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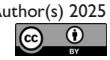
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New regulatory scaffolding for the United Kingdom: Brexit, devolution and the Windsor Framework

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Abstract

Membership of the European Union had a cohesive regulatory effect on the United Kingdom. Coinciding with devolution, the obligations of European Union membership served as a regulatory scaffolding within which the United Kingdom Government and the United Kingdom devolved governments could pursue their own legislative and policy paths. European Union membership alongside Ireland also facilitated the 1998 Belfast 'Good Friday' Agreement, particularly as regards north–south cooperation on the island of Ireland. Brexit therefore raised the prospect of the regulatory scaffolding being removed and so questions about how to manage the regulatory consequences domestically. This article establishes the regulatory effects of European Union membership on the United Kingdom before considering the impact of the post-Brexit United Kingdom–European Union relationship and approaches of the United Kingdom to managing the regulatory effects of withdrawal. It then considers the replacement domestic scaffolding put in place to manage devolution outside the European Union and Northern Ireland's unique post-Brexit position under the terms of the Windsor Framework.

Keywords

United Kingdom, European Union, Northern Ireland, Brexit, regulation, divergence

Introduction

Membership of the European Union (EU) had an important cohesive regulatory effect on the United Kingdom (UK). Coinciding with devolution in the UK, the regulatory obligations of EU membership, most notably through the burgeoning internal market *acquis* served as a legal and regulatory scaffolding within which the four constituent parts of the UK – England, Scotland, Wales and Northern Ireland – could pursue their own legislative

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and policy paths. Internal UK divergence was enabled by devolution and simultaneously tempered by the obligations of EU membership. This cohesive effect was particularly evident in areas of policy and regulation concerning internal UK trade. At the same time, EU membership provided the context in which the post-conflict future of Northern Ireland was being fashioned under the 1998 Belfast (Good Friday) Agreement (the '1998 Agreement'). While this reaffirmed Northern Ireland's constitutional status as part of the UK, it also included arrangements for increased north–south cooperation on the island of Ireland, a process facilitated by Ireland also being part of the regulatory scaffolding of EU membership.

Withdrawal from the EU raised the prospect of this regulatory scaffolding being removed, thus exposing and exacerbating existing and emerging territorial tensions over the complex consequences of Brexit for the UK generally and for Northern Ireland specifically. The situation became even more complex with the unique status conferred on Northern Ireland under the Protocol on Ireland/Northern Ireland. This effectively placed Northern Ireland in the EU's customs territory and internal market for goods. Managing these complexities required replacement domestic regulatory scaffolding for the UK. This begged questions about the form it would take and whether it would be sufficient to manage post-Brexit complexities.[1]

Against this backdrop, this article considers the regulatory effects that EU membership had on the UK, particularly while devolution was implemented and north–south cooperation on the island of Ireland was being pursued. It then considers the effects of UK withdrawal from the EU on the regulatory scaffolding by analysing the regulatory consequences of the EU–UK Withdrawal Agreement, its Protocol on Ireland/Northern Ireland and the EU–UK Trade and Cooperation Agreement. An overview is then provided of the main domestic strategies implemented to manage the effects of Brexit on UK law and regulation. The two remaining sections then assess the replacement regulatory scaffolding now in place to manage both devolution and Northern Ireland's unique post-Brexit regulatory position.

EU membership, devolution and the 1998 Agreement

EU membership has a profound impact on the legal orders of its member states. Traditionally understood as a 'community of law' (or *Rechtsgemeinschaft*),[2] the EU shapes the constitutional and legislative frameworks of its member states through the regulatory scaffolding that comes with membership and the adoption of the *acquis*.[3] For the UK, EU membership affected its domestic legal order in a manner that facilitated devolution and the implementation of the 1998 Agreement.

EU membership

The UK's dualist legal system means that international treaty obligations can only be given domestic legal effect through a dedicated provision of UK law. When, in January 1972, the UK signed its Treaty of Accession to the European Communities (EC), an act of domestic legislation was required to give legal effect to EC membership. This was the European Communities Act (ECA) 1972. It provided that all 'such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under' the Treaties on which the EC was based and 'all such remedies and procedures from time to time provided for by or under' the same were 'without further enactment to be given legal

effect or used in' the UK and would 'be recognised and available in law, and be enforced, allowed, and followed accordingly (ECA, 1972: s2). These provisions gave the laws of the then EC – and subsequently the EU – direct effect throughout the UK; meaning, these were laws on which natural and legal persons could rely. As the scope and interpretation of EU law evolved, this ECA 1972 provision operated and came to be recognised as a legal 'conduit pipe' through which all EU laws and obligations 'flowed' directly into the UK statute book (*Miller vs Secretary of State for Exiting the EU*, 2017: [65]). EU law also enjoyed primacy, meaning that non-EU-derived UK laws were subject to EU laws and their application in the UK.

During UK membership of the EU, the scope of EU competence expanded as did the EU *acquis* of rules and norms (see Bradford, 2020). As such the 'Europeanization' of the UK regulatory frameworks continued apace (see Bulmer and Burch, 2005). By the time of the UK's withdrawal, EU regulation had evolved to cover not just economic activities typically associated with market regulation – so standards for goods, rules for service providers, recognition of qualifications, authorisations and certifications – but also areas such as environmental protection, policing and judicial cooperation and the use of data. In 2015, it was estimated that 13.2% of UK regulatory acts related to the EU (Miller, 2015).

Withdrawing from the EU would by default mean that the *acquis* would no longer apply in the UK and the UK Government would 'take back control' for regulation across all areas of domestic public policy (see Kassim et al., 2022). Decisions would therefore be required on what, if any, EU laws should continue to apply and what laws would replace EU laws (on related challenges see Armstrong, 2018 and Cygan, 2022). With withdrawal seeing the UK leaving 30+ EU regulatory agencies, decisions would also be needed on how to manage diverse and often wide-ranging regulatory tasks. Primary responsibility for replacing the regulatory scaffolding lost with Brexit would fall to the UK Government. With devolution having taken place during the UK's membership of the EU, it would need, however, to proceed in a manner that respected the powers of the devolved authorities in Northern Ireland, Scotland and Wales.

Devolution

Contemporary UK devolution originated during the period of EU membership. For Scotland and Wales, the introduction of devolution in 1999 came in response to prolonged campaigns for territorial self-government. Its parallel reintroduction in Northern Ireland came as part of the wider 1998 Agreement that signified the end of violent conflict and the creation of new architecture for government, extending beyond just devolved institutions (see section 'Northern Ireland devolution and the 1998 Agreement'). Since 1999, the 'devolution settlements' in each part of the UK have evolved in similar but distinct ways; additional powers have been devolved to Scotland, Wales and Northern Ireland, but the substance and timings have differed. In Scotland, significant additional powers were devolved to the Scottish Parliament and Government via the Scotland Act 2012 in line with recommendations from the Calman Commission on devolution of more powers (see Mullen, 2011; Trench, 2009); and then again via the Scotland Act 2016 in line with recommendations from the Smith Commission established in the wake of the Scottish Independence Referendum of 2014 (see Kenealy and Parry, 2018; McHarg et al., 2016).[4] In Wales, the Welsh Assembly was initially established as a 'corporate body' presided over by an Executive Committee with a scrutiny and some executive functions but without

law-making powers. The Government of Wales Act 2006 changed the arrangement by providing for full legislative powers to be granted to the Welsh Assembly and transferring additional competencies to it. The Wales Act 2014 provided for the devolution of further powers and, two years later, the Wales Act 2017 enshrined the Senedd Cymru as a permanent part of the UK constitution and moved from a 'conferred powers' to a 'transferred powers' model of devolution for Wales (see Moon and Evans, 2017). The evolution of devolution in Northern Ireland followed a different pattern (see generally Birrell and Heenan, 2017, 2022). Changes generally occurred in the wake of the restoration of the power-sharing institutions following a period of collapse and on the basis of cross-party agreements brokered by the UK and Irish Governments. Important milestones include the St Andrews Agreement in 2007 (Irish Government, 2007), the Hillsborough Castle Agreement in 2010 (UK Government, 2010, the Stormont House Agreement in 2014 (UK Government, 2014), the Fresh Start Agreement in 2015 (UK Government, 2015) and the New Decade, New Approach Agreement in 2020 (UK Government, 2020).

With the different arrangements for and evolution of devolution in Scotland, Wales and Northern Ireland, the direct effect of EU law across the UK limited the potential for regulatory divergence between its constituent parts. The shared obligation on executive authorities in Belfast, Cardiff, Edinburgh and London to comply with EU law and policy frameworks therefore acted as scaffolding for regulatory and policy regimes within the UK. Territorial divergence was possible, but only within the parameters of EU law and policy. In addition, over time, the degree of overlap between EU competence and devolved competence steadily increased as both the EU and the devolved authorities gained more powers. With EU membership limiting intra-UK divergence, it effectively minimised the cost, in terms of regulatory variation, of any expansion of devolved government vis-a-vis central government. Indeed, for Keating (2022: 635), 'EU membership allowed for a more extensive devolution settlement than would otherwise have been possible'.

The prospect of the UK's withdrawal from the EU, and with it the return of competences from Brussels across a wide range of policy areas, begged a range of questions not least about where exactly repatriated powers would 'land' in the UK, and how regulatory divergence would be managed, assuming that the 'vast majority of powers returning from Brussels' would go to Belfast, Cardiff, Edinburgh.[5] Casting a dark shadow over such questions were tense intergovernmental relations between the UK Government and the devolved governments, particularly those in Scotland and Wales (see McEwen, 2020; McEwen et al., 2020; Sandford and Gormley-Heenan, 2020).[6]

Northern Ireland devolution and the 1998 Agreement

A further question arising from the prospect of the UK's withdrawal from the EU was how to manage the particular case of Northern Ireland. Of the four parts of the UK, it has always had the most distinctive regulatory architecture. This is due to a longer history of devolution dating back to 1921 and Northern Ireland's contested past,[7] and is reflected in its particular legal system and different regulatory structures (e.g. separate regulators) to those operating in the rest of the UK (see Whitten, 2022b).[8] Further distinguishing Northern Ireland as 'a place apart' within the UK are the unique governance arrangements established by the 1998 Belfast 'Good Friday' Agreement that ended a 30-year conflict. The resulting multilevel structure of government exceeds any conventional definition of devolution (Campbell, Ní Aoláin, and Harvey, 2003).

Strand One of the 1998 Agreement provided for the creation of new devolved institutions: the NI Assembly and NI Executive. These operate on the basis of mandatory power-sharing between 'unionists and 'nationalists' and so generally require consensus between political parties with diametrically opposed visions for the constitutional future of Northern Ireland. Instability has therefore been a feature of NI devolution with its institutions often liable to collapse. Devolution alone has not therefore led to significant regulatory developments. A disproportionate amount of regulatory change that has occurred in Northern Ireland since 1998 has been because of EU membership and the obligation on the devolved institutions to keep up with EU laws. Of note too is that more areas of policy are devolved to Northern Ireland than to Wales and Scotland. Official analysis identified 149 areas of policy devolved to Northern Ireland that intersected with EU law compared with 101 and 65 areas of policy in Scotland and Wales, respectively (Cabinet Office, 2021). The scope for post-Brexit intra-UK regulatory divergence was therefore greatest in Northern Ireland.

Withdrawal from the EU also threatened to complicate the operation of Strand Two of the 1998 Agreement. This established the North–South Ministerial Council (NSMC) in which the NI Executive can engage directly with the Irish Government to promote cross-border cooperation on the island of Ireland.[9] Cooperation is supported by the work of a set of dedicated North–South Implementation Bodies (NSIB) and was facilitated by Northern Ireland as part of the UK and Ireland being in the EU. The significance of the shared regulatory scaffolding provided by EU membership became evident in a joint mapping exercise undertaken by the Irish and UK Governments and the European Commission in 2017.[10] It identified 142 areas of north–south cooperation with 96 – more than two-thirds – being either fully or partially underpinned by or linked to EU law or policy (see UK and Government, n.d.).[11]

Brexit: Regulatory scaffolding removed?

Given its important supporting role for devolution, the removal of the regulatory scaffolding of EU membership posed challenges for the UK in terms of ensuring domestic regulatory coherence and legal certainty. It also raised questions about how cross-border cooperation under the 1998 Agreement could be sustained. The extent to which these would be addressed in a manner sufficient to minimise the inherently disruptive effects of Brexit would depend on the terms of withdrawal, the role of regulatory alignment in the UK's post-Brexit relationship with the EU, how the disapplication of EU law in UK law would be managed, and what strategies would be adopted to manage actual and potential regulatory tensions with devolution.

Withdrawal Agreement

According to the preamble to the EU–UK Withdrawal Agreement (WA), 'the law of the [European] Union . . . in its entirety ceases to apply to the United Kingdom' (see generally Dougan, 2021; Liefländer et al., 2021).The effective date was 1 January 2021, the day following the end of the 11-month 'transition period' during which the UK was obliged, for the sake of ensuring an orderly withdrawal, to comply with EU law while the post-Brexit relationship with the EU was being agreed. Not all EU law ceased to apply on 1 January 2021, however. Certain provisions of the WA had to be incorporated directly into domestic UK law and the UK had to ensure that individuals could rely on rights

created by the WA when appearing in UK courts (WA, Article 4). Moreover, under the Protocol on Ireland/Northern Ireland (see section 'Northern Ireland'), a set of EU acts continued to apply in the UK in respect of Northern Ireland. Overall, however, the general effect of the WA was to remove the UK from the legal and regulatory order of the EU, thereby destabilising the regulatory scaffolding that derived from EU membership and opening up the possibility of its complete abandonment.

Trade and Cooperation Agreement

The UK–EU Trade and Cooperation Agreement (TCA; 2020) sets the terms for the post-Brexit UK–EU relationship. Under international law, the terms of the TCA are binding on the UK, and domestic law cannot be invoked to justify breaching any obligations. Domestic law in the UK must therefore comply with TCA obligations. However, unlike the WA, there is no requirement for its provisions to have direct effect in the UK. Indeed, the agreement explicitly does not permit its provisions to be directly invoked in the domestic law of either party (Article 16 TCA). This means natural and legal persons cannot rely directly on any rights or obligations created under the TCA when appearing in UK Courts.

The TCA provides for zero-tariff, zero-quota trade in goods and so a preferential trading arrangement between the UK and the EU. It also provides for cooperation on sanitary and phytosanitary measures, customs and reducing technical barriers to trade. Importantly, none of this involves any regulatory alignment of the UK with the EU. While the TCA contains 'level playing field' provisions covering, for example, labour and social standards, environmental standards and sustainable development, in substance these consist primarily of non-regression clauses linked to trade and so place few constraints on regulatory divergence. The TCA does, however, include 'unstated cross-references to EU legislation' and thus, for Peers (2022: 79), 'alignment that dare not speak its name'.[12] The references are, though, limited. Consequently, the destabilising effect of the WA on the UK's regulatory scaffolding is not mitigated to any notable degree by commitments arising from the TCA and the post-Brexit UK–EU relationship.

The EU Withdrawal Act (2018) and Retained EU Law

In view of the terms of the WA and subsequently the TCA, EU law applicable in the UK would have ceased to have had effect from the end of the transition period on 31 December 2020. This would have created major gaps in the domestic laws of the UK in areas of previous EU competence.[13] To avoid such a scenario, the UK Government in 2017 introduced its 'Great Repeal Bill'. Its main purpose was to convert all applicable EU law into domestic UK law at the point it ceased to apply as EU law, and to enable UK Ministers to then 'decide which elements of that law to keep, amend or repeal' (Department for Exiting the European Union, 2017: 1.12). The bill was adopted as the EU (Withdrawal) Act (EUWA) in June 2018.

Under the terms of EUWA 2018, all EU law that applied at the end of the transition period on 31 December 2020 continued to have effect in UK domestic law as 'Retained EU law' (REUL) unless and until alternative provisions were made (see Barnard, 2022; Craig, 2019). The EUWA 2018 also required that UK courts continue to interpret REUL in line with the established case law of the Court of Justice of the European Union (CJEU) and the established principles of EU law. The effect was to retain, initially at least, the regulatory scaffolding of EU membership and so soften the immediate regulatory effects of Brexit in the UK.

However, with EUWA (2018) empowering ministers to make changes to REUL, the prospect existed of the partial and indeed wholescale dismantling of that regulatory scaffolding. Moreover, with multiple ministers able to make changes – including devolved ministers in areas of devolved competence – the potential for piecemeal and uncoordinated changes was high. The risk clearly existed therefore of the scaffolding collapsing rather than being dismantled and replaced in an orderly and planned manner.

Northern Ireland

Of all parts of the UK, Northern Ireland has the most complex post-Brexit regulatory arrangements. This is due to the Protocol on Ireland/Northern Ireland annexed to the WA that was agreed by the EU and the UK to address a set of 'unique circumstances' flowing from the geographic realities, historical experiences and constitutional arrangements on the island of Ireland (see McCrudden, 2022; Weatherill, 2020; Whitten, 2024a). It was amended in 2023;[14] since then it has generally been referred to as the 'Windsor Framework'.[15]

Under the terms of the Protocol/Windsor Framework (P/WF) certain aspects of EU law continue to apply in Northern Ireland and in the same way as they do in EU member states. While Northern Ireland remains part of the UK customs territory (Article 4P/WF), the EU customs code continues to apply there as do specific EU acts that regulate the free movement of goods (Article 5P/WF), VAT and excise (Article 8P/WF), state aid (Article 10P/WF), and electricity markets (Article 9P/WF). Certain EU acts concerning rights of individuals (Article 2P/WF) also continue to apply in Northern Ireland. Applicable EU acts are listed in the Annexes to the P/WF; over 330 EU acts were originally listed (see Whitten, 2023). Any amendments or replacements to EU acts applying under the P/WF automatically apply in Northern Ireland (Article 13(3)). In addition, new EU acts, deemed to fall within its scope may be added, through joint EU–UK agreement, to those that already apply (Article 13(4) P/WF). This puts Northern Ireland in a relationship of dynamic – and for the most part automatic – regulatory alignment with aspects of EU law.

The UK Government is responsible for ensuring the P/WF and those EU acts it makes applicable have effect in Northern Ireland (Article 12(1) P/WF). Furthermore, where the P/WF makes provision for the continued application of EU law, the institutions, bodies, offices and agencies of the EU retain the powers conferred on them by EU law in relation to natural and legal persons residing or established in the UK. This includes the CJEU, whose jurisdiction therefore still extends to the UK in respect of Northern Ireland under the P/WF.

The regulatory obligations for Northern Ireland arising from these novel arrangements are considerably more extensive than those that apply to the whole of the UK under the TCA. While the UK must ensure that its domestic law provisions align with its obligations under the TCA, this is a much weaker form of alignment than that created under the WA generally, and the P/WF in particular. For Northern Ireland, therefore, the EU regulatory scaffolding effectively remains in those areas covered by EU law applicable under the P/WF.

Replacing the scaffolding

The combined effect of the WA, the TCA, the EUWA 2018 and the Protocol on Ireland/Northern Ireland was to introduce a degree of instability and uncertainty to the domestic

regulatory scaffolding that EU membership had provided and open up the prospect for regulatory tensions between the different parts of the UK. While the provision for 'retained EU law' in the EUWA avoided the regulatory chaos that would have resulted from the simple disapplication of EU law at the end of the transition period, 'retained EU law' was only ever intended to be an interim solution for managing the regulatory consequences of UK withdrawal from the EU. Brexit was about 'taking back control' and thereby freeing the UK to adopt its own regulations and diverge from the EU. New and replacement regulation was to be expected.

As for domestic territorial regulatory tensions, these would undoubtedly emerge as a consequence of devolved competences no longer being constrained by the regulatory scaffolding of EU membership. Moreover, with the pro-independence and pro-EU Scottish Nationalist Party in power in Edinburgh, and Scotland having voted, in the 2016 referendum, in favour of remaining in the EU by a clear majority (62% vs 38%), political tensions over the UK Government's willingness to recognise Scotland's position were inevitable. Added to this, there was the question of how to manage Northern Ireland's unique regulatory position under the Protocol. How could the UK's post-Brexit replacement regulatory scaffolding manage the inevitable regulatory divergence away from the EU when part of the UK was in a process of dynamic regulatory alignment with the EU? Most notably, what would all of this mean for the coherence of the UKIM? These were questions in need of answers.

Removing the UK from the EU's legal and policy frameworks therefore introduced not only the possibility – indeed likelihood – of UK regulatory divergence from the EU, but also the potential for increased policy and regulatory differentiation within the UK. Given the P/WF arrangements, the part of the UK likely to be most significantly affected was Northern Ireland. So as to minimise domestic differentiation, a series of strategies were adopted to attempt to mitigate or manage post-Brexit intra-UK regulatory divergence. These not only strained intergovernmental relations within the UK (see McEwen, 2020; McEwen et al., 2020), but also increased the complexity of the UK regulatory environment, not least because of the under-appreciated interactions between and interdependencies of successive strategies.

EU (Withdrawal) Act 2018 and Common Frameworks

The Great Repeal Bill that became the EUWA 2018 was strongly opposed by devolved governments because its provisions would have constrained their powers (Douglas-Scott, 2019). After a bitter political dispute and allegations of a 'power grab' (see Stewart et al., 2017), the UK Government, facing cross-party opposition in the devolved legislatures as well as in the House of Lords, amended the bill to include provision for intergovernmental collaboration in managing the domestic legal aspects of Brexit. Devolved authorities would be able to make changes in areas of competence albeit with the UK Government retaining powers to act in devolved areas without consent.

At the same time, the 'EU Negotiations' sub-committee of the Joint Ministerial Council – then the primary body for domestic intergovernmental cooperation on Brexit – launched a 'Common Frameworks' (CFs) process. The aim was to develop 'common approaches' in areas of policy covered by the competences of the EU but which, post-Brexit, would be in the competence of devolved authorities. The CFs process and its outcomes would therefore be core to how the UK managed any dismantling of the regulatory scaffolding of EU membership. Each proposed framework agreement would be co-designed between

the UK Government and the three devolved governments, according to an agreed set of principles (Whitten, 2024b). Respect for the devolution settlements and devolved democratic accountability were among the CFs principles and the process itself was set up to be collaborative and co-owned by all four administrations with outcomes jointly determined. In this way, the intergovernmental ethos of the CFs process contrasted with both the initial approach of the Great Repeal Bill and the EUWA (2018) and with subsequent UK Government strategies, namely the United Kingdom Internal Market Act 2020 and the REUL (Revocation and Reform) Act 2023.

United Kingdom Internal Market Act 2020

The United Kingdom Internal Market (UKIM) bill was introduced by the UK Government in 2020 and forced through parliament despite fierce opposition from the devolved governments.[16] The Scottish Government and the Welsh Government were especially vociferous, claiming that the bill would undermine devolution, dilute the efficacy of devolved laws and increased the influence of 'UK' regulations that ostensibly apply to England only (see Antoniw, 2022; NI Assembly, 2020; Scottish Government, 2020).

The UKIM Act (2020) establishes two 'market access principles' (MAPs) for the post-Brexit governance of the UKIM (see generally Horsley, 2022 and Brown et al., 2024). Under the first principle – mutual recognition – any goods or services that are regulated and available for use or sale on the market of one of the UK's constituent parts must be accepted for use or sale in any other part of the UK without having to satisfy any regulations that apply only in that territory's market. Under the second principle – non-discrimination – any goods or services that are 'imported' to one part of the UK from another cannot be treated differently from locally produced goods or local service providers. Both MAPs are 'modified' in relation to goods entering Northern Ireland from the rest of the UK to accommodate obligations under the P/WF (see section 'Challenges of intergovernmental politics').

The operation of an internal market in a state with multiple levels of regulatory governance needs to strike a balance between regulatory autonomy for sub-state authorities and the ability of economic actors to trade freely within the market (and with external trading partners) (see Zglinkski, 2023). The MAPs do respect devolved autonomy insomuch as authorities in Scotland, Walesand Northern Ireland (subject to the P/F) are free to continue to set their own regulations and standards within their respective competences. At the same time, however, due to the asymmetry of the UKIM in which England is by far the biggest player, rules for England are very likely to have a persuasive effect on decisions made anywhere else. Moreover, because of the MAPs, any regulations or standards set by devolved authorities for local production of goods or provision of services that are higher than those that apply elsewhere in the UK now risk undercutting local traders.[17]

The UKIM Act clearly has a centralising effect. Although ostensibly modelled on the operation of the EU single market, it does not provide the same degree of flexibility for devolved authorities in the internal market of the UK as that provided for EU member states, and their sub-state authorities, operating in the EU single market (see Wincott et al., 2022; Kilford and Deb, 2024). The UKIM Act contains fewer exceptions for the application of MAPs than is the case with the operation of the 'four freedoms' of the EU single market. For example, exceptions (i.e. bans or restrictions) to the otherwise obligatory free movement of goods, services, capital and people in the EU single market can be

granted to Member States on grounds of national public health or environmental protection matters. In addition, the principle of subsidiarity – whereby decisions ought to be taken at the closest possible level to individuals – and the principle of proportionality – whereby any action ought not go beyond what is strictly necessary to achieve a specific end – do not feature in the UKIM Act. These principles are central to the operation of the EU single market and designed to protect the autonomy of member states and their substate authorities vis-a-vis EU institutions. Given its centrality to the replacement UK regulatory scaffolding, the centripetal effect of the UKIM Act is a significant feature of the post-Brexit UK regulatory environment, as currently constructed. This fact stands in sharp contrast to the earlier UK Government promise that the 'vast majority' of repatriated powers would go directly to devolved institutions.[18]

REUL (Revocation and Reform) Act 2023

Under the EUWA Act 2020, UK Government ministers can make changes to 'retained EU law' either under powers granted by the Act or using normal law-making processes. This notwithstanding, the UK Government – initially under Liz Truss (2022) and later Rishi Sunak (2022-24) – sought specific powers to make more radical changes to the laws that derived from and were a legacy of EU membership. To this end, the REUL (Revocation and Reform) bill was introduced in September 2022. As drafted, the bill would have introduced a 'sunset by default' mechanism resulting in the disapplication of the majority of REULs at the end of 2023. During the passage of the bill, that mechanism was replaced by a list of c500 EU-derived domestic laws to be revoked on the basis that they were either inoperable, no longer relevant or unnecessary. Furthermore, the REUL Act 2023 renamed 'retained EU law' as 'assimilated law' and empowered UK Ministers until 23 June 2026 to revoke, replace, restate or replicate any now 'assimilated' law. Underpinning the deregulatory thrust of the Act, a replacement instrument cannot, however, be used to create new delegated powers, establish criminal offences or monetary penalties, require new taxes to be levied or public bodies set up. Most significantly, replacement instruments cannot be allowed to increase the overall regulatory burden through the changes they enact. The REUL Act further provides for the 'abolition' of the UK-version of the principle of supremacy of EU law and for the general principles of EU law (s3; s4). These changes therefore dilute the stabilising effect the EUWA 2018 had in the replacement UK regulatory scaffolding while substantially increasing the degree of uncertainty regarding the continuation of (now) assimilated law where it continues to apply.

The devolved institutions in Scotland and Wales strongly opposed the REUL bill and refused to give consent to the REUL Act (see Scottish Government, 2023; Welsh Government, 2023). The devolved institutions in Northern Ireland were not sitting at the relevant time. Criticism from Edinburgh and Cardiff focused on the deregulatory thrust of the bill as well as the powers it granted UK Government ministers to revoke, restate, revise or replace now 'assimilated' laws in devolved areas without a requirement to seek the consent of the relevant devolved authority. The REUL Act therefore constitutes another source of intergovernmental tension in the replacement UK regulatory scaffolding while also creating new potential for inter-territorial regulatory complexity should UK Government ministers elect to act in devolved areas in a manner that is contrary to devolved policy.

For Northern Ireland, the changes introduced by the REUL Act have three important actual or potential implications and correspondingly introduce additional complexities.

First, the removal of EU general principles and relevant CJEU case law from assimilated laws that apply across the UK further differentiates Northern Ireland and the application of EU law in scope of the P/WF to which EU general principles and CJEU jurisdiction still apply. This means that any changes made under the REUL Act to assimilated laws concerning the regulation of goods cannot apply in Northern Ireland. Second, the deregulatory thrust of the REUL Act raises the possibility that the regulatory burden on producers in Great Britain could be lowered in areas where Northern Ireland continues to follow (likely higher) EU regulatory standards. Third, in areas of north–south cooperation and areas with cross-border implications, any changes in assimilated law, made under the REUL Act, can be expected to force a choice in Northern Ireland to diverge either with Ireland or with other parts of the UK.

The new regulatory scaffolding: Delivering for devolution and the UKIM?

The UK's regulatory scaffolding replacing that provided by EU membership comprises a series of elements introduced by successive UK Governments during 2018–2023. It is not the result of a single overarching strategy for UK regulation post-Brexit but rather the product of an iterative and generally contested process. For this reason, the new system is complex, and its different elements do not necessarily cohere. Managing this new regulatory scaffolding effectively poses political and policy challenges for both the UK Government and the UK's devolved governments.

The challenges of complexity

Post-Brexit regulation in the UK is complex. Strategies adopted by the UK to manage the return of powers from the EU and to make use of its post-Brexit regulatory freedom to adopt its own laws have created a smorgasbord of different, and sometimes competing, obligations. While managing the post-Brexit UK regulatory scaffolding was always likely to pose challenges, the absence of an overarching approach and the corresponding lack of an oversight body to monitor regulatory developments exacerbates the complexity already inherent in a system characterised by devolution and the particular situation of Northern Ireland (House of Lords European Affairs Sub-Committee on the Windsor Framework, 2023: paras. 94-98; Foreign, Commonwealth and Development Office, 2024: 8).

The interaction between the REUL Act and CFs exemplifies the complexity challenge. During the initial stages of the CFs process, an internal exercise identified 152 areas where devolved competence intersected with EU competence in one or more of the three devolved UK territories (Cabinet Office, 2021). For 32 of the areas, non-legislative CF agreements were developed. While all but one of these CF agreements are still to be finalised, in substance, they largely rely on what was at the time REUL and what is now assimilated law. This is significant because, prior to the REUL Act, the category of 'retained EU law' continued to enjoy a UK-version of the EU-derived principle of supremacy which infused this REUL with a stability not enjoyed by non-REUL. Changes introduced by the REUL Act removed the special status that was afforded to REUL from assimilated law. This raises questions about the operation of the CF agreements and the context in which they are implemented. Under the REUL Act, changes can be more easily made by both devolved and UK Government ministers to assimilated laws – including those named in the CF agreements – with no obligation to report on any such changes to

parts of the UK outside the initiating territory. Contingent on the extent to which REUL Act powers are used, the efficacy of CF agreements that rely on assimilated law is at risk of being undermined. In addition, for the 120 areas in which the UK Government and the devolved governments concluded that 'no framework [was] required' the basis for doing so was, on many occasions, premised on the continued application of relevant REUL (as was) in each part of the UK. Changes introduced by the REUL Act therefore additionally raise questions regarding the continued validity of the assumptions that underpinned 'no framework required' conclusions. The apparent contradictions between these two strategies adopted to manage post-Brexit regulation in the UK are symptomatic of the *ad hoc* nature of the exercise.

Challenges of intergovernmental politics

In addition to managing complexity, effective operation of the new regulatory scaffolding needs to contend with and withstand the often-conflictual politics of domestic intergovernmental relations. The Conservative UK Governments that oversaw – and championed – the UK's withdrawal from the EU during 2016–2024 regarded Brexit as an opportunity for both active regulatory divergence from the EU and deregulation. Devolved governments, particularly those in Scotland and Wales, did not share these goals, and would rather have preferred to stay more closely aligned with EU rules. Notwithstanding the variation in territorial visions for the ideal type of Brexit and the early promise from Prime Minister Theresa May in 2017 that devolved governments would be 'fully engaged' in the process (Prime Minister's Office, 2017), the deregulatory preference of successive Conservative UK Governments was nonetheless written into domestic regulatory strategies, notably the UKIM and REUL Acts. Consequently, the disruptive and detrimental impacts that the Brexit process had on intergovernmental relations risk being perpetuated by the UK's replacement regulatory scaffolding and its internal tensions.

The interaction between the UKIM Act and CFs process demonstrates the potential challenge for intergovernmental relations. Under the UKIM Act, a UK Government minister can introduce 'exclusions' to the application of the MAPs if doing so gives effect to an agreement that forms part of a CF and provides that 'certain cases, matters, requirements or provision' should be so excluded (s 10(3)). Any of the three devolved governments can seek an exclusion from the MAPs via a CF agreement. According to UK Government guidance, the scope and rationale for the proposed exclusion have to be set out and supporting evidence provided by the applicant devolved government (UK Government, 2021). Only if the relevant CF agreement forum agrees to the exclusion can a statutory instrument giving it effect be laid. Importantly, the granting of an exclusion is discretionary. Therefore, even where there is support and agreement among devolved governments and the relevant CF agreement procedure has taken place, UK Ministers are under no obligation to consent to the exclusion and lay relevant regulations. This centripetal dynamic of the UKIM Act sits in tension with the principles agreed between the UK Government and the three devolved governments at the outset of the CFs process and the commitment to ensure CF agreements would 'as a minimum' maintain 'equivalent flexibility for tailoring policies to the specific needs of each territory as is afforded by current EU rules' (Joint Ministerial Committee (EU Negotiations), (JMC(EN)) Communique, 2017). The UKIM Act exclusions process, as currently constructed, does not allow devolved administrations 'equivalent flexibility' to what they enjoyed during UK membership of the EU but rather renders the efficacy of devolved policy proposals in areas covered by a CF agreement subject to the discretion of a UK Government minister.

The Labour-led UK Government launched a review of the UKIM Act to consider *inter alia* whether or not the process for agreeing exclusions could be improved. The outcome, published in July 2025, falls short of proposing revisions to the UKIM Act. Instead, it proposes six reforms to the manner in which the UKIM Act will operate alongside a commitment, on the part of the UK Government to reposition CFs as the preferred primary vehicle for managing intra-UK divergence. As Horsley (2025) has noted, four of the six proposed reforms relate to the exclusions process and two commit the UK Government to working with devolved governments to agree to new processes for engaging stakeholders and making referrals to the Office for the Internal Market. In relation to exclusions, the UK Government envisages recognising non-economic factors when assessing requests. This change would bring the UKIM system closer to the approach to internal differentiation in the EU single market (see section 'UK Internal Market Act 2020') by allowing for exceptions on environmental and public health grounds. It stops short, however, of embracing principles of proportionality and subsidiarity. The UK Government also envisages reforming the procedures associated with requesting exclusions from the MAPs. These procedural reforms would allow exclusions with 'minimal economic impact' (less than £10 m annually) to be granted; introduce a new requirement for an exclusion to be granted where all four governments agree to as much via a CF; and, where consensus cannot be reached via a CF (either due to lack of agreement or lack of a relevant framework), allow for the proposing government to make an exclusion request directly (but transparently) to the relevant UK Government Minister (Department for Business and Trade, 2025b).

Assuming implementation of the proposed reforms, the UKIM Act Review outcomes represent a positive move towards fulfilment of the aspiration of the CF principles, particularly regarding respect for devolved autonomy. The changes remove neither the legislative potency of the UKIM Act nor UK Government 'gatekeeping' powers inherent in the exclusion process and the wider market management system created under the UKIM Act.[19] While, therefore, the new commitment to foreground CFs in the post-Brexit UK regulatory scaffolding has the *potential* to dilute the centralising effect of the UKIM Act, realising that potential (ironically) is still largely contingent on the approach that the UK Government choose to take.

Alongside domestic reforms, the UK Government's 'reset' of relations with the EU and a closer UK–EU relationship may also ease some of the intergovernmental tensions that linger in the UK's post-Brexit regulatory scaffolding. Regulatory alignment with the EU is likely to be welcomed by all three devolved UK Governments. At the same time, however, this could also lead to further centralisation in domestic legislation. Reaction to the Product and Metrology (PAM) bill demonstrates this. As introduced to the House of Lords in 2024, it would grant UK Government Ministers broad powers to make provisions 'in relation to the marketing or use of products in the United Kingdom, which corresponds, or is similar, to a provision of relevant EU law' for the purpose of mitigating or reducing the environmental impact of products (PAM Bill, 2024: S1(2)). While UK regulatory alignment with the EU is attractive, UK Government encroachment on devolved competence (such as that anticipated in the PAM bill) is seen as unacceptable (see Scottish Government, 2024; Welsh Government, 2024).[20]

The new regulatory scaffolding for Northern Ireland

The strategies that successive UK Governments have adopted to manage the domestic regulatory effects of withdrawal from the EU have resulted in a complex set of arrangements and processes. The picture becomes even more complex in the case of Northern

Ireland given the unique governance arrangements of devolution and the 1998 Agreement and its recently established position under the P/WF at the intersection of EU and UK regulation. A consequence of this is that what happens in Northern Ireland has significance for the UK as a whole and, in particular, its relations with the EU. Any attempt to understand the new regulatory scaffolding of the UK today must, therefore, engage with the complex situation of Northern Ireland.

Evolving arrangements

The arrangements originally agreed in the Protocol on Ireland/Northern Ireland were controversial. Following an extended period of contestation and often fractious negotiations on the terms of the Protocol and their implementation, the European Commission and the UK jointly announced in February 2023 the 'Windsor Framework' – a package of measures to address 'deficiencies' in the original Protocol (European Commission, 2023). The various measures were subsequently given effect in EU and UK law.

The WF essentially covered two areas: the movement of goods and governance. On goods, easements were introduced for movements based on differentiation by destination. Certain goods being moved by trusted traders for end use or consumption in Northern Ireland can avail of a UKIM System and so require fewer customs checks and regulatory controls. By contrast, goods moving into Northern Ireland and at risk of onward movement into the EU remain subject to full EU customs checks and EU regulatory controls. Also on goods, the WF amended the terms of application of specific EU laws to certain goods moving from Great Britain to Northern Ireland. For 'retail goods' for use or consumption in Northern Ireland and moved by 'trusted traders', less onerous sanitary and phytosanitary (SPS) rules and checks now apply. Data-sharing and labelling requirements must, however, be fulfilled for goods and traders availing of these easements (see Decision No 1/2023 of the Joint Committee, 2023). For compliant 'retail goods', some 65 of the approximately 300 EU acts that otherwise apply under the P/WF do not apply. While these changes are beneficial in that they enable certain types of goods to move more freely into Northern Ireland, they also create (see 'Challenges of intergovernmental politics') further regulatory complexities in and for Northern Ireland.[21]

On governance, the WF introduced a 'Stormont brake' that could be applied, subject to stringent criteria being met, to the application of amendments and replacements to certain EU acts applicable in Northern Ireland under the P/WF (see Phinnemore and Whitten, 2024). This creates the potential for the UK to deviate from the otherwise automatic dynamic regulatory alignment of Northern Ireland with EU rules on the movement of goods. If applied, the brake could put Northern Ireland in a position of divergence from both the EU (where the amended or replaced act would apply) and from the rest of the UK in respect of Northern Ireland (where the relevant EU instrument may no longer apply as 'assimilated law').

The uncertainties of regulatory complexity

The P/WF arrangements are novel and complex in and of themselves. Viewed as part of the post-Brexit UK regulatory scaffolding, however, they add to the complexity. So too do the implementation of the CFs process and the consequences of the UKIM Act 2020 and the REUL Act 2023.

The principles that guided the development of CF agreements included a commitment to recognise the 'economic and social linkages of Northern Ireland and Ireland'

and 'adhere to the [1998] Agreement' (JMC(EN) Communique, 2017). The extent, however, to which the CFs and their operation upholds these dual commitments is open to question. In the text of the 28 (agreed and provisional) CFs, the position of Northern Ireland tends to be referred to only vaguely, if at all. This is despite most CF agreements being drawn up after the terms of the WA and the Protocol had been agreed. This is also despite 18 CF agreements intersecting with the scope of the P/WF and 21 intersecting with areas of north–south cooperation under the 1998 Agreement.[22] Because CF agreements are intended to allow for divergence between different parts of the UK, overlaps with both the P/W F and north–south cooperation are not necessarily problematic. However, the participation of Northern Ireland in certain CF agreements is constrained by its obligations under the P/WF and could be affected by developments in north–south cooperation. For example, if agreement was reached under the Animal Health and Welfare CF agreement for one or more of England, Scotland or Wales to change regulations concerning animal health so that they differed from applicable EU-derived regulations, Northern Ireland could not opt to do the same. Also, if the UK Government wanted to change regulations for England, Scotland and Wales concerning commercial transport and operator licensing so that they differed from EU-derived regulations, Northern Ireland would not be prevented from doing the same, but this would potentially have negative implications for cross-border commercial transport and freight movements on the island of Ireland.

Further regulatory complexity flows from the UKIM Act 2020 which contains 'modifications' to allow for implementation of the P/WF (s11). Among the 'modifications' are a guarantee that 'qualifying' NI goods have 'unfettered access' to the Great British (GB) market. This, however, is subject to international obligations and biosecurity monitoring (UKIM Act, 2020: s47). A further 'modification' is that UK market access principles (MAPs) do *not* apply to goods moving from Great Britain to Northern Ireland (UKIM Act, 2020: s11). Instead, these movements are governed by the terms of the P/WF. While it is necessary to ensure that the UK upholds its obligations under the WA (see section 'Withdrawal Agreement'), these UKIM Act modifications for Northern Ireland reflect and reinforce the additional complexities of its post-Brexit participation in the UKIM, due to its novel position at the intersection of EU and UK regulation.

A third notable 'modification' is a 'best endeavours' obligation on UK Ministers to have 'special regard' for Northern Ireland's place in the UK market and customs territory when making any provision for the movement of goods in the UK (UKIM Act, 2020: s46). A potential effect, assuming the obligation is taken seriously, is that Northern Ireland's alignment with EU law under the P/WF could act as a regulatory anchor for policymakers elsewhere in the UK with goods regulations mirroring – via Northern Ireland – those of the EU. Such a 'Brussels via Belfast effect' will likely depend on the extent to which GB producers avail of the option, since the WF, to move certain retail goods into Northern Ireland as part of the UK Internal Market Scheme (UKIMS) and so without the need to comply with applicable EU regulations, provided those goods are for end use or consumption in Northern Ireland.

A further possible effect of the UKIMS flows from the fact that, where it is used, the MAPs do apply. NI producers are therefore exposed to the potential negative under-cutting impacts of GB producers operating under less onerous regulatory obligations. This is similar to the effects of MAPs on Scotland and Wales (see section 'United Kingdom

Internal Market Act 2020' above). A key difference is that whereas Scotland and Wales can act to mitigate the effects, Northern Ireland is unable to adapt its regulatory obligations given its dynamic regulatory alignment with the EU under the P/WF.

A last point concerns the potential impact of the REUL Act 2023 on Northern Ireland's involvement in north–south cooperation under the 1998 Agreement. Whereas a key objective of the P/WF is to 'maintain necessary conditions for North–South cooperation' (Article 1(3)), it does not comprehensively address all areas of such cooperation that pre-Brexit were underpinned by EU regulatory and policy frameworks of which both Ireland and Northern Ireland were therefore part (see Whitten, 2022a). Ongoing cooperation in areas not directly covered by the P/WF therefore relies to a large extent on the implied regulatory equivalence that arises from EU law on one side of the border and UK assimilated law on the other. With UK Ministers empowered to 'revise, revoke, and restate' the latter, the REUL Act has the potential not only to weaken further the regulatory context for north–south cooperation but also to create new regulatory and administrative obstacles. For Northern Ireland, this may be a lasting legacy of the REUL Act.

Conclusion

A regulatory paradigm shift resulted from the UK's decision to leave the EU. The regulatory obligations of EU membership had provided a scaffolding in which all parts of the UK could pursue separate legislative and policy paths according to their competences. While the removal of the EU regulatory scaffolding and its replacement with a domestic equivalent was always likely to be a particularly complex aspect of the Brexit project, the lack of an overarching strategy exacerbated the complexity of the task. The replacement UK regulatory scaffolding is composed of a series of elements introduced by successive UK Governments during 2018–2023, making it the product of an iterative and generally contested process. For this reason, the new system is characterised by complexity, and its different elements do not necessarily cohere. Moreover, central UK Government actions throughout the *ad hoc* process for developing the replacement regulatory scaffolding have favoured centralisation and deregulation, notwithstanding sustained critique and opposition from devolved governments on both aspects.

Due to its iterative and *ad hoc* development, meaningful reform of the UK's replacement regulatory scaffolding will require rationalisation of established elements. The UK Government under Prime Minister Keir Starmer is pursuing a 'reset' of relations with devolved governments and with the EU. Progress on the latter came in the form of 'new Strategic Partnership' announced in May 2025 in which both parties commit to increasing cooperation in areas such as security and defence, fishing, sanitary and phytosanitary rules, emissions trading, electricity markets and movement of people in specific and limited circumstances (European Council, 2025). Importantly, much of detail of this new UK–EU deal is still to be worked out. The implementation of the new UK–EU deal together with the domestic intergovernmental 'reset' could lead to improvements in the UK regulatory system. That said, reform efforts so far, such as the UKIM Act review, have fallen short of considering fundamental change to the current UK system. There is, therefore, a risk that changes, when they come, will be insufficient to mitigate the problematic features of the UK's post-Brexit regulatory scaffolding.

Under the P/WF, Northern Ireland is subject to additional regulatory complexities and has a newly elevated significance as the intersection for the respective regulatory orders of the UK and the EU. As has been the case throughout the Brexit process, Northern Ireland is therefore likely to be most exposed to the effects (either positive or negative) of

any reforms or lack of reforms to the overall UK regulatory scaffolding, and its relationship to the EU scaffolding that the UK, with Brexit, left behind.

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Notes

1. Regulation as concept tends to be much discussed and rarely defined. For the purposes of our analysis, regulation is understood in three ways: (1) 'the promulgation of a binding set of rules, to be applied by a body devoted to this purpose'; (2) 'all state actions that are designed to influence business or social behaviour' and (3) 'all mechanisms affecting behaviour – whether these be state-based or from other sources (e.g.) markets' (see Baldwin et al., 2012: 3). We deal primarily with regulation and regulatory frameworks that conform to (1) and to a lesser extent (2) (see also Koop and Lodge, 2015).
2. The term was first used by the first President of the European Commission, Walter Hallstein, in 1962 who declared: 'The European Economic Community is a community of law [*Rechtsgemeinschaft*] . . . because it serves to realise the idea of law' (Hallstein, 1962; in Oppermann, 1979: 343–344).
3. On constitutional impacts see, for example, Koen Lenaerts, Gutiérrez-, and Fons (2018); on legislative impacts, see, for example, Tonne Van Den Brink (2017).
4. Scottish Independence Referendum held on 18 September 2014 asked voters to respond to 'Should Scotland be an independent country?' A majority (55.3%) answered 'No'; 44.7% answered 'Yes'.
5. See the comments of UK Prime Minister, Theresa May, in BBC News (2018).
6. Northern Ireland was without a functioning government for much of the Brexit and post-Brexit periods. The NI Executive collapsed on 16 January 2017 and was not re-established until 11 January 2020; it then collapsed again on 3 February 2022 and was not restored until 3 February 2024.
7. Between 1921 and 1972, devolution operated in Northern Ireland according to the terms of the Government of Ireland Act 1920. The competences of these early NI devolved institutions included education, planning, housing, local government, transport, law and order, civil and criminal law, minor taxation, appointment of local magistrates and judges, as well as health services. The institutions were suspended in 1972 and then abolished in 1973 amid the outbreak of violence at the start of the 'The Troubles'.
8. Examples include the Health and Safety Executive Northern Ireland, which operates separately from the Health and Safety Executive in Great Britain; the Northern Ireland Human Rights Commission and the Equality Commission Northern Ireland that were specifically established under the 1998 Agreement; the Electoral Commission for Northern Ireland which operates in collaboration with but separately from the Electoral Commission that regulates elections in Great Britain; the Utility Regulatory that is responsible for regulating electricity, gas, water and sewerage industries in Northern Ireland and operates separate from Ofgem (electricity and gas) and Ofwat (water and sewerage) in Great Britain.
9. Arrangements for cooperation are agreed directly by the NI Executive and the Irish Government and so without any oversight from the UK Government. This is an exception to the UK constitutional norm that international relations are the sole responsibility of the UK Government.
10. Although the mapping exercise was jointly undertaken, no joint report was issued. Instead, separate reports were issued by the UK Government (2018) and the European Commission (2019).
11. Strand Three of the 1998 Agreement provides for 'east–west' cooperation between both the UK and Irish Governments via the British Irish Intergovernmental Conference (BIIC) and, via the British Irish Council, between the UK and Irish Governments, the devolved governments in the UK and the UK Crown Dependencies. While such cooperation would have been similarly facilitated by the UK and Ireland being members of the EU, only limited cooperation has ever been developed. The significance of Brexit and the loss of the regulatory scaffolding of shared EU membership was therefore limited.

12. The examples concern criminal law where Peers (2022: 68) notes: 'to avoid any whiff of alignment with EU law, there is no express reference to the relevant EU measures, although the wording of each chapter matches the relevant EU law at least in part'.
13. Subsequent UK Government analysis government identified over 6900 individual pieces of EU-derived UK law (Department for Business and Trade, 2025a).
14. For an account of the substantive changes made to the Protocol by the Windsor Framework, and initial analysis, see Murray and Robb (2023).
15. The Windsor Framework was a set of measures on the implementation of the Protocol agreed by the European Union (EU) and the UK in 2023. So as to distinguish between the Protocol *per se* and the measures agreed in 2023, we use 'Protocol on Ireland/Northern Ireland' or 'Protocol' when referring to the pre-Windsor Framework arrangements, 'Protocol/ Windsor Framework' when referring to the Protocol in light of the Windsor Framework arrangements, and 'Windsor Framework' for referring specifically to the measures agreed in 2023.
16. The NI Executive and NI Assembly were not as vocal in their opposition to the UKIM bill, largely due to divisions over the impacts of Brexit and of the Protocol on Ireland/Northern Ireland. In September 2020, however, the NI Assembly did vote in favour of a motion rejecting the UKIM Act (see NI Assembly, 2020).
17. The UKIM Act also made provisions for competence in respect of State Aid – which had arisen as a point of disagreement in the CF process – to be reserved to the UK Government (UKIM Act 2020: s52). The Act also empowered the UK Government to spend directly in devolved areas, thereby bypassing established systems of territorial finance; these UKIM Act spending powers were an additional source of controversy.
18. See section 'Devolution' and Note 16.
19. For further discussion, see Horsley (2025).
20. The NI Executive has not yet published a legislative consent memorandum.
21. The Windsor Framework also contained specific provisions regarding VAT and excise as well as on the supply of medicines, the movement of pets and of parcels to NI from GB. Related changes and provisions amounted to the introduction of derogations for Northern Ireland in relevant EU laws.
22. The 18 CF agreements that intersect with the scope of the Protocol/Windsor Framework concern Hazardous Substances; Radioactive Substances; UK Emissions Trading Scheme*; Nutrition, Labelling, Composition and Standards; Blood Safety and Quality; Organs Tissues and Cells; Rail Technical Standards; Resources and Waste; Food Compositional Standards and Labelling; Ozone Depleting Substances and Fluorinated Gases*; Animal Health and Welfare; Plant Varieties and Seeds; Fertilisers*; Plant Health; Organics*; Chemicals and Pesticides; Food and Feed Safety and Hygiene. All of these except the four marked with an asterisk intersect with north–south cooperation as do another seven CF agreements on Public Procurement; Public Health Protection and Health Security; Commercial Transport and Operator Licensing; Driver Licensing; Motor Insurance; Fisheries Management and Support; and Air Quality.

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