (Passenger Ships on Domestic Voyages) (Amendment) Regulations 2012 (S.I. 2012/2636)[355], which was subsequently amended by The Merchant Shipping (Safety Rules and Standards for Passenger Ships) (Miscellaneous Amendments) Regulations 2018 (S.I. 2018/53)[356] and The Merchant Shipping (Passenger Ships on Domestic Voyages) (Miscellaneous Amendment) Regulations 2020 (S.I. 2020/1222)[357].

Directive 2009/45/EC, as amended, provided improved and updated minimum safety rules and standards for seagoing domestic passenger ships on domestic (non-international) voyages and ensured, through statutory survey, certification and inspection that those standards are underpinned and maintained on such ships operating in the domestic waters of EU member states. The Directive applies to "new" ships (built after 1998) of any length, and *"existing ships"* of 24 or more metres in length, constructed of *"steel or equivalent".* The EU first introduced standards for passenger ships through Council Directive 1998/18/EC on safety rules and standards for passenger ships[358] (the 1998 Directive). The 1998 Directive, and its subsequent amendments, first introduced new EU categories of passenger ship classes A, B, C or D, based upon the corresponding sea areas where they operate. The safety standards applied by the 1998 Directive are based on those developed for passenger ships on international voyages, by the International Maritime Organization (IMO), and adopted through several international Conventions and Codes. Those standards were applied by the 1998 Directive, to varying degrees depending on the level of risk presented by the sea area in which a given passenger ship operates, its age and other factors. Sea area "A" is farthest from land. It consequently carries the highest safety risks and normally attracts the full international safety standards. Area D is nearest to land, has the lowest risks and consequently attracts less onerous adaptations of the international standards. The standards for areas B and C are at intermediate levels.

According to the impact assessment for S.I. 2012/2636[359] "*there will be additional costs incurred by the owners of UK ships already in operation that are affected by the Regulations, through having to familiarise themselves and comply with the new safety standards which the Regulations introduce. Based on the available evidence, these costs are estimated at approximately £0.6-0.9 million in 2012 and approximately £8,000 per year thereafter.* [£10,650 in 2023 prices] *However, these estimates are based on a partial understanding of the likely equipment upgrade costs at this present moment, which means they could be underestimates... There will be additional costs related to the regulatory requirements upon UK ships constructed on or after 1 January 2012. Due to the various economic and commercial factors that affect vessel design and construction costs at any given point in time, it has not been possible to estimate the size of these costs at this stage.*"

[355] https://www.legislation.gov.uk/uksi/2012/2636
[356] https://www.legislation.gov.uk/uksi/2018/53
[357] https://www.legislation.gov.uk/uksi/2000/2687
[358] https://www.legislation.gov.uk/eudr/1998/18
[359] https://www.legislation.gov.uk/ukia/2012/2026/pdfs/ukia_20122026_en.pdf

According to the explanatory memorandum for S.I. 2018/53 *"as the amended requirements are limited in impact, with estimated annual costs of less than £1m, this transposition was deemed as Fast Track, and a Regulatory Triage Assessment (RTA) was completed in December 2016. The RTA estimated an expected cost of £234,491 in its most expensive year from the quantifiable costs imposed by the directive as a worst-case scenario. The cost over a 10-year period is not expected to be greater than £450,000. The non-monetised costs are not expected to be larger than £500,000, because many of these are either negligible or only applicable to ships constructed on or after 1 January 2018".*

There appears to be minimal consultation feedback to the Government consultations both for S.I.s 2012/2636 and 2018/53, probably indicating a low level of concern within the industry. That said, with the UK outside the EU there is scope for regulatory cost exemptions or Government subsidies to break down barriers to entry by covering regulatory costs for small businesses owning or planning to acquire in-scope passenger ships affected by Directive 2009/45/EC, as implemented and amended.

We also believe the UK is still bound by **Directive 2010/65/EU of the European Parliament and of the Council of 20 October 2010 on reporting formalities for ships arriving in and/or departing from ports of the Member States and repealing Directive 2002/6/EC[360].**

Directive 2010/65/EU led to the introduction of the UK's National Maritime Single Window (NMSW)[361] in 2016, which continues today to oblige ships to pass on information to port authorities, as described in Section A of the Annex of 2010/65/EU as part of the Consolidated European Reporting System (CERS). It is unclear whether this is still appropriate or necessary, or requires modifying now that the UK is no longer in the EU.

Regulation (EU) 2019/1239 of the European Parliament and of the Council of 20 June 2019 establishing a European Maritime Single Window environment and repealing Directive 2010/65/EU[362] replaced Directive 2010/65/EU, but the latter is not repealed by Regulation (EU) 2019/1239 until 15 August 2025, until which time Directive 2010/65/EU still applies.

10.10 Equal Treatment Regulation

The Independent Business Network fully endorses the principles of equality and non-discrimination, but believes government measures to tackle discrimination should not impose unreasonable costs on businesses, impacting economic growth.

[360] https://www.legislation.gov.uk/eudr/2010/65
[361] https://maritime.dft.gov.uk/splash.olg
[362] https://www.legislation.gov.uk/eur/2019/1239

Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)[363] was implemented in the UK by the Equality Act 2010[364] (along with other EU legislation) and built on existing equal treatment legislation.

At the time it was deemed unnecessary by many as it duplicated existing rules. According to Maria Eagle, then Minister of State for Justice and Equalities, addressing parliament on the 10th November 2008[365]:

"Our domestic law is fully compliant with the requirements of the recast directive… In Great Britain we already protect people from discrimination on the grounds of sex, through the Equal Pay Act 1970 and the Sex Discrimination Act 1975 and the anti-discrimination provisions in the Social Security Act 1989 and the Pensions Act 1995."

This was reiterated in 2019 by Greg Clarke, then Secretary of State for Business, Energy and Industrial Strategy, who stated[366]:

"The UK already exceeds EU standards in many aspects of workers' rights and, in that context, the government believes that, after the UK's withdrawal from the EU, it should be for Parliament to determine what rules are most appropriate, rather than automatically accepting EU changes."

Of present concern, Schedule 25 of the Equality Act ('Information Society Services") provides that that the Act must not conflict with the requirements of European Directive 2000/31/EC of 8 June 2000[367], known as the eCommerce Directive. The Directive concerns information society services, which are services provided from a distance by means of electronic equipment to businesses and consumers such as on-line shopping, direct marketing and advertising. It provides that where an information society service provider is established in GB, the provisions of the Act apply to anything done by it in providing the information society service in another EEA state other than the UK.

What this means in practice is that if, for example, an online holiday company established in GB refused intentionally or even possibly unintentionally to take a booking for shared accommodation from a person

[363] https://www.legislation.gov.uk/eudr/2006/54

[364] https://www.legislation.gov.uk/ukpga/2010/15

[365] Eagle, M. (10 November 2008), Recast Directive [Hansard], Vol. 482, https://hansard.parliament.uk/commons/2008-11-10/debates/0811108000013/RecastDirective

[366] UK Government: Protecting and enhancing worker rights after the UK withdrawal from the European Union, 6 March 2019, https://www.gov.uk/government/publications/protecting-and-enhancing-worker-rights-after-the-uk-withdrawal-from-the-european-union/protecting-and-enhancing-worker-rights-after-the-uk-withdrawal-from-the-european-union

[367] https://www.legislation.gov.uk/eudr/2000/31/adopted

or group with protected characteristics under the Equality Act, for example a same-sex couple, a case of direct sexual orientation discrimination could be brought before the British Employment Tribunal or courts, regardless of whether the complainant was located in the UK or another EEA member state. This means the obligation to conform with EU legislation under the Equality Act puts UK businesses at risk of litigation not only from UK nationals or residents but from nationals or those resident in EU member states. **This is a punitive risk exposure for small businesses which we believe HMG should consider rectifying now that the UK is outside the EU.**

11. Retained EU Law and the UK Legal Method

Quite apart from policy changes on specific measures, the greatest benefit of Brexit would be unleashed by a change in our philosophical approach to the law, moving back from the EU's pervasive approach to law to our traditional common law method.[368] The UK's common law heritage leads to greater competitiveness and growth – for businesses and for the whole of the UK – as shown by highly regarded US economic research.[369] Some of those parts of English law which have not been superseded by EU-made law have been estimated by Oxera, the UK economic consultancy, to be worth hundreds of trillions of pounds globally, and trillions to the UK.[370] Reverting to lawmaking based on the common law method will bring great benefits to the UK by encouraging growth and competition. However, making the switch is not straightforward and requires a change in culture and mindset among legislators and regulators.

English common law is the essentially the world's most successful base-level legal operating system, just like the US dollar is the world's reserve currency. English legal method was adopted for US law (apart from in Louisiana), and also forms the basis for law in the world's most successful secondary or regional financial centres, such as Hong Kong, Singapore, Dubai and Abu Dhabi Global Market. English law itself is a law of choice for many international contracts, in shipping, insurance, derivatives, commodity

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368 See B Reynolds, *Restoring UK Law - Freeing the UK's Global Financial Market*, POLITEIA, 8 February 2021.

369 See, e.g. Cross, *Identifying the Virtues of the Common Law* (2007) 15 Supreme Court Economic Review 21; Graff, *Law and Finance: Common Law and Civil Law Countries Compared: An Empirical Critique* (2008) 75 Economica, New Series, 60; Rafael La Porta, Florencio Lopez-de-Silanes and Andrei Shleifer, *The Economic Consequences of Legal Origins* (2008) 46 Journal of Econ Lit 285 and Mahoney, *The Common Law and Economic Growth: Hayek Might Be Right* (2001) 30 Journal of L Studies 503 which presents evidence that common law countries experienced faster economic growth than civil law countries during the period 1960–92, approving Friedrich A Hayek's observation (in *Law, Legislation and Liberty: a New Statement of the Liberal Principles of Justice and Political Economy* (1973) Routledge, at 94), that "the ideal of individual liberty seems to have flourished chiefly among people where, at least for long periods, judge-made law predominated". And see the Commonwealth Growth Monitor, which shows higher growth data in the Commonwealth than the Eurozone during 1971–2016.

370 The-value-of-English-law-to-the-UK-economy.pdf (legaluk.org). This authoritative report was prepared for, and with help from, LegalUK.

trading and numerous other areas. It embodies a legal approach founded on freedom of action, freedom of contract, fairness and competition.

Approximately two thirds of the world uses an inferior legal approach for their domestic affairs, based on the code-based civil law system developed by France and Germany in the nineteenth century. This system is less predictable in effect, less permissive, less respectful of the wishes of contracting and other parties, and more controlling of individual and commercial activity. The idea is that the law should be stated in a code, rather than being developed iteratively as society itself changes and new facts and circumstances arise. Businesses from around the world, including in code-based civil law countries, often opt out of their own legal system and *choose* to use English law for their international commercial transactions; or they use New York law, which is also a common law system, ultimately based on the same English law roots.[371] This is not an accident of history. It persists in the face of national and government pressure from the home countries of corporates to use their local system. Ironically, the greater the pressure not to use English law, the greater its attractiveness and use in practice. Businesses shy away from systems which seek to restrict and control their activities.
The Oxera report explains the attractions and the value to the UK of English law as follows:

- English law is often one of the first to provide solutions to complex market issues, driving greater volumes of transactions under English law as a global market standard. This in turn provides certainty and predictability in the law and allows the law to evolve continuously to reflect the issues that businesses face.

- Knowledge sharing through agglomeration effects from the clustering of sophisticated providers increases the productivity, innovation and competitiveness of those providers, and also that of the UK economy as a whole.

- The widespread use of English law globally reduces transaction costs for UK businesses trading internationally.

The UK's legal system has spawned a massive export industry, with many of the world's most successful law firms and major operations of US law firms being based in the UK. This interacts with a broader ecosystem of professional services in related fields such as accountancy, insolvency, actuaries and consultancies. Using our homegrown legal system internationally, with its familiar, inbuilt values, provides a significant

[371] The law in Australia, New Zealand and elsewhere in most of the Commonwealth is based on the same English law system, but it is less trusted for international dealings. Part of the reason is the depth of the UK legal services market, the sophistication of the UK's judiciary in considering international matters, and the momentum and trust arising from generations successfully relying upon the UK system.

advantage to UK-based businesses worldwide. English courts and UK arbitrators are often chosen to resolve global cross-border commercial disputes under our law.

Emulation internationally

Hong Kong and Singapore are the most important financial centres in Asia. They share (and differ from all other local jurisdictions[372]) in being based upon English common law. Countries around the world, from the United Arab Emirates (Abu Dhabi Global Market, Dubai International Financial Centre, Ras al Khaimah Financial Centre), Qatar (Qatar Financial Centre), Saudi (Neom, Red Sea, al Ula and other zones), Kazakhstan (Astana International Financial Centre) and elsewhere have been seeking to emulate this, changing their constitutional arrangements to adopt English law in a segregated portion of their territory - or, in the case of Qatar, for certain operations of businesses which register to indicate they wish to opt in to that system. These are generally known as "special economic zones" or "financial free zones". Their aim is commercial advantage and attracting business for the benefit of the entire country. They seek the help of UK-based cross-border commercial lawyers in order to do so. They staff their new systems with regulators and professionals who are trained in the Commonwealth and the US, who are schooled in our system; the UK's services industry follows and establishes places of business there. Notably, each of these countries has (generally) chosen to adopt a version of the English common law which operates without the inherited elements of EU law. They have UK regulation, based more on the traditional UK approach, albeit with some elements conceptualised while the UK was in the EU; as such, it forms the most up to date standard for others.

More states seem to be following suit. For example, China has introduced reforms adopting the central common law notion of the "trust" and Hainan province has been considering the wholesale adoption of English law; Vietnam is exploring the introduction of English law (for two new financial centres), as is Kuwait (for a new financial centre); and Georgia was going to adopt it (in Anaklia, for financial and commercial business) before political events superseded. Interestingly, several years back Poland asked at least one member of our judiciary (Lord Goff) for help in considering adopting English commercial law in its entirety after the Berlin Wall came down. In essence, English law is an extraordinary, under-appreciated and unique asset, a significant export, and a touchstone for individual and commercial freedom worldwide.

Erosion of the common law approach and system during the EU period

372 Malaysia is largely a common law jurisdiction. However, under its constitution Sharia law also has special status.

Nevertheless, our system has suffered from being shoehorned into the EU's code-based environment.

Within the EU:

- a central bureaucracy of lawyers (Commission Legal Services) was built and managed largely by persons trained in continental, civil law disciplines; the civil law method – of regulating for everything and prescriptively writing down the only way in which business was lawfully to be conducted for each sector - was rolled out across numerous areas of law in the name of harmonisation. Where EU law did not yet apply, local traditions were left largely untouched;

- in advance of the Brexit vote, the City had become the financial centre for the internal European market, but gradually became less competitive for international business. The blanket of "one-size fits all", overly bureaucratic and overly prescriptive EU regulation introduced in earnest after 2007 (under Michel Barnier, when he was made Financial Services Commissioner) became a burden. The introduction of 1.7 million provisions of the Markets in Financial Instruments Directive No 2 (MiFID II) became a high-point in damaging lawmaking (small bits of which are now being repealed or adjusted in the UK[373])

- there are no successful "big tech" businesses based in Europe, in part because of the EU's cumbersome General Data Protection Regulation (GDPR), which is an opaque legal scheme which is heavily restrictive, requiring for instance that data only be collected for a specific purpose and destroyed as soon as that purpose is fulfilled (which is a drag on innocent and desirable uses of data on a longer-term basis); and

- our goods industry is under EU law restrained by product regulations which dictate how things must be constructed in terms of processes, sizes, shapes and other unnecessary controls over point-of-sale fitness and process, rather than (as we would have it) allowing businesses to sell what they want, subject to appropriate safety and disclosure rules, with the success of a product (in terms of its broader functionality) being determined by market forces. A *cause celebre* is the EU regulation on bananas, which regulates maximum curvature and allows for clusters of four or more, but not two or three, bananas to be sold together.[374] The EU claims that this measure harmonised

[373] For instance, HM Treasury has been making changes to capital markets regulation and listings rules: Ambitious reforms to capital markets regulation and listings rules announced - GOV.UK (www.gov.uk)

[374] Commission Implementing Regulation EU No 1333/2011.

> previously differing rules between member states, but countries such as the UK under its common law approach simply did not make prescriptive rules on such topics, leaving the choice of buying one, two or three bananas, or straight or curvy bananas, to consumers.

The EU's approach to the law (unsurprisingly, given the origins of the EU itself) derives from the French and German methods of the nineteenth century. Its law has gradually rendered those sectors which it has addressed less competitive. Instead of being designed to preserve freedom and encourage commerce and competition, whilst establishing core standards, the continental methods were designed to apply rationalist and scientific methods to human existence, with top-down direction from the state across all areas. This approach has demonstrably failed in attracting business, as compared to common law competitors. Life and business are too complex to be mapped out in advance. Sophisticated commercial parties wish to write their own contracts for what they themselves believe might happen, knowing that their intentions will by and large be enforced, and to operate only with necessary restrictions. They believe they know better than the state, but accept that the state can intervene if their purposes are improper. The code-based civil law systems, including that of the EU, succeed in allowing for a managed economy, for which they operate a "machine" of lawyers to write the detailed code and keep it up to date. Mobile, discretionary investment flees such a system when it can do so. The EU approach of treating law as an enabling measure, whereby nothing can be done unless it is written down, and there is only one way of doing anything (which is what has been written down), is stifling for business.

It is the UK's system and methods which powered the Industrial Revolution, and whose underlying influences are now powering much of the entrepreneurialism and innovation in the current US economy.[375] The Oxera report shows the trillions in value and global benefits of those aspects of our system which EU law had failed to reach.

What are we doing to reinvigorate our traditional system?

[375] The phenomenal recent successes of US technology businesses such as Apple, Facebook, Amazon, Netflix and Google cannot be seen of themselves to be due to the common law, but the US's essentially common law framework is likely to have provided considerable support, as in fact key business owners have attested: see e.g. A. Chander, *How Law Made Silicon Valley* (2014) 63 Emory L Journal 639, who observed that "[j]ust as nineteenth-century American judges altered the common law in order to subsidise industrial development, American judges and legislators altered the law at the turn of the Millennium to promote the development of Internet enterprise." All of these companies are incorporated under Delaware law (except Apple, which is incorporated in California). One point which is interesting to note about Delaware is this dual benefit of stability (competent judges, deep precedent and so on) and flexibility (arising in part from the unique role of Delaware's Chancery Court, which is a rarity in the American judicial system, and the doctrinal flexibility it offers). See, for instance, https://courts.delaware.gov/chancery/history.aspx. Chandler also relates an anecdote involving Google's Larry Page and Sergey Brin, who noted that US law afforded significant flexibility, particularly in the area of intellectual property law, to their business. Such flexibility apparently could not at the time be found elsewhere to the same degree as in the US.

Certain elements of inherited EU law are beginning to be reversed, piece by piece, by the Government in the financial services[376] context and, to a limited degree, for data protection.[377] For financial services, the City Minister, Andrew Griffith, has accelerated the programme of change, which is welcome, although much more is to be done, as can be seen from the recent lessening of the competitiveness of the City, relative to its main rival, New York.[378] For data protection, we have limited our reform efforts for fear of losing EU data adequacy recognition.[379] The value of this recognition, other than in the short term, is questionable given the benefits achieved from using data for wider business purposes. It should not be treated as being of overriding importance. In the US, it is noticeable how analysis is often more rigorously fact-based, with wide-ranging sales and other data increasingly becoming available. Both the private and public sectors can operate with far greater visibility and (as a result) at higher levels of sophistication than in the UK (and EU). More broadly, our reform programme post Brexit has so far been extremely limited. We have left goods regulation untouched.

Plotting the right path requires an understanding of legal systems. Incumbent businesses are resistant to change, especially if they have already built compliance systems (and incurred related costs) for the current code-based European *acquis*. Laws become a barrier to entry for others and their maintenance may be beneficial in the short-term for such incumbents. The reactions of such businesses to proposals for change to prescriptive layers of law may be misleading. Inherited EU law has generally been written at an inordinate level of detail in discussion with industry, baking in incumbent advantage but ossifying progress and reducing competition. Those who operate under code-based systems have a fear of competing on an open market. The following examples of change and stasis in our post-Brexit system so far are instructive.

- *Financial services.* Initially and for years after the Brexit referendum, the Government encountered notable resistance from the financial services industry to any re-wordings in the inherited *acquis*. Whilst companies were structuring for Brexit, they preferred no change in the hope of an equivalence determination from the EU, which would have enable them more easily to operate across the EU, cross-border from a UK base. Now that businesses have structured for EU access without equivalence, this industry is not only behind the government's reforms but is asking for more.[380]

376 *The Future Regulatory Framework (FRF) Review: Proposals for Reform*, HM Treasury, July 2022, and the Financial Services and Markets Bill are the main means through which this initiative is being progressed.

377 See HM Treasury's initiative, *Data: a new direction - government response to consultation and the Data Protection and Digital Information Bill*, DCMS, June 2022.

378 New York catches up with London to head City's global centres survey | Reuters

379 See fn 10 above.

380 See the oral evidence taken by the European Scrutiny Committee, 3rd May 2023: 3 May 2023 - Regulating after Brexit - Oral evidence - Committees - UK Parliament

- *Data protection.* As above, no major reforms have been made to date in relation to data protection. Part of the reason is that the UK has not yet had an open consultation with non-UK-based businesses (since that is normally beyond any consultation process). Over time, data businesses have voted with their feet, and those business that remain here, whom the government will need to consult on any proposals to change this element of inherited EU law, are not necessarily those who would be attracted by a more fundamental change to the current regime. A common law approach would be one based on presumptive and broader permitted legitimate usages of data (supplemented by a facility for opt-ins beyond that) rather than one requiring so many opt-ins for different usages.
- *Goods.* For goods, there is (as for financial services) again industry resistance to change, with unarticulated fears of the competition this might unleash, and concern over the situation with the Northern Irish border.[381] There has not yet been a programme of meaningful remodelling. Clearly, the UK's position as a country with high standards of ethics and welfare in farming and high food quality is important, and it would be unfair for UK farmers to compete with cheaper producers of chlorinated animal-based foods or battery farm meat from other countries; but point of sale and other regulations should be an area in which the burden can be lessened.

To unlock the benefits of Brexit, the UK needs to move back to an approach based upon high standards, clear laws, and less prescription in all these areas.

The philosophy

However, the point is not just the UK's ability to achieve legal outcomes using fewer rules, or the permissiveness of our system. A critical element is the enhanced legal certainty provided by our courts, with the doctrine of precedent (*stare decisis),* which allows for predictability and evolution at the same time. The EU law method is less comfortable for commerce because constant reference is made back to the static code, and it is unable to evolve because court decisions are subordinate to the code itself. The law is instead clarified and evolved through the issuance of yet more code, which is cumbersome, adds to the complexity of the rules and takes time to develop.

This is not a point of English nationalism. English and Welsh law is the same; the common law is also used in Northern Ireland. Scots law, which has civil law origins, is uncodified and is like English law in this context (although it is less widely used internationally). Similar positive comments could be made about US, Hong Kong, Singapore and even Abu Dhabi Global Market laws.

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381 Mutual-Enforcement-Antidote-to-the-NI-Protocol.pdf (centreforbrexitpolicy.org.uk)

Unfortunately, for businesses located in the UK, the local impact of inherited EU law which applies to many matters is still inescapable by virtue of their location. The resulting drag from this body of law (which cannot be contracted out of) is felt across multiple sectors. Many businesses need to comply with EU laws because they operate also across the EU, but this does not mean that their UK head office should be subject to those laws.

The prize

The question then is what the UK might achieve were it to remove EU law and its underlying and undesirable philosophies from the UK legal system entirely and replace them with a common law style approach. The answer is that the UK would be likely to become even more attractive for discretionary and mobile investment, with knock-on benefits for the economy and society. The EU law superstructure unavoidably undermines core points of competitiveness for businesses established here, since it does not have an inbuilt respect for competition or commerce more generally, being built for different purposes. This law holds back our businesses from competing globally.

The Gulf states, China, Vietnam and many others have not called this wrong. They are well aware of the competitive advantages brought by our system. We have the judges, the legal industry and the culture that supports what we have created. No common law countries are seeking to switch to the code-based method. Business wants the common law system and countries are prepared to adjust their own constitutions to adopt it and further investment. The UK needs to have a re-booted faith in its own creation, in full, for the maximum benefit of its economy and attracting international businesses.

How to proceed?

Moving back to the common law style of approach is a subtle and complex exercise. It has been achieved, very successfully, in the context of the special economic zones and financial free zones mentioned above. Those jurisdictions have sought to adopt a business-friendly, common law approach, and have been selective in which provisions of the UK regime should be adopted, given the voluminous nature of the EU *acquis* currently applicable here across many sectors.

As it stands, Government Departments appear to have had problems in identifying inherited laws which might be beneficially removed or changed.[382] The difficulty arises at a conceptual level: re-thinking a legal system is a task requiring a deep understanding of law and regulation in a practical context, whereas Government Departments exist to manage and (generally) add to an existing rulebook. Furthermore, under the EU scheme, the laws were conceived in Brussels, with only input from London. The result is that the current schedule to the Retained EU Law Bill contains provisions which are largely irrelevant or immaterial. It lists 687 provisions, and of these only five

[382] Brexiteers fume as UK dampens bonfire of EU laws – POLITICO

are of any use or relevance to the national interest.[383] Significant work is now required in order that the job is done properly.

It is vital that a special system is now put in place to review and reform all laws and regulations inherited from our time in the EU, along common law lines. The goal should be that impediments to competitiveness, inherent both in the substance of EU provisions and the controlling methods of EU law, should be removed in the UK, enabling businesses to innovate freely under clear laws and regulations. The Retained EU Law Bill provides a framework for change, but only a framework. A significant initiative is needed if any such approach is to be successful.

As explained, the civil service machine is not well-equipped to implement the necessary programme. They are used to a particular mode of operation. In many ways, the administrative state and code-based approach equip regulators and bureaucrats with a range of legislative requirements and tools which they may use to take enforcement and other actions. A change of philosophy is required whereby the competitiveness of the UK is put ahead of the power of the administrative state. Without such a change of mindset, the UK is likely only to achieve the removal of a limited number of regulations accepted by particular Departments as unnecessary, on the basis largely of a reconsideration of policy not method. By contrast, wholesale reform would involve removing all provisions which create red tape, including unnecessary clauses in instruments which contain other clauses of value. Those provisions which remain should then be reformulated along common law lines, using wording which is clear, sparse and predictable in meaning.

The task requires fresh thinking, along with thoughtful and detailed implementation, on a massive scale. A large team of lawyers and other experts will be required to deal with the thousands of inherited measures. The UK's normal "system", established for business as usual, is ill-suited to pilot the endeavour since the system itself resists substantial change. For the job to be done properly a significant new project team must be established, above the individual Departments and reporting directly to government, to undertake a thorough examination of the provisions. This team should be led by, and comprise, lawyers with the facility properly to consider whether such provisions are necessary in whole or part as a practical matter, and, if so, how those provisions can best be reformulated.

In the private sector, special project teams are created when it is sought to achieve results of such ambition. As mentioned above, in various emerging economies, UK lawyers have been and are being commissioned to draft new

[383] See e.g. Hansard, 24th May 2023, and the observations of the Chair of the European Scrutiny Committee, Sir William Cash MP: Retained EU Law (Revocation and Reform) Bill - Hansard - UK Parliament. In financial services, which is addressed in the Financial Services and Markets Bill, the Treasury proposes to shift most of the inherited EU financial regulations to the UK regulators' rulebooks, but the Treasury has made clear that subsequent change by the regulators to those rules will be slow: *Financial Services Future Regulatory Framework Review: Proposals for Reform* (CP548), HM Treasury, November 2021, paras 18 and 19.

laws and regulations, on the UK model, to help those countries attract business and enhance commercial activity. For the UK, this method involves retaining only those laws and regulations which are necessary to achieve clear policy objectives, in the most economically efficient way; and for those laws and regulations to be drafted clearly, using the fewest words possible (which itself leads to greater economic efficiency). There needs to be a review of all inherited laws, line-by-line, topic-by-topic, with input from industry and other interested parties. There should also be a review of the best ideas from across the world for how to achieve particular policy objectives. For example, the reams of pages of MiFID II technical standards on transaction reporting may better reside in system operational manuals than as law. The process of cutting red tape will require extensive discussion of options, the production of draft text and the implementation of adjustments to reflect input from policymakers. Amendments, when made, will often require numerous consequential changes elsewhere.

At the very least the work should involve the repackaging of existing measures in a more efficient, common law form. This programme does not necessitate the making of major new policy choices. However, the opportunity to reconsider matters of policy will indeed arise and should be seized, and its value is demonstrated elsewhere in this publication. Government archives and similar materials will assist in identifying many such choices.[384] There will need to be a process whereby the Government can consider, on a systematic basis, those policy choices which present themselves.

The task could be undertaken in the following manner:

1. Appoint a project leader, who will have significant legal and commercial experience in a sector significant to the UK economy and who understands how law and regulation drives that success.

2. Agree a budget. The amount should allow for the evaluation of options at the highest level of sophistication with the most subtle legal conceptualisation and drafting. The budget for all aspects to be dealt with outside government might be in the low hundreds of millions. However, given the scarcity of public funds, this amount could be reduced significantly by making sophisticated use of in-house government resource, controlled by the project team.

3. The project leader should assemble a multidisciplinary set of teams to evaluate individual segments of law and regulation, categorised by industry sector within the remit of Government Departments, to ensure that the provisions make sense for businesses operating in

[384] The archives at Kew, in individual government Departments, Parliamentary counsel's office and the European Scrutiny Committee date back to 1973 and are extremely comprehensive. They contain a trove of information on those EU laws which the UK wished at the time to reject or adopt in another form. These will be a useful resource from a policy perspective. There are also the explanatory notes that were produced for the European Scrutiny Committee on individual measures, which explained the Government's position on particular points.

each sector. Every industry team should comprise 9-12 lawyers, expert in the relevant legal area, with the ability to think on a "blue sky" basis, and a familiarity with the subject matter and policy of that legal area (or part of it). Consideration should also be given to the involvement of policy experts, trade economists (with appropriate access to those able to provide data and analysis) and entrepreneurs in the relevant business sector.

4. There should also be a project team to determine points of method, such as the ability to consolidate across texts (because of common themes), and extent to which, and when, reliance could be placed upon:
    a. case law developed in the future by the courts;
    b. market forces;
    c. industry codes; and
    d. competition law.

5. The industry teams should re-evaluate the laws necessary for their sectors, examining which inherited EU rules are needed, and which are not or would benefit from reformulation. The project leader would drive the work and ambition of every team.

6. The project leader, with relevant team personnel, would present recommendations to relevant Ministers or, e.g., a Cabinet sub-committee.

7. Once Ministers have decided which recommendations to pursue, the project leader would instruct drafting teams (formed from both the public and private sectors, for reasons of scale[385]) to produce revised text, agreeing deadlines and budgets for the task. The teams will need to be tightly controlled and large enough to process the changes rapidly.

8. A group of former Parliamentary counsel should be assembled to polish the text to the UK's exacting standards of statutory drafting. Given the shortages in such expertise, this group could seek to draw on additional members from Commonwealth countries such as Australia, New Zealand and Canada, who produce legislative text using similar techniques to those of the UK Parliamentary counsel.[386]

Adopting such an approach, significant results could be seen within a year, with milestones within that period at which batches of reforms could be announced. The task is achievable, if the above technique is adopted and deployed.

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[385] English lawyers in private practice at major law firms have been used for projects of this nature in many of the special economic zones and financial free zones mentioned above.

[386] This technique has already been used successfully in at least one of the special economic zones mentioned.