

European Scrutiny Committee

House of Commons London SW1A 0AA

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From: Sir William Cash CH MP

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Rt Hon Kemi Badenoch MP

Secretary of State for Business and Trade, Department for Business and Trade

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Regulating after Brexit

Dear Kemi

Thank you for giving evidence to our inquiry ‘Regulating after Brexit’ on 6 June last year. Over the course of our inquiry, we received 20 submissions of written evidence and took oral evidence from twelve witnesses. We are grateful to all of those who contributed to our inquiry. We have set out below our main areas of inquiry, including preliminary conclusions and tentative recommendations. We hope that our successor Committee will further consider these issues in the next Parliament.

Background and Government approach

There was a significant amount of regulatory restriction on the UK when part of the EU and the UK complied with thousands of EU laws. Outside of the EU, the UK can now be nimbler in regulatory terms, although it must recognise that the EU sets many standards followed globally.

Smarter Regulation programme

The appointment of the Minister for Regulatory Reform as head of the Smarter Regulation programme is a welcome step toward a more coordinated regulatory approach. However, there is limited transparency around exactly what the role entails, including how much time is dedicated to smarter regulation, what resources have been allocated to the programme and what the programme’s objectives are.

We would encourage the Government to provide regular updates to our successor Committee on progress toward regulatory reform, including the Government’s objectives and whether they are being met.

Brexit opportunities

The Government have made a good start with regulating after Brexit, such as via the Financial Services and Markets Act 2023 and the Genetic Technology (Precision Breeding) Act 2023. However, witnesses felt that the Government could have been more ambitious on the scope of such legislation.

Diverging for advantage can be beneficial, and priority should be given to areas where little or no EU regulation exists, such as for artificial intelligence and where the UK has a comparative international advantage, such as in financial services.

When regulating after Brexit, it is important that the Government considers precision and strategy, as well as breadth and speed.

The Government should prioritise areas where the UK can set global standards, such as financial services and technology. We would advise that the Government work closely with key stakeholders within strategically important industries when devising new post-Brexit legislation, to understand what would benefit industry the most.

Parliamentary scrutiny

The Government's current approach to regulation does not provide for full transparency with stakeholders and the public.

Regulators

Regulators have been granted significant power since the UK left the EU. However, they have not been granted the necessary resources to effectively carry out their expanded roles.

The Government must ensure that regulators have appropriate resources to carry out their jobs, including recruiting the specialist skills that they need in key areas. We would advise the Government to prioritise this so that capacity gaps do not delay necessary new regulation.

Trade with the EU

The greater regulatory divergence from the EU, the greater the potential costs incurred if it is not done well. Therefore, the Government must exercise care when rewriting regulation which touches on international trade.

We recommend that the Government carefully weigh up the benefits and the costs of diverging from EU law and make these clear to the public. The Government should develop impact assessments when diverging from EU rules in specific sectors.

EU regulation is not the only constraint on the UK's ability to regulate freely. The UK is also bound by agreements within the WTO and commitments agreed on in the UK/EU Trade and Cooperation Agreement.

Internal Market Act

Common Frameworks exist to manage post-Brexit regulatory divergence within the UK.

The Internal Market Act was introduced to prevent barriers to trade within the UK. Scotland and Wales have reacted negatively to the Internal Market Act, preferring to work within Common Frameworks.

Internal disruption to the UK market will have consequences. We suggest that the Government work closely with the devolved nations on a strategy for regulation.

Sectoral considerations

Agriculture

Although the Government have made some regulatory progress within the agricultural sector, such as the Agriculture Act 2020, there has not been a great deal of change in terms of specific regulations that farmers operate under.

There are several opportunities where the Government can regulate differently from the EU, such as plant protection products and the Precision Breeding Act, where there is scope to go further.

The Government should involve scientists when considering further regulation relating to gene-editing technology. There is a potential opportunity to go further with the Precision Breeding Act, which should be explored carefully and robustly with scientists, whilst weighing up the cost benefit of further deregulation compared with the EU.

Financial services

Overall, the financial services sector is pleased with the Government's approach to regulating after Brexit. The Financial Services and Markets Act is a good start, with witnesses particularly pleased with the proposed Solvency II changes.

The UK is a world leader in financial technology products, accounting for half of all fintech investment in the world. To smartly regulate fintech, the Government must also get artificial intelligence regulation right.

The Government should focus on financial technology as this is an area where the most positive change can be made, without trade-offs stemming from diverging from EU rules. Key firms across the finance and tech sectors should be consulted when considering artificial intelligence regulation.

Technology

Overall, witnesses were pleased with the direction the Government has taken with tech regulation since leaving the EU. Witnesses were supportive of tailoring our laws to the needs of the UK but emphasised converging with the EU for ease, where deemed appropriate.

Artificial intelligence is an exciting area for divergence from the EU, and the UK's artificial intelligence plans are looked at more favourably than the EU's proposals. However, there are concerns around the resources available for regulators to police the sector.

As with Ofcom, the Digital Markets Unit should be accountable to Parliament. We recommend that the Government reports to Parliament on what it intends to do in its first year and then to report back every year on how it has performed against its remit.

The Government should consider the impact of personal data protection when regulating the use of artificial intelligence. The Data Protection and Digital Information Bill should be revisited, and data protection strengthened within it to improve artificial intelligence regulation.

The Government should look at increasing the powers given to regulators on artificial intelligence so that they can achieve the principles behind the UK's regulatory vision. There is a case for looking at common powers that cut across regulators with regards to artificial intelligence.

With every best wish for the future

CHAIR