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Devolution and Post-Brexit Governance: Institutional Constraints on Policy Coordination in the United Kingdom

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ABSTRACT

This paper examines the post-Brexit evolution of UK devolution, focusing on the United Kingdom Internal Market Act (UKIMA) and its impact on devolved governance and policy coordination. It argues that the interaction between asymmetrical devolution, centralising fiscal mechanisms, and the adaptation of EU internal market principles has reshaped the balance of authority within the UK, strengthening central control while constraining devolved autonomy.

Although Common Frameworks were intended to manage policy divergence through cooperation, their non-statutory nature and uneven implementation have limited their effectiveness. Consequently, intergovernmental relations remain dependent on informal mechanisms, leaving coordination vulnerable to political disagreement.

The paper contends that UKIMA has entrenched constitutional asymmetries by prioritising market integration and enabling Westminster to exercise significant authority within devolved domains. It concludes that post-Brexit reforms have weakened multi-level governance in the UK, highlighting the need for both institutional reform and a shift towards more structured and durable forms of intergovernmental cooperation.

KEYWORDS

UK Internal Market Act, Devolution, Post-Brexit Governance, Constitutional Asymmetry, Intergovernmental Relations

Introductory Remarks

Since the 1998 devolution settlement, the UK has operated within an asymmetrical constitutional landscape, balancing Westminster sovereignty with devolved autonomy in Scotland, Wales and Northern Ireland. Brexit and subsequent legislation, notably the UKIMA, have placed these arrangements under strain, exposing tensions between centralised governance and territorial autonomy. This article examines how post-Brexit legal, fiscal and intergovernmental changes have affected policy divergence and coordination across the UK, with a particular focus on how these developments constrain devolved competence. In doing so, it evaluates the extent to which these institutional changes have reshaped the balance between central authority and devolved self-government.

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Origins and Nature of Devolution

The UK devolution settlement introduced in 1998 under Prime Minister Tony Blair was a pragmatic political response to rising nationalist pressure, particularly in Scotland, rather than a comprehensive constitutional redesign (Paun et al., 2019; Petersohn, 2025). It created devolved legislatures in Scotland, Wales and Northern Ireland (in Edinburgh, Cardiff and Belfast), while institutional change in England remained limited, largely confined to the establishment of the London Assembly (Paun et al., 2019).

The settlement restructured the distribution of political authority within the UK by delegating significant legislative and policy competences to devolved institutions. In Scotland, this replaced a hierarchical model with a system in which executive accountability is exercised within sub-state institutions rather than at Westminster (Paun et al., 2019; Scottish Government, 2021, p. 3). These changes have been reinforced through constitutional conventions and legislation, including the Sewel Convention, which establishes that Westminster does not normally legislate on devolved matters without consent, alongside the Scotland Acts of 2012 and 2016 and expanded fiscal powers (Petersohn, 2025).

This institutional transformation is reflected in patterns of legislative output: since 1999, the Scottish Parliament has enacted substantially more Scotland-specific legislation than Westminster did prior to devolution (an annual average of 15 Acts compared with 5), consistent with the reserved powers model (Paun et al., 2019).

Despite this redistribution of authority, devolution operates within the framework of parliamentary sovereignty, under which the UK Parliament retains ultimate legal authority, including the power to legislate on devolved matters and amend devolution statutes, thereby preserving central control (Horsley, 2023). This creates a system in which regional institutions exercise autonomy within clearly defined legal curbs. Intergovernmental relations have developed largely through informal settlements, including Memoranda of Understanding and the Joint Ministerial Committee prior to its replacement by the Intergovernmental Relations Framework referred to later in this paper. The asymmetrical structure of devolution, where Westminster acts both as the UK's chief legislature and as England's legislature, further reinforces its constitutional dominance (Petersohn, 2025).

Policy Divergence and the Need for Coordination

Devolution has enabled policy variation across the UK by allowing governments to pursue distinct priorities, reflecting the principle of adapting policy to local conditions, often described as 'local solutions to local problems' (MacKinnon, 2015). This is evident in sectors such as agriculture, food standards and public health.

At the same time, pressures for alignment remain significant, especially as the UK Government increasingly operates as a de facto government for England in policy areas such as health and education (Kenny et al., 2021). Devolution has also enabled comparison between territories, although this remains constrained by UK-wide regulatory core (MacKinnon, 2015).

Divergence is further shaped by region-characteristic political systems across the UK. Since 1999, Scotland, Wales, Northern Ireland and England have advanced divergent governance and party dynamics, including Scottish National Party (SNP) dominance, Labour

predominance, power-sharing in Northern Ireland (DUP–Sinn Féin), and two-party competition in England (Paun et al., 2019), thereby shaping different policy priorities.

This is specifically visible in health and welfare policy. Scotland has adopted a more social-democratic model, maintaining a publicly delivered NHS and introducing policies such as free personal care, free prescriptions and a smoking ban, while England has incorporated greater private sector involvement (MacKinnon, 2015). Following 2010, austerity further differentiated outcomes, with Scotland reducing education spending less sharply than England (9% compared with 20%) (MacKinnon, 2015).

Devolution and the EU: Brexit as a Stress Test

Prior to Brexit, EU membership added a supranational layer to UK governance, complementing devolved autonomy by embedding shared regulatory standards and facilitating engagement with European institutions (Minto, Rowe, & Royles, 2025). Devolved governments developed direct relationships with the EU, including through Brussels-based offices, enabling access to policy networks, funding and expertise.

In turn, this contributed to a "Europeanised" regional governance model and supported patterns of intergovernmental cooperation (Minto, Rowe, & Royles, 2025). Brexit disrupted this regime by removing supranational coordination and reasserting UK-level authority, exposing tensions between devolved preferences and central decision-making.

Scotland opposed a hard Brexit and linked withdrawal to renewed demands for independence (Minto, Rowe, & Royles, 2025). These divisions became more pronounced during the repatriation of powers, particularly as autonomous governments sought to retain influence over areas previously governed by EU frameworks.

The European Union (Withdrawal) Act 2018 formalised these conflicts by granting UK Ministers powers to amend retained EU law in devolved areas (Clause 11 of the Bill, Section 12 in final expression), constraining devolved legislative competence (Scottish Government, 2021 p4). In doing so, it departed from established practice under the Sewel Convention and set a precedent that has been followed in subsequent Brexit-related legislation, including the EU (Withdrawal Agreement) Act 2020, the UKIMA and the EU (Future Relationship) Act 2020 (Scottish Government, 2021, p. 4).

These developments highlight the limits of devolved autonomy within a system of parliamentary sovereignty, where constitutional conventions depend on political compliance (Scottish Government, 2023).

Intergovernmental Machinery

JMC

The Joint Ministerial Committee (JMC) served as the UK's main intergovernmental forum, but it was widely criticised for its limited effectiveness in supporting shared governance (Petersohn, 2025). Operating largely under UK Government control, with agendas set by Westminster and meetings typically held in London, it confined the influence of devolved

administrations (House of Lords Constitution Committee, 2015). Even before Brexit, concerns were raised about weak transparency, constrained usefulness of sub-committees, and poorly structured plenary sessions, often marked by vague communiqués and insufficient notice, which confined parliamentary oversight (House of Lords Constitution Committee, 2015). These limitations became more significant as devolution expanded and policy complexity increased.

They became more apparent during Brexit. The JMC (European Negotiations), established in 2016 to align UK and devolved positions, did not function as a collaborative forum (Paun et al., 2019). Engagement was also inconsistent, including an eight-month gap during a critical stage of negotiations (Thimont Jack et al., 2018). Devolved governments were largely excluded from key processes such as negotiation strategy and legal drafting, despite commitments to strengthen the Union (Scottish Government, 2021, p. 4). Tensions were further heightened by their exclusion from major decisions, including the triggering of Article 50 (Scottish Government, 2021, p. 4). Although a 2017 agreement proposed Common Frameworks, persistent disagreements reflected deeper structural and political challenges (Kenny et al., 2021).

Philip Rycroft, former Permanent Secretary of the UK Government's Department for Exiting the European Union, echoed these concerns, noting that intergovernmental cooperation during Brexit was strained by divergent political positions, structural constraints within Whitehall, limited information-sharing, and slow-building trust, with the JMC(European Negotiations) largely functioning to manage disagreements after decisions had already been taken.

The COVID-19 pandemic further exposed these issues, as early cooperation gave way to declining engagement, weaker communication, and increasing policy divergence, underscoring declining trust (Kenny et al., 2021). These developments led to calls for reform, primarily for clearer structures, more consistent engagement and stronger mechanisms for resolving disputes.

Intergovernmental Relations Reform (2022 Review)

The 2022 Review of Intergovernmental Relations replaced the JMC with a more structured three-tier system, including a Prime Minister-led council, interministerial committees and a joint secretariat, to improve engagement (House of Lords Library, 2022). Although the framework introduces greater formality, its non-statutory nature limits its impact, leaving outcomes dependent on political cooperation (Royal Society of Edinburgh, 2023; Guderjan, 2025).

However, its effectiveness is restricted by structural asymmetry within the UK, with the UK Government retaining this central position while also operating as both the UK and English Government in intergovernmental processes (House of Lords Library, 2022). Although dispute mechanisms exist, ultimate authority remains unchanged (House of Lords Library, 2022).

As John Swinner, former Deputy First Minister, and Philip Rycroft both emphasise, its success ultimately depends on political leadership, reflecting the continued low priority of territorial governance within Whitehall. Consequently, the 2022 novelty does not address the underlying imbalance of power, and without sustained political commitment risks reproducing earlier patterns of consolidation and reliance on goodwill, inhibiting its ability to manage post-Brexit divergence (House of Lords Library, 2022).

Policy Areas Returning from the EU

Following Brexit, the UK Government and devolved administrations established Common Frameworks to manage policy areas previously governed by EU law (House of Lords Library, 2022). These sought to balance regulatory alignment with devolved input, although disagreements arose over whether powers should be concentrated or fully devolved (Thimont Jack et al., 2018).

The frameworks were designed as flexible, non-legislative mechanisms to maintain coordination across policy areas where necessary. Their objectives include preventing internal trade barriers, ensuring international compliance and managing shared resources (Thimont Jack et al., 2018; Paun et al., 2019).

Despite this cooperative intent, Brexit legislation often required legislative consent from devolved governments. While Wales generally supported such measures following negotiation, Scotland frequently withheld consent, criticising the process as a "power grab" and calling for reform of the Sewel Convention (Paun et al., 2019). These disputes illustrate ongoing tensions between devolved expectations and Westminster's control over key regulatory areas, including the internal market (House of Lords Library, 2022).

Asymmetry in the UK's Territorial Governance

The UK's asymmetric structure produces uneven coordination, with intergovernmental relations largely based on informal, bilateral engagement rather than formalised structures (Petersohn, 2025).

Direct cooperation between devolved administrations remains limited, with stronger interaction largely confined to specific institutional arrangements such as the North-South Ministerial Council under the Belfast/Good Friday Agreement. Elsewhere, collaboration is mediated through umbrella organisations such as COSLA, WLGA, NILGA and the LGA, reinforcing a system that prioritises bilateral engagement over multilateral cooperation (Petersohn, 2025).

Patterns of engagement are also shaped by political factors, including electoral cycles, party alignment and government congruence, which make it difficult to sustain stable and consistent intergovernmental cooperation (Petersohn, 2025).

At the same time, the increasing use of UK ministerial powers in devolved areas has intensified these asymmetries. Although often justified by Brexit-related needs, such interventions can bypass devolved scrutiny (Scottish Government, 2023). The UKIMA is a key example, enabling Westminster to override devolved regulatory choices and reshaping the balance of authority within the Union (Scottish Government, 2021 p. 4).

These shifts raise constitutional questions about whether the UK operates as a partnership of equals, as devolved attempts to assert authority are often overridden (Scottish Government, 2021 p. 4).

Funding and Centralisation under UKIMA

The UKIMA deepens fiscal centralisation over public spending and subsidy regulation, thereby narrowing devolved influence in areas of otherwise devolved competence. Part 6 permits UK Ministers to fund initiatives directly within devolved territories, while Parts 7 and 8 consolidate control over subsidy policy and limit opportunities for legislative modification (Scottish Government, 2021, p. 5).

The shift becomes particularly visible when comparing EU and post-Brexit funding systems. Under the Common Agricultural Policy (CAP), allocations were structured around territorial need, with agriculturally dependent regions receiving proportionally higher support. In 2016, Scotland received approximately £104 per person compared with £40 in England from a UK total of €3.9 billion, alongside around €300 million annually for rural development (Paun et al., 2019).

EU Structural Funds similarly targeted regional disparities, distributing resources between 2014 and 2020 at levels of approximately £140 per capita in Wales, £47 in Scotland and £27 in England, in support of objectives including environmental sustainability, equality and innovation (Minto, Rowe, & Royles, 2025).

Post-Brexit accords depart from this model. Centrally administered programmes such as the Shared Prosperity Fund enable the UK Government to allocate funding according to UK-wide priorities, often without devolved involvement (Minto, Rowe, & Royles, 2025). Alongside the incomplete and uneven development of Common Frameworks, this reduces the capacity of devolved institutions to independently determine spending priorities (Horsley, 2022).

These changes deepen fiscal centralisation, inhibiting devolved discretion and strengthening Westminster's structural position within the territorial constitution.

UKIMA

Legal Transplantation and Constitutional Implications

The UKIMA establishes a post-Brexit regulatory framework designed to secure the free movement of goods and services across the UK while concentrating key areas of economic governance (HM Government, 2020; Horsley, 2022). Its operation is based on the principles of mutual recognition and non-discrimination, which ensure that compliance in one part of the UK grants access to all others, thereby constraining the practical reach of devolved regulatory authority (Horsley, 2022).

This framework can be interpreted as a form of legal transplantation. EU membership previously embedded devolved policymaking within a system of shared rules, supported by principles such as proportionality and subsidiarity and underpinned by coordinated governance structures (Horsley, 2022). UKIMA reproduces selected doctrinal elements of this regulatory system, mainly those associated with Cassis de Dijon and Keck, but applies them within a domestic context and across a narrower set of domains, including goods, services, professional qualifications and subsidy control (Horsley, 2022).

However, this adaptation is structurally incomplete. The institutional features that shaped the EU internal market; joint decision-making, enforcement mechanisms, and

negotiated rule development, are absent. As a result, the Act does not replicate the balance between integration and autonomy characteristic of the EU model, but instead constitutes a distinct constitutional framework (Scottish Government, 2021, p. 5).

This structure strengthens central dominance. Unlike federal systems that entrench sub-state autonomy, UKIMA reinforces this by allowing centrally determined rules to take precedence (Scottish Government, 2021, p. 7). Although Common Frameworks continue to exist, their partial and inconsistent implementation leaves them secondary to the Act's legally enforceable market principles (Horsley, 2022).

Case for Repeal

UKIMA has been the subject of sustained criticism, particularly from the Scottish Government, both for the manner of its enactment and its constitutional implications. Devolved involvement in its formation was limited: the Scottish Government withdrew from discussions in 2019 after being marginalised, consultation on the White Paper was brief, and the Bill was introduced with minimal prior engagement with devolved institutions (Scottish Government, 2021, p. 5). The Act proceeded despite the refusal of legislative consent by both the Scottish Parliament and the Welsh Senedd, marking a departure from expectations associated with the Sewel Convention (Scottish Government, 2021, p. 5; Horsley, 2022).

In practice, the Act creates a framework in which UK-wide market rules take precedence over devolved legislation where regulatory divergence affects intra-UK trade, thereby confining the practical application of distinct regulatory approaches (Scottish Government, 2023).

The UK Government has defended this approach on the grounds that regulatory divergence generates economic inefficiencies. However, Scottish data disputes this assumption: productivity has converged towards the UK average, growth between 2008 and 2018 exceeded UK levels, and earnings have also aligned more closely (Scottish Government, 2021, p. 7). These patterns indicate that variation in policy has not hindered economic outcomes. Instead, differences in sectoral composition, such as Scotland's greater reliance on oil and gas and its larger public sector, reflect strategic policy choices (Scottish Government, 2021, p. 7).

At an institutional level, UKIMA further consolidates this concentration of authority. UK Ministers hold powers to define exclusions, modify the scope of market rules, and legislate after only limited delay where devolved consent is withheld (Horsley, 2022). The Act also introduces an asymmetry: while UK legislation may depart from market access principles, devolved legislation remains constrained where cross-border trade is affected (Horsley, 2022).

These issues are intensified by the previously mentioned dual function of Westminster. This further highlights the UK's departure from more clearly federal systems and raises concerns about impartiality in governance (Horsley, 2022). From the perspective of the Scottish Government, the shift from negotiated coordination to unilateral control undermines the devolution settlement and strengthens the case for repeal (Scottish Government, 2021, p. 7).

Erosion of Devolved Competence

While regional governance structures formally retain legislative authority, UKIMA further confines how these powers are exercised. Market access rules restrict the enforceability

of higher regulatory standards on goods and services originating elsewhere in the UK, undermining policy divergence and exerting downward pressure on regulation (Scottish Government, 2021, p. 6).

These constraints apply across sectors. In education, for instance, the replacement of Erasmus+ with the Turing Scheme was implemented without Scottish consent, despite education being a devolved matter, thereby narrowing scope for autonomous policy progress and international engagement (Scottish Government, 2021, p. 6).

More broadly, the Act prioritises market integration over social, environmental, and developmental objectives, while reserving key areas such as state aid to Westminster (Scottish Government, 2021, p. 7). This reduces the range of policy instruments available to sub-state governments pursuing distinct agendas.

The repeated overriding of devolved consent has also raised concerns about the weakening of constitutional conventions. The Scottish Government identifies UKIMA as part of a wider post-2016 pattern in which central legislation increasingly prevails over devolved preferences, raising doubts about its long-term stability (Scottish Government, 2023).

As Michael Dougan notes, internal market regulation goes beyond technical trade facilitation to influence fundamental economic and social policy choices, positioning UKIMA as a key site of constitutional contestation over the distribution of power within the UK (Scottish Government, 2021, p. 6).

Concluding Remarks

Post-Brexit reforms have intensified the asymmetries embedded within the UK's devolution settlement, with the UKIMA and more centralised funding mechanisms consolidating Westminster authority at the expense of devolved discretion. While Common Frameworks and intergovernmental reforms provide formal avenues for cooperation, their limited legal force and continued reliance on political goodwill expose enduring structural weaknesses in the UK's model of territorial governance.

More broadly, these developments illustrate how institutional design shapes the boundaries of policy coordination across the Union. The predominance of central authority, combined with asymmetrical devolution, constrains the capacity of devolved governments to pursue distinct policy agendas while maintaining coherence within a shared internal market. This tension is further exacerbated by the absence of robust, statutory mechanisms for intergovernmental decision-making, leaving coordination vulnerable to political disagreement and institutional imbalance.

As a result, the UK's territorial governance model remains characterised by a persistent tension between unity and autonomy. Brexit has not only tested this balance but has also reconfigured it in ways that reinforce central control while limiting the practical scope of devolution. In this context, meaningful reform would require more than procedural adjustments; it would necessitate a fundamental reassessment of how authority is distributed and exercised across the UK. Without such change, the current framework risks entrenching a system in which coordination is episodic and contingent, rather than stable and institutionalised.

Ultimately, the future of UK governance depends on whether political actors can move beyond reliance on informal cooperation towards a more structured and durable model of multi-level governance, one that accommodates divergence while ensuring effective coordination across the Union.

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