

# BREXIT, DEREGULATION AND CIVIL SOCIETY

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# INTRODUCTION

The UK has been engaged in a steady process of deregulation<sup>1</sup> for many years.

It has already threatened hard-won protections across a vast range of areas that matter to a striking diversity of civil society: for example, consumer safety, workers' rights, fair trade campaigners, small businesses, animal welfare and the environment.

Research by the New Economics Foundation (*'Threat to Democracy'*, 2015) exposed the scale and depth of the deregulation project: impact assessments that bias the costs of regulation over the benefits to society and environment; indiscriminate targets for government departments to cut regulations; and the 'one in, three out' rule<sup>2</sup>.

Narratively, regulations have become a "burden on business" and "red tape". It is harder to introduce new protections than it has ever been, and existing ones have been put under consistent pressure.

Now with **Brexit**, we have learned that the Government's existing deregulation drive could be put on steroids.

The drive for competitiveness could be an excuse to cut existing UK laws further and faster.

The signs are pointing towards a bonfire of laws and regulations inherited from Europe.

And new trade deals could make it all a lot worse.

## **This paper**

The New Economics Foundation interviewed experts<sup>3</sup> in August and September 2016 to find out:

- Will Brexit accelerate the 'war on red tape'? If so, where and how?
- What are the main threats posed by the push for 'free trade' in the current climate?
- How can we build a movement that campaigns against it?

## SUMMARY OF KEY FINDINGS

1. **The vote to leave the EU is very likely to lead to more pressure to deregulate.**

The tenor of the new Government is deregulatory and free-marketeers have considerable influence. It will seek to give the impression to business that the UK is a good place to invest, which will mean both symbolic and actual moves to reduce the 'costs of doing business'. EU laws will be brought wholesale into UK law upon Brexit and at that point there is a big risk of a major scrapping of protections.

2. **Democratic oversight is critical.** The referendum result does not give a green light to Ministers to strip away or trade off hard-won protections; this was not a vote on lower animal welfare standards, less safe consumer goods, or worse conditions at work. But there is a real risk of it being interpreted as such, enacted with little ability for Parliament or the broader public to influence the terms of the negotiations or final Brexit settlement.

3. **The EU's own drive to deregulate is unlikely to be abated by Brexit and could even be accelerated.** The UK was responsible for much of this in the first place, but was not alone, and much of the architecture to deliver it is now up and running. There are many uncertainties: rapid deregulation in the UK may cause some EU member states to push for Brussels to follow suit. Brexit is already being interpreted by some in Brussels as a rejection of 'too much Europe'.

4. **The UK will push for 'free' trade and there is a high risk that it will 'trade off' social and environmental protections.** All things being equal it is likely in practice to prioritise its own domestic interests – for example, financial interests and pharmaceuticals – ahead of strong social and environmental protections. The nature of the UK's ultimate trading relationship with the EU may be the single largest 'check' on UK deregulation; the Government's apparent pursuit of a 'hard Brexit' appears to threaten this, but there will always be a 'floor' provided by the fact that our exporters need to sell into the EU.

5. **The UK faces explicit choices about how seriously it takes social and environmental protections** and advocates for good regulation should react accordingly. It's important to set out a positive vision for the kind of economy

and society we want to have, and to be inclusive across society and politics. The UK should be a 'great' country with high standards, not engage in a race to the bottom. While there are in principle opportunities to 'do things better', we need to be clear-eyed that this is a time of risk more than of opportunity; hard-fought protections will be under threat and intense lobbying from vested interests is already underway: it is not likely given political and economic reality that Brexit will – without pressure – result in anything other than, at best, a replication of the status quo.

**6. Deregulation is a deep-seated project. There hasn't yet been a coordinated fight-back.**

Campaigns against particular potential impacts of deregulation have sometimes been very successful, but the underlying 'war on red tape' remains. We need a joined-up set of campaigns from a diverse range of organisations with different stakeholders, which talk about the issues that most resonate with their supporters but linking back to a central narrative and political strategy. We should work with business voices and actively aim for a broad political appeal. It's vital that we get the framing right: we shouldn't talk widely about "regulations", but instead about threats and impacts; powerful stories, told visually and viscerally.

## IN MORE DEPTH

### 1. The vote to leave the EU is likely to lead to increased deregulatory pressure in the UK.

- While the Government's policy agenda is still in flux, its broad tone remains free-market and deregulatory. There is no reason on the face of it to believe that the new Government as whole – with senior roles for some of the keenest advocates for both Brexit and free-market policies – will reverse the general push for deregulation of recent years. Mrs May's chief advisor, Nick Timothy, is on the record as stating that the UK Climate Change Act is a “unilateral and monstrous act of self-harm”<sup>4</sup>.
- There will be renewed short-term pressure on a very wide range of domestic laws and regulations, particularly those that appear to impose “burdensome” costs on business.

Off the ‘leash’ of the EU, and with significant economic challenges ahead, there is a very big risk of a new focus on stripping back regulations in everything from animal welfare standards to consumer safety. The Government will be seeking to reduce – and just as importantly for the signals it wishes to send out, to be seen to be reducing – the costs of doing business, particularly in those areas most exposed to international markets or where the UK's standards are very different to others. Partly this is merely rhetorical: the Government will seek to mollify business by being seen to be ‘on their side’, irrespective of effect. But we can in practice expect particular pressure on areas such as **labour rights, fair wages, green levies, the planning system, and, more generally, taxation**. One possible counter to this is that Ministerial and civil servant time will be hugely dominated by Brexit with far less time and resource to pursue ‘non-essential’ deregulation<sup>5</sup>.

#### ***The Great Repeal Bill / Act***

*The Government has announced a Great Repeal Bill which, when/if passed into law, would mean that on the date of Brexit itself – expected in March 2019 – two things will happen. 1) the 1972 European Communities Act, which gives primacy to EU law in the UK, will be repealed; 2) the provisions of **all** EU law that apply in the UK at that time will be converted into British law.*

- The EU laws we inherit will eventually be subject to UK deregulatory pressure. EU laws are the source of a great deal of existing protections and had previously

been outside the scope of UK deregulation. They will pass wholesale into UK law via the Great Repeal Act (see box on previous page) when Brexit has formally passed. Some policies – e.g. agriculture and fisheries – will not be included in the scope of the GRA and need to be reinvented from scratch post-Brexit. What these policies look like will be hugely determined by all of the above.

- The closer the UK's relationship with the EU, the better it is likely to be for maintaining protections. At the 'softest Brexit' extreme, an EEA-type agreement would continue to formally bind the UK to EU standards without affording it much formal ability to downwardly influence them – this is not where current Government rhetoric is, however. The UK will make a trade deal of some form with the EU, and ultimately it may be this – what is included, and what standards the UK is held to - that is one of the largest checks on how much the UK is able to deregulate in a number of key areas.

## **2. What should the role be of Parliament and the civil service to prevent deregulation during Brexit?**

- Parliament should have a strongly engaged scrutiny and oversight role. It should vote on the terms of the UK's Brexit settlement and the importance of protections for consumers, workers, citizens and the environment within that. The maximum possible<sup>6</sup> Parliamentary scrutiny should be given to proposals to amend or scrap the EU laws we transpose into UK law post-Brexit. The Great Repeal Bill itself should also be properly scrutinised and debated by MPs before becoming law.
- The Great Repeal Bill is to be welcomed in principle but carries risks. The Bill creates time for ongoing discussion over the months and years that follow Brexit about which laws we keep and which we dispense with. But given the weight of EU legislation entailed this in practice is likely to invest considerable power in the Government to unilaterally "at the stroke of a Minister's pen" (in practice, via secondary legislative instruments) remove protections without proper scrutiny or debate. It vests huge power in Government and thus the outcomes will depend in large part on the pressure that it feels under not to trade off or give up valuable protections.
- In the long run there will be technical work to do to establish powerful and well-resourced enforcement bodies, and to change the way impact assessments are done to better reflect the benefits to society of good regulation.

### **3. The impact on the EU's position on deregulation will take time to become clear, but is unlikely to be positive.**

This is an uncertain time with many moving parts, and there are more questions than answers:

- Will the UK's absence from the table slow the EU's deregulation drive? The UK was its leading architect; many of the UK's sharpest deregulatory instincts were held back by other member states. But other deregulatory voices (for example, the Netherlands) remain, and the architecture of and narrative around the Better Regulation agenda is already firmly established.
- How will Brexit be interpreted outside the UK? There are already signs that Brexit is being interpreted in Brussels and other member states as a warning against 'overweening' EU influence, although public support across the EU27 for the principle of EU regulation remains high (*Eurobarometer surveys*).
- What influence will unilateral UK deregulation have on lowering standards in the EU? For example, if in the name of competitiveness the UK lowers labour rights, this could encourage countries such as Germany to push to follow suit<sup>7</sup>; conversely other countries could use it as a rationale to push for excluding UK exports from the EU market.
- What trade deal(s) will the UK seek to strike with the EU? Will either party push for a lowering of standards? (see below)
- What is the future for existing trade proposals: TTIP, CETA and TISA? It is not clear whether the UK will be a signatory to any, should they become binding. But the UK was and will remain ambassadors for all three. TTIP in particular is in a difficult political situation on both sides of the Atlantic, but the International Trade Secretary, Liam Fox, has made it explicit that for as long as we are still members of the EU, the UK will remain firm advocates for TTIP and CETA.

### **4. It is highly likely that the UK will pursue a free-trade agenda that prioritises the interests of key industries above social and environmental protections.**

- 'Free trade' remains a dominant narrative across most of Westminster. The UK has been a leading advocate for trade liberalisation and will continue to be so under the direction of Liam Fox. It is worth noting here that the social and environmental chapters of current trade proposals are generally the only parts that are non-binding.



- The UK wants TTIP, CETA and TISA to pass and thus will seek to be members of them in some form. The UK has been an architect of all three. It is not clear how and whether this is possible yet, or indeed what the future holds for these agreements. CETA, which sets out a number of concerning precedents (for example around regulatory cooperation and an ISDS mechanism), could well have been ratified before March 2019.
- The EU will remain the UK's closest market and will thus retain strong influence over a number of standards in the UK. As set out above, the type of relationship and deal that the UK strikes with the EU matters.
- The UK is likely to also seek unilateral deals with countries such as Australia and the USA. The key consideration for the UK in any such deal is what it will trade off – willingly or otherwise – in exchange for favourable terms on its highest priority areas, such as financial services or pharmaceuticals. Its ability to resist, even if it wanted to, the desire of (for example) the USA to export GM crops is questionable. For both Australia and the USA, trade deals with the EU will be a bigger prize, potentially further reducing the UK's ability to undercut EU regulation.

## **5. Advocates of strong social and environmental protections should consider adopting a core number of coordinated asks.**

- The UK has a choice between being a high or a low standard country. Brexit was not a referendum on lower standards for people, animals or the environment and must not be excused or interpreted as such. If anything Brexit was an appeal *for* rules – rules that we set here, in the interests of those that most need protecting from the many externalities of global markets.
- High standards are needed now more than ever. These are uncertain economic times and the UK may find itself more exposed to global forces than ever.
- The closer our trading relationship is with the EU, the better. We should not glorify the EU and it is critical that we are not seen as blindly defending all that comes from it. But it remains our biggest trading partner and will almost certainly continue to be so, and the regulations set to trade with the Single Market could provide a floor below which the UK would not be able to fall.
- There are 'opportunities' from Brexit but also risks; it's important to be clear-eyed about this. Agriculture is an example of a policy that urgently needs to be improved and Brexit does offer the theoretical opportunity to do so. But in reality, this is likely to be a deregulatory Government juggling powerful vested interests

and running the risk of a major economic downturn, and may have little appetite for anything that feels like radical reform.

- We need to set out a joint vision that needs to be positive and engaging, forward-looking and inclusive. Good regulations are vital for the economy we need to build and for business confidence.

## **6. Deregulation is a deep-rooted project. It requires a coordinated and engaging response from groups representing those it threatens.**

- Clear threats, obvious impacts, and powerful stories. Campaigns against individual deregulation threats – i.e. animal welfare standards – have often been successful. This is primarily because they have been able to *marshal an existing, concerned supporter base* against a *live, specific threat* where they *feel they can do something about it* and where there is a clear *'baddie'*. We need to learn from this. Conversely it's always been difficult to talk compellingly to all but the policy community about deregulation as a concept. It doesn't motivate people; dry processes seem a very long way away from impacts; and immediate links to civil society's campaigning concerns seem hard to find. Any joined up campaign or set of campaigns needs to focus on language that works (see 'framing') but also finding the most resonant ways to link this to the things our supporters care about.
- One story told in multiple, totemic ways. Deregulation is a deep-rooted project that unites us all – that's the reason we've all come together today. We should try to tell that story in a coherent and compelling way, across a really diverse range of issues that command popular support.
- A political strategy is needed to try to connect the stories we tell via our supporters to the change that we want to see. This will require coordination and joint working.
- Progressive business voices are a key ally. Proponents of deregulation paint regulations as 'burdensome' on business, but by no means do all businesses agree. We need to work closely with businesses that share our views and are prepared to use their voice – publicly or otherwise – to help.
- Different organisations have different theories of change and we should embrace this. The ideal is for a coherent response to deregulation from a diverse range of groups that work to influence change in different ways. Decent standards for society and the environment should not be a politically polarised issue. There are

many examples (i.e. the ban on microbeads, supported by the Daily Mail) where the right-wing press have been as active as the left-wing.

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## ENDNOTES

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<sup>1</sup> In this document we use ‘deregulation’ to mean the process that has seen ongoing pressure from Government both on the absolute level of regulations or other legal protections, or for new mechanisms such as the primacy of monetary values in impact assessments, the ‘one in three out’ rule on new regulations, and ‘regulatory cooperation’ mechanisms in trade deals, that have made it harder to introduce new regulations in future. For more, see ‘Threat to Democracy’, New Economics Foundation, 2015: <http://neweconomics.org/threat-to-democracy>

<sup>2</sup> Any new regulation that ministers wish to introduce must be accompanied by the scrapping of other regulations with three times the costs to business.

<sup>3</sup> We are grateful to: Ruth Davis (E3G); Sam Lowe (Friends of the Earth); Rosa Crawford (TUC); Ruth Bergen (Trade Justice Movement); Michael Warhurst (ChemTrust); David Baldock (IEEP); John Hilary (War on Want); Donal McCarthy (RSPB); Jon Cracknell (Goldsmith Family Philanthropy)

<sup>4</sup> See Nick Timothy, Conservative Home, April 2016: <http://www.conservativehome.com/thecolumnists/2016/04/nick-timothy-port-talbot-should-make-us-question-the-unthinking-liberalism-of-our-governing-classes.html>

<sup>5</sup> The Public Affairs Committee has recently criticised the Government not only for improperly considering the social and environmental impacts of the ‘Red Tape Challenge’ but also for failing on its own terms to achieve anywhere near the cost savings to business for which it was aiming. <http://www.endsreport.com/article/54103/government-should-report-environmental-impact-of-regulatory-decisions> The National Audit Office has also been critical of the Red Tape Challenge, noting that Ministers are vulnerable to the charge of ‘cherry-picking’ which regulations are included to give themselves the best chance of success against targets. <https://www.nao.org.uk/wp-content/uploads/2016/06/The-Business-Impact-Target-cutting-the-cost-of-regulation.pdf>

<sup>6</sup> Exactly how much is possible is an issue of debate. For example: “The Prime Minister said in her speech that “[a]ny changes in the law will have to be subject to full scrutiny and proper Parliamentary debate”. However, it is almost inconceivable that the entirety of the process whereby the body of domesticated EU law is to be reviewed — and some, perhaps much, of it adjusted or removed — could be carried out in this way”. <https://publiclawforeveryone.com/2016/10/02/theresa-mays-great-repeal-bill-some-preliminary-thoughts/>

<sup>7</sup> There are already signs that Germany is prepared to reduce its labour standards in order to entice UK banks. <https://www.ft.com/content/3f3ce35e-8c9b-11e6-8aa5-f79f5696c731>