

REPORT

# Westminster Rules? The United Kingdom Internal Market Act and Devolution

3 October 2024

Coree Brown Swan, Thomas Horsley,  
Nicola McEwen, and Lisa Claire Whitten

Published by the Centre for Public Policy  
at the University of Glasgow

# Authors

---



## **Coree Brown Swan**

**Lecturer in Politics, University of Stirling**

Coree Brown Swan specialises in the politics of independence and union in the UK, with a particular focus on party politics and intergovernmental relations. She is Director of the Scottish Political Archive and co-led a recent UKICE project, '25 years of Devolution: Exploring the Brexit Legacy'.



## **Thomas Horsley**

**Professor of Constitutional Law, University of Liverpool**

Thomas Horsley specialises in constitutional and comparative law with a particular focus on the UK and EU legal systems. His most recent work assesses the impact of the United Kingdom Internal Market Act 2020 on devolution, particularly in Wales, and he led a recent UKICE project, 'Enhancing Stakeholder Understanding of the United Kingdom Internal Market Act 2020 and its Impact on Devolved Competences in Wales'.



## **Nicola McEwen**

**Professor of Public Policy and Governance and Director of the Centre for Public Policy, University of Glasgow**

Nicola McEwen specialises in devolution, multi-level government, and territorial politics. Her recent research has focused on intergovernmental relations. She co-led the UKICE project '25 years of Devolution: Exploring the Brexit Legacy'.



## **Lisa Claire Whitten**

**ESRC Research Fellow, Queen's University Belfast**

Lisa Claire Whitten is an interdisciplinary Research Fellow in Politics and Law. Her recent research has focused on the constitutional and regulatory impacts of the UK's withdrawal from the EU, particularly on Northern Ireland. She was recently commissioned by the Scottish Parliament Constitution, Europe, External Affairs and Culture Committee to compile and report on its European Union Law Tracker.

# Contents

---

|  |           |
|--|-----------|
| Introduction   | 4         |
| Acknowledgements   | 4         |
| Executive Summary  | 5         |
| <b>1. Devolution, Brexit and the Internal Market</b>       | <b>7</b>  |
| 1.1 Devolution within the European Union                   | 8         |
| 1.2 Exiting the EU Internal Market                         | 8         |
| 1.3 A Collaborative Approach: Common Frameworks            | 9         |
| 1.4 A Unilateral Approach: The UK Internal Market Act      | 10        |
| <b>2. The United Kingdom Internal Market Act (2020)</b>    | <b>12</b> |
| 2.1 The UKIMA Market Access Principles                     | 13        |
| 2.2 Exclusions and the Exclusions Process                  | 14        |
| 2.3 The Market Access Principles: Direct Effect            | 15        |
| 2.4 Northern Ireland and the UKIMA                         | 16        |
| 2.5 Spending Powers and Financial Assistance               | 18        |
| 2.6 Conforming to English standards?                       | 18        |
| <b>3. Operational Impact of the UK Internal Market Act</b> | <b>19</b> |
| 3.1 Operational Impact                                     | 20        |
| 3.2 Goods: Single-use Plastics                             | 22        |
| 3.3 Goods: Deposit Return Schemes                          | 26        |
| 3.4 Goods: Glue Traps                                      | 30        |
| 3.5 Goods: Precision Breeding                              | 31        |
| 3.6 Goods: Agricultural Policy                             | 32        |
| 3.7 Horizon Scanning: Future Policy Innovations            | 34        |
| <b>4. Reforming the UKIMA</b>                              | <b>40</b> |
| Option 1: The Status Quo                                   | 41        |
| Option 2: Repeal the Act                                   | 41        |
| Option 3: Legislative Change                               | 44        |
| Option 4: Procedural Changes                               | 47        |
| Conclusion   | 49        |

# Introduction

2024 marks the 25<sup>th</sup> anniversary of devolution. We mark this milestone by reviewing one of the most significant and controversial pieces of legislation to affect devolution over the last 25 years.

The United Kingdom Internal Market Act (UKIMA) is an Act of the UK (Westminster) Parliament. It entered into force on 31 December 2020. With respect to the process that led to its enactment, and the substance of the legislation, the UKIMA represents a significant challenge to the authority of the devolved institutions.

The UKIMA limits the reach of some laws passed by the devolved parliaments where these laws introduce new regulations for businesses trading across the UK's domestic market. The Act symbolised a new approach to devolution by the UK Conservative Government. The tendency to 'devolve and forget' that UK governments had broadly practised prior to Brexit was replaced by a more competitive, interventionist and supervisory approach to devolution. The UKIMA was passed by the UK Parliament in the face of fierce opposition from the governments in Scotland and Wales and most opposition parties within the devolved parliaments. It contributed to the deterioration of the relationships between the UK and devolved governments.

The new Labour Government elected in July 2024 is committed to 'resetting' relations with the devolved governments. This is a positive signal. Effective working relationships between the UK and devolved governments are essential to good government and policy, and vital to support governments to deliver their missions and ambitions. Reconsidering the controversies and constraints associated with the UKIMA could be a significant opportunity to rebuild trust between the administrations and work towards more cooperative and productive relationships.

Our report offers an impartial analysis of the context, content and operational impact of the UKIMA, to raise awareness of the Act and its interaction with devolution. We also offer reform options as a positive contribution to discussion, debate and pragmatic policy ideas that could lead to a new, more consensual, way forward.

## Acknowledgements

We are very grateful to the Economic and Social Research Council and the UK in a Changing Europe for funding the research underpinning this report. We are also grateful to those who participated in a Policy Lab on the United Kingdom Internal Market Act run by the Centre for Public Policy in December 2023, the stakeholder workshop on the United Kingdom Internal Market Act and Welsh Law at the Senedd Cymru on 22 January 2024, and numerous interviewees across the UK for sharing their reflections and experiences of the legislation. The views expressed in this report remain those of the authors.

# Executive Summary

- The new UK Labour Government has committed to resetting its relationships with the devolved governments. All roads to such a reset must first recognise and navigate the roadblock created by the United Kingdom Internal Market Act (UKIMA).
- The UKIMA was passed in the UK Parliament on 17 December 2020. In keeping with the Sewel Convention, the UK Government sought the consent of the devolved legislatures, acknowledging the legislation's impact on devolved policies and powers. The Scottish Parliament and the Senedd Cymru (Welsh Parliament) withheld consent. The legislation was passed anyway and entered into force on 30 December 2020.
- As an EU member state, all laws passed by the UK and devolved parliaments had to comply with EU law. This did not prevent each parliament from developing its own distinctive body of law, but it minimised the scope for the rules and regulations set in each part of the UK to be so dissimilar that they might make it harder for goods, services and people to move freely across the UK.
- There were concerns that departure from the EU and especially from its Internal Market might lead to a confusing mix of rules and regulations that would create new barriers to trade and business mobility within the UK's domestic market. The UKIMA was one response, among others, designed to minimise that risk. It introduced two new 'market access principles' that prioritise frictionless trade within and across the UK, by default.
- While the UKIMA supports business mobility, it is antagonistic towards devolution. It limits the ability of the devolved governments to set and apply their own ambitious standards, especially in relation to the production and sale of goods. The UKIMA's operational impacts to date have been felt mostly in environmental policy, animal welfare, agriculture policy and public health, particularly in Scotland and Wales.
- In Northern Ireland, the Protocol/Windsor Framework requires that certain EU laws – primarily concerning trade in goods – apply in Northern Ireland, to enable Northern Irish goods to continue to move freely into the EU market. While this constrains the *direct* effects of UKIMA in Northern Ireland, the interaction between Protocol/Windsor Framework and the UKIMA also creates challenges that are Northern Ireland specific.
- It is possible for governments to negotiate an exclusion from the UKIMA market access principles. However, there is a lack of consensus and transparency over the operation and timing of submissions and decisions under the agreed exclusions process. Moreover, the UKIMA and the exclusions process give the UK Government significant powers to frustrate, delay and diminish policy and law-making by devolved governments and parliaments. This could be seen as an effective UK veto over devolved action. Such a supervisory role for the UK Government was never part of the design or spirit of devolution. The evidence base for exclusion decisions is also unclear, generating

considerable uncertainty and potentially wasted resource for devolved governments, parliaments and key stakeholders.

- The UKIMA is beginning to encourage cooperative working towards joined-up approaches in policy areas that would otherwise be constrained by the market access principles; for example, tobacco and vaping policy. Cooperation between administrations is a positive development, and joined-up approaches can be appropriate to share learning, resources and to maximise policy ambitions across the UK. But UKIMA-driven coordination risks stifling policy innovation at the devolved level, may slow the pace of policy development, and could generate pressure to conform to the standards that the UK Government deems appropriate for England.
- There was no explicit commitment in the Labour manifesto to change the UKIMA. But in our view, doing nothing is not a viable option. A meaningful reset of UK government-devolved government relations must first recognise that the UKIMA has undermined the authority and status of the devolved institutions and contributed to the erosion of intergovernmental trust.
- However, we also recognise the genuine problem that the UKIMA was designed to address. That problem is likely to prevail for as long as the UK remains outside of the EU Internal Market. Consequently, in our view, repealing the Act is also not a viable option. While in principle, these regulatory challenges can be managed via intergovernmental processes, the UK's intergovernmental machinery is not currently sufficiently robust to assume that burden.
- Our report therefore offers a spectrum of reform options that could help to alleviate some of the detrimental consequences that the UKIMA has had for devolution, intergovernmental relations and democratic accountability. These include changes to the legislation itself, including introducing principles of proportionality and subsidiarity, and/or expanding the list of policy areas that are excluded from the reach of the market access principles. Non-legislative change options include having a more robust, evidence-based and transparent exclusions process, and more rigorous legislative tracking to encourage intergovernmental communication and cooperation at an earlier stage of the law-making process.
- Reforming the UKIMA should not be for the UK Government alone to determine, nor for the UK Parliament alone. The UKIMA was a unilateral intervention by the former UK Government, backed by the UK Parliament, in the face of considerable opposition from devolved governments and most opposition parties in the devolved legislatures. Collaborative working across the four administrations – with the engagement and oversight of the four parliaments – will be key to securing consent for the way ahead.



**FREE METRO**

**YOUR REGULAR METRO  
PACKED WITH NEWS,  
SPORT AND FEATURES**

INSIDE 27

**BREXIT 31 OCTOBER**



HM Government

**Get  
ready  
for  
Brexit**

**1. Devolution,  
Brexit and the  
Internal Market**

Visit [gov.uk/brexit](https://www.gov.uk/brexit)



In this section of the report, we outline some of the changes to devolution since Brexit, charting the path from EU membership to the complex arrangements for overseeing and regulating trade within the UK now that it has left the EU internal market.

## 1.1 Devolution within the European Union

The UK has a complex, multi-layered and multi-national system of government. The introduction of devolution in Scotland and Wales in 1999 recognised and reinforced the UK's multinational character by accommodating demands for territorial self-government. Its reintroduction in Northern Ireland, as part of a broader peace deal and new architecture for government that extended beyond just the devolved institutions, signified the end of violent conflict.

Establishing devolved institutions also gave the respective governments and parliaments the opportunity to create policies and solutions that could be tailored to their distinctive circumstances, geographies, institutions, communities and preferences. This sometimes led to policy experimentation, innovation and difference in services, rules and standards in place across the UK.

During the UK's membership of the European Union, the laws of each of the four legislatures of the United Kingdom had to comply with EU law. This limited the extent of variation in the rules and regulations in place in the constituent territories of the UK, especially in those policy areas that affect trade and mobility. Significantly for Northern Ireland, the shared EU membership of Ireland and the UK also limited the extent of regulatory divergence between the two jurisdictions on the island of Ireland, thereby reducing frictions on the Northern Ireland – Ireland land border.

## 1.2 Exiting the EU Internal Market

When negotiating its exit from the European Union following the 2016 referendum, the UK Conservative Government also decided to leave the EU internal market. This reflected its desire to 'take back control' of law-making, ending the requirement to comply with EU laws or to allow the Court of Justice of the European Union (CJEU) to rule on compliance with EU rules.

The UK Government believed that leaving the EU legal framework risked creating greater variation between the rules made by the four legislatures and governments across the UK. It feared this would add complexity, costs and barriers for businesses looking to trade across the UK. It was also concerned that regulatory variations may hinder the UK Government's ability to negotiate and implement new trade agreements with non-EU countries.



The government led by Theresa May sought initially to use clauses in the legislation on EU withdrawal to restrict the ability of the devolved parliaments to modify 'retained EU law'.<sup>1</sup> But in the face of deep and widespread opposition, the EU (Withdrawal) Bill 2018 was amended to grant the UK Secretary of State a more limited, time-bound (and, in the end, never used) power to make regulations to restrict devolved competence, after seeking the consent of the devolved institutions.<sup>2</sup>

## 1.3 A Collaborative Approach: Common Frameworks

In place of using the EU withdrawal legislation to minimise future variations in rules and regulations, an intergovernmental process was initiated to explore whether and where it might be necessary to have 'common frameworks' operating across the UK in response to leaving the EU's legal framework. The Common Frameworks process saw the four governments work together to co-determine which of those devolved policy areas previously subject to EU law would benefit from a shared approach after the UK's exit from the EU.<sup>3</sup> This work was mainly undertaken by officials and followed an agreed set of principles that both recognised the importance of minimising trade barriers whilst respecting devolution. The resulting Frameworks Analysis identified 152 broad policy areas where EU law overlapped with devolved law-making powers. Of these, just three have led to new legal frameworks, 29 have generated intergovernmental frameworks, mostly in areas related to agriculture, the environment, food, and transport standards and safety. For the remaining 120 areas, the governments agreed that no frameworks were required.<sup>4</sup>

'Common frameworks are a unique and innovative mechanism for developing UK-wide policy by collaboration and consensus. They acknowledge the interdependence of policy between the administrations, but also the autonomy of each administration in its areas of competence. This is emphasised by the possibility of divergence on the basis of consent. They therefore have singular potential to strengthen cooperation between the administrations which is essential to maintaining the Union.'

House of Lords Common Frameworks Scrutiny Committee, 2022

<sup>1</sup> Retained EU law references a new body of law that UK legislation created to permit EU law to be incorporated into domestic law to ensure legal continuity on exit day.

<sup>2</sup> For a further overview, see McEwen, N, 2020, '[Negotiating Brexit: Power Dynamics in British Intergovernmental Relations](#)', *Regional Studies*, 55(9), 1538-1549.

<sup>3</sup> For periods throughout the Common Frameworks process, the government in Northern Ireland was not sitting; it was therefore represented by NI officials rather than NI politicians in relevant discussions.

<sup>4</sup> Cabinet Office, Frameworks Analysis, 2021.

# 1.4 A Unilateral Approach: The United Kingdom Internal Market Act

In tandem with the co-owned, collaborative approach associated with the Common Frameworks process, the UK Government also pursued a new legal mechanism that could provide a legal backstop for the domestic market. This approach was accelerated under the Johnson administration, despite considerable opposition from the devolved governments in Scotland and Wales; the Northern Ireland Executive was not sitting at the time.

The UKIMA was motivated by the same concerns as the initiatives discussed above: how to avoid Brexit resulting in new barriers to trade and mobility arising from increased divergence in rules and regulations across England, Scotland, Wales and Northern Ireland. However, unlike the principles that guided the Common Frameworks process, respect for the devolution settlements is not among the UKIMA's primary objectives. The Act does not formally prevent the devolved legislatures from exercising their law-making powers as they see fit. However, its core principles - the 'market access principles' - preclude them from applying those laws to most goods and many services entering a devolved territory from another part of the UK.<sup>5</sup>

In principle, the same restrictions apply to the UK Parliament (when legislating for England only), but the scale of the English market relative to the others means that their effect is felt more acutely in the devolved territories.<sup>6</sup> Over time, it is expected that English political and economic dominance will increase pressure on the devolved governments to harmonise regulations in a manner that conforms to standards set by the UK Government for England.

The legislation sparked deep concern in Scotland and Wales for its potential to erode the authority of the devolved parliaments. Both the Scottish Parliament and the Senedd Cymru withheld consent, after it was sought in accordance with the Sewel Convention.<sup>7</sup> The UK Parliament passed the legislation in December 2020, nonetheless.

In 2021, the Welsh Government challenged the Act before the courts, seeking clarification that it did not modify the Senedd's legislative competences under the Government of Wales Act (GOWA) – the legislation setting out the powers of the devolved legislature – as a consequence of the latter's special status as a 'constitutional statute'. The legal challenge was unsuccessful before the High Court and, thereafter, in the Court of Appeal, on the grounds that it was premature in the absence of a factual dispute engaging specific provisions of the UKIMA and enacted (or proposed) Welsh legislation<sup>8</sup>. But that belief in

---

<sup>5</sup> Except when it comes to goods moving into Northern Ireland from other parts of the UK where different rules apply – see Part 2, below, for detail.

<sup>6</sup> Under the doctrine of parliamentary sovereignty, the UK Parliament may also legislate contrary to the UKIMA market access principles should it wish to do so expressly.

<sup>7</sup> The doctrine of parliamentary sovereignty means that the UK Parliament can make laws on any matters, including in devolved areas, but by convention (the Sewel convention) it will 'not normally' legislate with regard to devolved matters without the consent of the devolved legislatures. The NI Assembly was not sitting at the time, in light of the absence of Ministers and a Speaker, so could not take a formal position on the UKIM Bill.

<sup>8</sup> R. (on the application of Counsel General for Wales) v Secretary of State for Business, Energy and Industrial Strategy EWHC 950 (Admin) [2022] EWCA Civ 118 at [33].

the protected status of the GOWA has coloured the Welsh Government's response to the UKIMA. Whereas the Scottish Government maintains that the Act has already undermined devolution, the Welsh Government's approach thus far has been to deny its impact in Wales.<sup>9</sup> It has repeatedly asserted that the Senedd's law-making powers are protected and not trumped by the UKIMA:

'[T]he Government of Wales Acts of 2017 and 2006 are not legally trumped by the Internal Market Act. That is, it's a protected, constitutional piece of legislation and, therefore, that's what stands and it doesn't restrict our powers to operate.'

Mick Antoniw MS, Counsel General for Wales, 2023

This political context in which UKIMA has been introduced and implemented, as well as its perceived threat to devolution, has contributed to stresses and strains in the relationship between the UK and devolved governments in recent years.

---

<sup>9</sup> [Scrutiny session with the Counsel General and Minister for the Constitution 10/07/2023.](#)



An aerial photograph of a city at sunset. The city is densely packed with buildings of various architectural styles, including a prominent glass skyscraper. A river flows through the city, with a bridge crossing it in the foreground. The sky is a mix of orange and blue, and the city lights are beginning to glow.

## 2. The United Kingdom Internal Market Act (2020)





In this part of the report, we summarise the key provisions of the UKIMA and take a closer look at the meaning, scope and application of the market access principles that lie at its heart. We also discuss the established intergovernmental process whereby the devolved governments can seek exclusions from these principles when making devolved law.

## 2.1 The UKIMA Market Access Principles

At the heart of the UKIMA lie two market access principles (MAPs): mutual recognition and non-discrimination. Each is applied to goods, services, and professional qualifications, with the effect on goods trade the most far-reaching.

**Mutual recognition** guarantees, by default, UK-wide market access for goods (except in/for Northern Ireland, see 2.4 below) and services that are produced in, imported into, and regulated in one part of the UK. With respect to the sale and supply of goods, this includes requirements with respect to any characteristics, including ingredients, composition, packaging and labelling, as well as mandatory conditions relating to production covering issues such as site of manufacture, record-keeping, inspection and approval. Mutual recognition also grants access to most regulated professions throughout the UK based on qualifications and/or experience obtained in England, Scotland, Wales or Northern Ireland, respectively.

**Non-discrimination** applies to UK and/or devolved legislation that introduces, directly or indirectly, differences in treatment between goods (again, except in/for Northern Ireland, see 2.4 below), service providers or regulated professional activities based on their connection to another part of the UK. It applies to selling arrangements, including rules around advertising, shop opening restrictions or licensing requirements, as well as mandatory conditions relating to circumstances of sale covering issues like conditions of storage or transportation.

These market access principles are familiar benchmarks and operate, for example, in the context of the EU internal market.<sup>10</sup> In the UK case, the principles were to apply only prospectively; in other words, they are applicable to laws introduced, or amended, after 31 December 2020 when the Act came into force, but not to those already in place. But in other respects, the UKIMA is much stronger and more restrictive than EU law. EU internal market law recognises an open-ended list of legitimate public interests that may justify national measures that restrict trade between EU Member States, including environmental protection, animal welfare and consumer protection.<sup>11</sup> And whereas EU internal market rules are overseen by the EU Court of Justice, under the UKIMA, the UK Government remains in charge.

---

10 Horsley, T 2022, '[Constitutional Reform by Legal Transplantation: The United Kingdom Internal Market Act 2020](#)' Oxford Journal of Legal Studies, 42(4), pp.1143-1169.

11 For discussion, see eg Dougan, M, Hunt, J, McEwen, N & McHarg, A 2022, '[Sleeping with an elephant: Devolution and the United Kingdom Internal Market Act 2020](#)', Law Quarterly Review, vol. 138, no. Oct 2022, pp. 650-676.

## 2.2 Exclusions and the Exclusions Process

There are very few permissible exclusions to the UKIMA market access principles, especially in relation to goods. For example, exclusions apply to regulations that are aimed at controlling the spread of pests, disease or unsafe foods or feeds, between territories, where justified with evidence, and where the absence of such controls would pose a serious threat to the health of humans, animals or plants. A broader range of services are excluded from one or both market access principles, including legal and transport services, health and social care, and energy supply services, while the legal profession and schoolteachers are excluded from the unrestricted access the Act gives to qualified professionals.

In the case of direct discrimination, permissible exceptions are restricted to combatting the spread of pests or diseases or responding to a 'public health emergency' that poses an 'extraordinary threat' to human health. Indirect discrimination against other UK goods may be justified according to a lower threshold, i.e. where the measures can reasonably be considered 'a necessary means of achieving a legitimate aim,' defined in the legislation as 'the protection either of the life or health of humans, animals or plants,' or 'the protection of public safety and security'. These exclusions, however, remain much more limited than the broad public interest grounds under EU internal market law.

A late amendment to the legislation, prompted by significant pressure from the House of Lords, empowers the UK Secretary of State to amend the list of exclusions to which the market access principles do not apply, including to give effect to a 'Common Framework Agreement' reached between the UK Government and one or more devolved administrations. This provided a bridge between the UKIMA and the pre-existing and much more cooperative Common Frameworks programme.

Although a concession to concerns about the impact on devolution, this amendment leaves considerable power in the hands of UK ministers. Before making these changes, the Secretary of State is legally required to 'seek the consent' of relevant ministers in the devolved governments, but not necessarily to secure that consent, with little time afforded to scrutiny of proposed changes.

'If consent to the making of the regulations is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority, the Secretary of State may make the regulations without that consent.'

s.10 (10) UK Internal Market Act

In December 2021, the UK and devolved governments reached agreement on an intergovernmental procedure setting out the process for securing exclusions.<sup>12</sup> This requires the government seeking an exclusion to set out its scope and rationale, with consideration then given to the associated evidence and potential impact, including direct and indirect economic impacts. As demonstrated in Part 3 of this report, the process remains problematic both structurally and operationally. It generates uncertainties and slows the pace of policy development and, in effect, gives the UK Government a veto power over exclusion requests emerging from devolved governments. We discuss how the exclusions process has operated thus far in relation to the regulation of single-use plastics and deposit return schemes in Part 3.

## 2.3 The Market Access Principles: Direct Effect

The UKIMA market access principles have direct effect. This means that businesses and individuals can invoke them to challenge legislation that adversely affects trade in goods and services between one part of the UK and another, or that limits access to regulated professions. At the time of writing, no such challenge has been made.

Businesses and individuals cannot use the MAPs to challenge regulations within their own 'home' nation. The UKIMA permits the devolved governments and, regulating for England, UK Government to apply their own regulatory standards to traders and professionals operating within their respective territories.

As directly effective principles, the MAPs are intended to enable traders who are already regulated in one part of the UK to trade in another part of the UK without having to comply with any additional (or different) regulations that apply there. The UKIMA makes no distinction here between devolved and UK legislation, insofar as the latter makes rules and regulations for the English market.<sup>13</sup> Accordingly, businesses based, for example, in Scotland may challenge UK legislation introducing different regulatory standards in England as much as English (or Welsh or Northern Irish traders) may seek to challenge Scottish legislation regulating in-scope goods and services or professional activity within Scotland.

Businesses and individuals regulated in one part of the UK may simply choose not to comply with additional (or different) regulations that apply in another part of the UK where they seek to trade. In such cases, traders may find themselves using the MAPs defensively (i.e. in proceedings brought against them for non-compliance with local regulations). However, initial OIM data indicates that businesses are reluctant to adopt this strategy, not least for reputational reasons, favouring instead the adoption of the highest standards so as to conform with the rest and/or alignment with EU regulations.

---

<sup>12</sup> [Process for considering UK Internal Market Act exclusions in Common Framework areas](#) (10 December 2021).

<sup>13</sup> There is, however, a constitutional difference. Under the doctrine of parliamentary sovereignty, the UK Parliament retains competence to legislate expressly contrary to the MAPs, including to impose regulations adopted for England on goods and services entering from another part of the UK, whereas the devolved parliaments may not do so. The UKIMA has been added to the list of 'protected enactments' that the devolved legislatures are precluded from repealing or modifying.

The UKIMA established the Office of the Internal Market (OIM) to support the effective operation of the UK internal market, including assessing the impact of whether and how the market is impacted by specific laws, rules and regulations. Where rules do differ across the UK, OIM research (2024) has identified a reluctance on the part of businesses to use the UKIMA market access principles to challenge them on the grounds that they represent a barrier to intra-UK trade.<sup>14</sup>

The OIM suggests three possible reasons for the reluctance on the part of the larger businesses it surveyed to use the market access principles to challenge regulatory variation:

1. the importance of brand values in the relevant sector;
2. consumer understanding and anticipated consumer criticism should businesses fail to adopt local standards; and
3. the likelihood of businesses adopting local standards being undercut by those opting to invoke the market access principles to challenge those standards.

‘One of the most notable findings from our case studies on [single-use plastics] and [deposit return schemes] is the perception of the [market access principles] amongst larger businesses with strong brands and a significant footprint of operations in the devolved areas. There was a clear view from those to whom we spoke that the MAPs were unlikely to be used to address regulatory difference within their businesses.’

Office for the Internal Market, Annual Report 2023/24.

These findings are offered as working conclusions based on a small data sample that overrepresented larger firms, with an acknowledged need for further research. Adding to the OIM’s findings, we would highlight alignment with EU law as a further key consideration. Where EU law adopts higher standards, businesses trading in the UK and EU markets may find it easier to align with those standards, including when trading within the UK.

## 2.4 Northern Ireland and the UKIMA

The UKIMA hits differently in Northern Ireland than elsewhere in the UK because of its distinctive status in the context of Brexit.

### The Protocol

As part of the UK-EU Withdrawal Agreement, a Protocol on Ireland/Northern Ireland (the Protocol) was agreed to address the ‘unique circumstances on the island of Ireland’ and more specifically to ‘maintain necessary conditions for North-South cooperation, avoid a hard border and protect the 1998 Agreement in all its dimensions’.<sup>15</sup> Under the Protocol,

<sup>14</sup> Annual Report on the Operation of the UK Internal Market 2023-2024, 20 March 2024 OIM11, p.79.

<sup>15</sup> Protocol/WF: Article 1(3).



over 300 EU laws, mostly concerning the production and movement of goods, continue to apply in Northern Ireland. This allows the border on the island of Ireland to remain open and thereby gives Northern Ireland traders continued access to the EU internal market with respect to goods only. The Protocol also meant that the checks and controls normally associated with goods entering (and to a lesser extent leaving) the EU internal market would instead be imposed on goods trade between England, Scotland or Wales (GB) and Northern Ireland, producing a so-called 'Irish Sea border'. Having a trade border between Northern Ireland and the rest of the UK sparked considerable concern, especially among Unionist politicians and the business community in Northern Ireland.

## **UKIMA and the Protocol**

UKIMA included an 'unfettered access' guarantee for trade in goods from Northern Ireland to England, Scotland and Wales (subject to a small number of exceptions including on biosecurity). But goods trade from Great Britain to Northern Ireland was necessarily restricted by the legal obligations set out in the Protocol.<sup>16</sup> Market access was extended to 'Qualifying Northern Ireland Goods', initially defined as any goods present in Northern Ireland and which were not subject to, or had successfully completed, customs supervisions, restrictions and controls. Under the original Protocol, this meant goods could move freely from Northern Ireland to Great Britain (with only a small number of exceptions) but not from Great Britain to Northern Ireland, because of Protocol requirements for customs controls and regulatory checks on goods moving in this direction. UKIMA imposes a duty on public authorities (including devolved authorities), when implementing the Protocol, to have 'special regard' for the need to maintain Northern Ireland's integral place in the UK internal market; the need to respect its place in the UK customs territory; and the need to facilitate free flow of goods between Great Britain and Northern Ireland.

## **UKIMA and the Windsor Framework**

The 'Windsor Framework', agreed between the EU and the UK Government in 2023, eases the impact of the Protocol on Northern Ireland's place within the UK internal market by distinguishing between 'retail goods' (essentially agri-food products) destined for consumption in Northern Ireland – where checks are now minimal – and those entering Ireland and, by extension, the EU internal market – where fuller checks are still required. Although these changes do not remove the need for checks and controls on goods moving from Great Britain to Northern Ireland entirely, they should help facilitate certain types of trade within the UK internal market. At the same time the Windsor Framework changes also newly expose Northern Ireland to the potential undercutting impacts of the market access principles that are experienced elsewhere in the UK. This is because producers in Northern Ireland are still required to comply with all EU laws listed in the Windsor Framework, yet their products appear on the same shelves as goods originating in, or imported from, other areas in the UK that need not comply with – and may not have the same standards as – EU law.

---

<sup>16</sup> Whitten, L. C. (2024) 'Northern Ireland and the United Kingdom internal market: the exception that disproves the rules?' NILQ 75(1).

## 2.5 Spending Powers and Financial Assistance

Other sections of the UKIMA also challenged the authority of the devolved institutions. During the Frameworks process, the UK and devolved governments argued over who had the power to grant state aid to industry. The UKIMA resolved that dispute by reserving to the UK Parliament the power to make regulations for the provision of subsidies that might distort competition within the internal market. Notably, EU state aid rules still apply in Northern Ireland in relation to aid that does/may impact its trade with the EU. The UK Government also used the UKIMA to grant itself a general power to provide financial assistance for the purposes of economic development, culture, sporting activities, infrastructure, domestic educational and training activities and exchanges, and international educational and training activities and exchanges. This spending is in addition to – and outwith the arrangements for – the established system of financing devolution through the Block Grant. Although beyond the scope of this report, the spending powers have become one of the most controversial aspects of the Act. They have enabled the UK Government to distribute funds, including the Levelling Up Fund, to local authorities, community groups and other organisations, without consulting or cooperating with devolved governments, and potentially competing with them.

## 2.6 Conforming to English standards?

Aside from its modifications and limitations in Northern Ireland, the UKIMA market access principles are intended to facilitate trade across the UK's domestic market. These principles value the free movement of goods and services for businesses over the autonomy of the devolved legislatures to innovate and chart a distinctive course.

In theory, the market access principles limit the reach of laws set by the UK Government for England as much as they limit the reach of laws set by the devolved legislatures for Scotland, Wales and Northern Ireland. Where English regulations are distinctive from those set in Scotland, Wales or Northern Ireland, the UK Government cannot force businesses based in the devolved territories (and subject to rules set by the devolved institutions) to comply with those regulations. In practice, however, the position in relation to England is distinct from that of the devolved nations. England's economic dominance, combined with the UKIMA's design and the continued sovereignty of the UK Parliament, increases pressure for policy harmonisation between the UK and devolved governments that conforms to the standards the UK Government sets for England. This has significant implications for devolution, which are expected to cumulate over the longer term. In the next part, we survey UKIMA's operational impacts in its early years, which already finds evidence of these dynamics at play.



### 3. Operational Impact of the UK Internal Market Act





This section details how the UKIMA has affected public policy in devolved areas, with a focused look at legislative developments across the four UK nations. We also explore in greater detail the intergovernmental exclusions process in practice, highlighting its limitations. Finally, we look ahead to the potential impact of the market access principles on future policy proposals.

## 3.1 Operational Impact

The UKIMA has had a significant operational impact on devolved policy making, particularly in Scotland and Wales. In Northern Ireland, the implementation of the Windsor Framework has mitigated the direct impact of the UKIMA (see 2.4 above).

The Act's operational impact remains focused on goods, but there is evidence of emerging interactions with services and the regulated professions. Intersections between the Act and devolved policymaking have been felt most acutely in environmental legislation on packaging and recycling. Scottish and Welsh government plans to pursue environmental policies that go further and/or faster than equivalent plans being developed by the UK Government for England have been delayed or stymied by the application of the UKIMA market access principles.

In Scotland, the SNP Government's commitment to 'keep pace', i.e. remain aligned, with EU law was likely to lead it to develop legislative proposals that were distinctive from the UK Conservative Government's policy plans. Ideological divergences between the governments also results in some different policy choices. In Wales, the operational effects of the Act remain heavily conditioned by the Welsh Government's view that the Act does not affect the Senedd's law-making powers, including when these are contrary to market access principles.<sup>17</sup>

### Policy Impact

The majority of Scottish and Welsh legislative developments that intersect with the UKIMA broadly align with similar initiatives undertaken and/or planned by the other administrations. In part, this may also evidence the 'Brussels effect' – the continued external influence of EU law on all four administrations in the UK, particularly in environmental legislation. Differences in legislative proposals mainly speak to considerations of scope, depth and timing, rather than issues of substance.

Policy developments have also tested the process that the UK and devolved governments have agreed to seek additional exclusions from the UKIMA, generating further intergovernmental tensions. That process can be time-consuming, breeds uncertainty, and

---

<sup>17</sup> See eg Counsel General for Wales and Minister for the Constitution, Mick Antoniw, [Legislation, Justice and Constitution Committee 10/07/2023](#) at [196]: 'The view I took is that we are clear in the position we've put, and that is that the Government of Wales Acts of 2017 and 2006 are not legally trumped by the internal market Act. That is, it's a protected, constitutional piece of legislation and, therefore, that's what stands and it doesn't restrict our powers to operate.' See also eg Lowri Lewis, Lawyer, Welsh Government, [Legislation, Justice and Constitution Committee 06/03/2023](#) at [153].



remains subject to ultimate UK Government control.

Meanwhile, in Northern Ireland, comparative developments in relevant policy areas serve to demonstrate the particularity of its position under the terms of the UKIMA, in view of the Protocol, the Windsor Framework and the 'unique circumstances' on the island of Ireland more generally.

## Political Impact

The operational impacts under the UKIMA have not only been logistical, but also highly political. There are, however, some important differences here. Following its unsuccessful legal challenge to the Act, the Welsh Government has consistently maintained its opposition to the UKIMA with reference to the Act's impact of devolved competences, though its position appears to be evolving in recent months. In contrast, from the outset, the Scottish Government has engaged with the UKIMA at face value, acknowledging and strongly denouncing the Act's impact on devolved competences and its implications on devolved policymaking. On 3 October 2023, the Scottish Parliament voted symbolically in favour of the Act's repeal.

If one intention of the UKIMA was to foster common rules across the UK, there is some evidence of this emerging. The increased use of joint consultations (e.g. on wet wipes and vaping)<sup>18</sup> between the UK and devolved governments may be a sign of a greater willingness to set UK-wide regulatory standards. This also evidences a shift towards greater intergovernmental cooperation that may be expected to intensify under the new UK Labour Government. This has broader political consequences, especially for the institutional role of the devolved parliaments. If more policies are decided in the intergovernmental space, there is less opportunity for parliaments to exert their roles as legislatures and to scrutinise policy.

---

<sup>18</sup> See eg [Consultation on the proposed ban of the manufacture supply and sale of wet wipes containing plastic](#) and [Creating a smokefree generation and tackling youth vaping consultation: government response](#)



© satura\_/Adobe Stock (stock.adobe.com)

## 3.2 Goods: Single-use Plastics

### Single-use Plastics in Scotland

The first test of the UKIMA's impact on devolved policy making came when the Scottish Parliament passed legislation placing restrictions on single use plastics. This aligns in large parts with the European Union's Single-Use Plastics Directive (Directive (EU) 2019/904),<sup>19</sup> which requires all EU member states to pass laws that would prohibit certain plastic products from trade within the EU internal market (and which partially applies in Northern Ireland under the Windsor Framework).

The Environmental Protection (Single-use Plastics Products) (Scotland) Regulations 2021<sup>20</sup> came into effect on 1 June 2022. The Regulations banned the manufacture and supply of a range of products containing single-use plastics, including cutlery, plates, straws, beverage stirrers, polystyrene takeaway containers, and balloon sticks. The regulations included biodegradable, recyclable, and compostable plastics, with exemptions in place for medical usage.

By covering manufacture as well as supply, and banning a wider range of products, the regulations were more extensive in their reach than the UK Government's equivalent proposals for England. This led the Scottish Government to seek an exclusion from the market access principles of the UKIMA, under the auspices of the Resource and Common Waste Framework, one of the non-legislative Common Frameworks negotiated between the four administrations.<sup>21</sup>

The Scottish Government requested a broad exclusion in December 2021 that would allow for the extension of the ban to cover a growing number of policies intended to promote

<sup>19</sup> [Directive \(EU\) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment.](#)

<sup>20</sup> [The Environmental Protection \(Single-use Plastic Products\) \(Scotland\) Regulations 2021.](#)

<sup>21</sup> [Resources and Waste Provisional Common Framework Framework Outline Agreement and Concordat \(PDF\).](#)

reuse and recycling, and was supported by the Welsh Government.<sup>22</sup> Following three months of negotiations, a narrower exclusion was granted, which the then Secretary of State said struck an “appropriate balance” that avoided uncertainty and ensured coherence across the UK market.

Scottish Government ministers took issue with the three months it took to come to a decision, and the narrowness of the exclusion. Circular Economy Minister, Lorna Slater, then one of the Green Party ministers in government, complained that the process illustrated the detrimental impact of the UKIMA on Scotland’s ability to progress on climate friendly legislation.<sup>23</sup>

In July 2022, the UK Parliament passed the United Kingdom Internal Market Act 2020 (Exclusions from Market Access Principles: Single-Use Plastics) Regulations 2022 to give effect to the exclusion.<sup>24</sup>

This exclusion included some single-use plastic items that were not presently banned under the Scottish regulations (plastic bowls and trays), but it did not cover oxo-degradable

‘It means we’re not able to move as fast with the sort of protections for our environment as we would like to. We need the UK Government to either respect the devolution settlement and let Scotland move at pace by giving us the exemptions to the Internal Market Act that we need, or we need them to step up the pace and keep up with us. It’s a climate emergency.’

Lorna Slater MSP, (then) Minister for Green Skills, Circular Economy and Biodiversity

‘I believe this represents an appropriate balance between furthering our shared ambition to tackle plastic pollution, while also respecting market coherence across the United Kingdom and the importance of providing certainty for businesses and consumers. An exclusion for all single-use items would cause significant uncertainty, which would be damaging for businesses across the United Kingdom.’

George Eustice MP, (then) Secretary of State for Environment, Food, and Rural Affairs

plastic products, carrier bags, polystyrene lids for cups and takeaway food containers, and single-use cups containing plastics. A further exclusion would have to be negotiated with the UK Government should the Scottish Government wish to ban the sale and manufacture of these products in Scotland. For comparison, EU law already prohibits the placing on the market of oxo-degradable single use plastic products, as well as beverage, cups and food containers made from expanded polystyrene.<sup>25</sup>

The process of negotiating an exemption for the Scottish regulations gave rise to a period of legal uncertainty for traders. The 2022 Regulations did not come into effect until 12

<sup>22</sup> Inter-Ministerial Group for Environment, Food and Rural Affairs: 6 December 2021.  
<sup>23</sup> Politico: Scottish environment minister slams UK over single-use plastics scrap.  
<sup>24</sup> The United Kingdom Internal Market Act 2020 (Exclusions from Market Access Principles: Single-Use Plastics) Regulations 2022.  
<sup>25</sup> Directive (EU) 2019/904 on Reducing the Impact of Certain Plastic Products on the Environment (2019) OJ L155/1.

August 2022, meaning that between 1 June and 12 August 2022, a regulatory gap existed, during which the Scottish Regulations could not lawfully be applied to products imported from, or produced in, other parts of the UK.

## Single-Use Plastics in Wales

Wales was the first of the UK nations to tackle single-use plastics with its introduction of a 5p charge for single-use plastic bags in 2011. The Welsh Government has continued to innovate in this area following the entry into force of the UKIMA.<sup>26</sup> The Environmental Protection (Single-Use Plastic Products) (Wales) Act 2023 criminalised the supply (on premises or by delivery) of in-scope single-use plastics to consumers based in Wales. The Act prohibits the supply of eleven single-use plastic items (cups, cutlery, drinks stirrers, straws, plates, takeaway food containers, balloon sticks, cotton buds, lids for cups and takeaway containers, carrier bags, and oxo-degradable plastic products).

As with the Scottish regulations, the ban on the supply of in-scope products falls squarely within the scope of the mutual recognition principle, as it relates to the characteristics of the goods themselves – specifically their nature and composition. The effect on devolved competences is a practical one. The principle of mutual recognition operates to prevent the Welsh Government from applying its ban on single-use plastics to products entering Wales from other parts of the UK. The Welsh measures may only be applied to incoming plastic products to the extent that they fall within the scope of the 2022 UK Regulations excluding certain single-use plastic items from the MAPs (see above).

However, unlike its Scottish counterpart, the Welsh Government has consistently maintained that the market access principles do not impact on its competence to regulate the supply of single-use plastic items in Wales, including products entering the Welsh market from the rest of the UK. The Welsh Government has been repeatedly pushed in Committee scrutiny sessions and Plenary debates to explain its reasoning on this point. Challenges to its official position are met with standard form responses.<sup>27</sup>

‘It’s our [the Welsh Government’s] position that this Bill [the Environmental Protection (Single-Use Plastic Products) (Wales) Bill] is entirely within our competence, and that UKIMA is not capable of changing the devolved competence of the Senedd’

Julie James MS, (then) Minister for Climate Change

It was open to the Welsh Government to follow a similar course to the Scottish Government and seek a further exclusion to safeguard its legislation from the practical effects of the market access principles (the existing exclusion – the 2022 UK Regulations – include only

<sup>26</sup> See eg [Single Use Carrier Bags Charge \(Wales\) Regulations 2010](#), introducing a 5p charge for single-use plastic bags in Wales at first use.

<sup>27</sup> See eg Minister for Climate Change, Julie James, Legislation, Justice and Constitution Committee 3 October 2022 at [18]. See also [Legislation, Justice and Constitution Committee Report October 2022](#).



some of the single-use plastic items listed in the Welsh regulations). However, the Welsh Government opted not to make use of this mechanism. Instead, it announced its intention to adopt a 'phased approach' to the implementation of the 2023 Act. In the first phase, which began on 30 October 2023, only eight single-use plastic items were banned, with a ban on the remaining three items to be introduced by Spring 2026.<sup>28</sup> The eight plastic items prohibited in Wales during the first implementation phase correspond exactly with the list of single-use plastic products removed from the scope of the UKIMA market access principles under the existing exclusion (the 2022 Regulations).<sup>29</sup>

To date, the Welsh Government has not made any exclusion requests to the UK Government under s10(3) of the Act, in line with its official statements that UKIMA does not constrain devolved competences in Wales. But its decision to align implementation with the scope of the existing exclusion indicates the potential 'chilling effect' of the UKIMA on Welsh policymaking. It suggests that, contrary to the official line, Welsh regulatory choices have been designed to avoid direct conflict with the market access principles.<sup>30</sup> Looking ahead, there may be an even stronger desire to avoid conflict with a Labour Government in Westminster.

## Single-Use Plastics in Northern Ireland

Northern Ireland is the only part of the UK not to have introduced legislation concerning a ban on certain single-use plastics. Ironically, it is also the only part of the UK that is subject to the EU's Single-Use Plastics (SUP) Directive which mandates a comprehensive ban on certain products and a range of measures designed to reduce the use of plastics in the EU market.<sup>31</sup> The obligations under the Protocol/Windsor Framework ultimately fall on the UK Government. Despite the deadline to give effect to those aspects of the SUP Directive having now passed, regulations have yet to be introduced, with delays put down to the two-year absence of devolved government in Northern Ireland.<sup>32</sup>

The requirement to comply with the more comprehensive EU SUP Directive means that, when implemented, regulations on single-use plastics in Northern Ireland will be more restrictive than in the rest of the UK. This is because the EU regulations are more extensive than any currently in place in England, Scotland or Wales. This trend may continue. The EU is proposing a new EU Regulation on Packaging and Packaging Waste, which targets the use of packaging for cosmetic, hygiene and toiletry products.<sup>33</sup> Following Windsor Framework changes, the Northern Ireland Assembly may have an opportunity to vote on whether or not to accept the addition of the new EU Packaging and Packaging Waste Directive, though choosing not to align with EU law could have implications for its access to

---

<sup>28</sup> [The Environmental Protection \(Single-use Plastic Products\) \(Wales\) Act 2023](#).

<sup>29</sup> [The United Kingdom Internal Market Act 2020 \(Exclusions from Market Access Principles: Single-Use Plastics\) Regulations 2022](#), amending Schedule 1, UKIMA.

<sup>30</sup> When pressed on this point, the (then) Minister for Climate Change, Julie James, restated the Welsh Government's line that UKIMA has no impact on devolved competences in Wales. [Plenary 24/10/2023](#) at [415].

<sup>31</sup> [Directive 2019/904 on the reduction of the impact of certain plastic products on the environment](#). Under the Windsor Framework, Northern Ireland is subject to Articles 2-7, 14 and 17 of the EU SUP Directive.

<sup>32</sup> [DAERA 'Single Use Plastics Directive'](#)

<sup>33</sup> [Proposal for a Regulation of the European Parliament and of the Council on packaging and packaging waste, amending Regulation \(EU\) 2019/1020 and Directive \(EU\) 2019/904, and repealing Directive 94/62/EC COM/2022/677 final](#)

the EU (and hence the Irish) market.

At time of writing, the OIM is conducting a survey into the effects of the differences in the timing and details of regulatory restrictions on single-use plastics now in operation across different parts of the UK, to identify whether these are having an impact on the functioning of the internal market.

## 3.3 Goods: Deposit Return Schemes

### The DRS in Scotland

Scotland's Deposit Return Scheme (DRS) has been the most controversial – and visible – manifestation of the UKIMA provisions to date. The controversy related to the process and timing of the exclusion decision and the ability of the UK Government to intervene to effectively veto devolved policy. The Scottish Government moved ahead of the other administrations with its plans to introduce a DRS for Scotland. In contrast, the Welsh Government favoured progress towards the introduction of a coordinated UK-wide scheme, though one that, in line with the Scottish Government's position, would include glass products.

Consultation on the Scottish Government's DRS proposals began in 2018, with regulations 'pre-laid' in 2019, using regulatory powers set out in section 5 of the Climate Change (Scotland) Act 2009. Following consideration in the Scottish Parliament, the regulations were passed in May 2020 and implementation set for January 2021. The Deposit and Return Scheme for Scotland Regulations 2020 required anyone marketing or selling single-use drinks containers made of PET plastic, steel, aluminium, or glass to be registered with the Scottish Environment Protection Agency. A 20p deposit would be paid each time such containers were sold, to be reimbursed on return with costs borne by producers.

The regulations required retailers to house a return point and also imposed ambitious mandatory targets on producers to recover a high and increasing percentage of the containers placed on the market. The objective was to boost recycling and contribute



towards promoting a circular economy.

In parallel, the UK Government in its Resource and Waste Strategy (RWS) committed to introducing a DRS scheme for England in early 2019, subject to consultation. The RWS indicated a preference 'to adopt a UK-wide approach to DRS if it is introduced.'<sup>34</sup> A consultation was launched in 2021 for a scheme covering England, Wales and Northern Ireland, following which the UK Government decided to exclude glass from the schemes planned for England and Northern Ireland. At the same time, it noted that 'since waste management is a devolved policy area, it is the responsibility of each nation of the UK to decide the scope of its own DRS in a way that fits its policy needs.'<sup>35</sup> The UK Government scheme, however, has been subject to delay: initially intended for introduction in 2023, this was pushed back first to 2025 and is now set for October 2027.<sup>36</sup>

In evidence taken by the Scottish Parliament Environment, Climate Change and Land Reform Committee, industry groups expressed a strong preference for a UK-wide DRS or a scheme that would be interoperable with those introduced in the rest of the UK. This reflected concerns about the scope for fraud or waste tourism, the operational costs of changes to packaging, supply chain issues, and consumer confusion. Environmental groups, meanwhile, argued for the scheme to have as broad a scope as possible, including glass bottles. While acknowledging the logistical appeal of a uniform scheme across the UK, they stressed that 'the introduction of a Scottish scheme should not be delayed over the uncertain prospect of a UK-wide scheme.'<sup>37</sup>

The mutual recognition principle in the UKIMA would have made it impossible for the Scottish Government to compel producers of drinks containers based in other parts of the UK – or bottles and cans imported into other parts of the UK – to comply with the Scottish regulations. A scheme applying only to Scottish-based producers would not achieve its environmental goals and would at the same time put these products at a competitive disadvantage. Using the agreed process, therefore, the Scottish Government sought an exclusion from the UKIMA market access principles.

Following protracted negotiations, the UK Government agreed a temporary exclusion to allow the Scottish DRS to launch in 2024, ahead of the planned scheme covering the rest of the UK. The exclusion covered PET plastic, steel and aluminium – glass was not included. Additional conditions were intended to ensure the scheme's interoperability with those to be introduced across the UK, including requiring one marking (e.g. barcode) for use throughout all parts of the UK, and 'a single common UK logo, recognisable across all systems.'<sup>38</sup> The decision was justified in light of the 'widespread and serious concerns expressed by business about the development of different approaches to deposit return schemes across the UK...the powerful representations made by a broad range of businesses across the UK

---

34 [HM Government - Our waste, our resources: A strategy for England \(PDF\)](#).

35 [Introducing a Deposit Return Scheme for drinks containers in England, Wales and Northern Ireland - Government response](#).

36 [Deposit Return Scheme for drinks containers: joint policy statement](#).

37 [Report on the Proposed Draft Deposit and Return Scheme for Scotland Regulations 2020](#). Quoted text from Friends of the Earth written evidence.

38 [Policy statement: Scottish Deposit Return Scheme - UK internal market exclusion](#).

that interoperability of schemes is critical to avoiding unnecessary barriers to trade...’ and the insufficient justification for ‘permanently different arrangements on glass within the UK internal market’ that would add cost and complexity especially for hospitality and retailers ‘as well as adding to consumer inconvenience.’<sup>39</sup>

That decision resulted in the Scottish Government halting the scheme in June 2023, citing business confidence and uncertainty, though work is continuing toward introducing interoperable schemes with maximum alignment. Circularity Scotland Ltd – the firm set up to administer the DRS – went into administration in June 2023, with reported debts and liabilities of £86 million. Biffa, the logistics partner for the scheme selected by Circularity Scotland Ltd, has launched legal action against the Scottish Government to recover £200 million losses it claims are the result of delays to the introduction of DRS.

The controversy surrounding the DRS, exacerbated by the lack of transparency and the informality of the process of seeking an exclusion, resulted in claim, counter-claim and disputed blame. Much of the discussions took place among officials within the Resources and Waste Common Framework working group. No minutes associated with these meetings are in the public domain. There is no requirement to report to parliaments on meetings between officials or of the process of seeking an exclusion; the only stipulation in the UKIMA is that the Secretary of State must lay regulations before the UK Parliament, following consultation with devolved ministers, to amend the list of exclusions.

The Scottish DRS experience exposed a divergence of views on how the exclusion process should operate. In particular:

- The UK and Scottish governments do not agree on the timing of when exclusions should be sought and decisions made: during the development phase (Scottish Government) or only once proposals are finalised (UK Government)?
- The UK Government set a ‘high bar’ for exemptions, suggesting a presumption against granting exclusions; the Scottish Government considers that granting exclusions to facilitate devolved policy choices should be routine.
- The devolved governments regard the Frameworks process as the appropriate forum for discussing and agreeing exemptions on the basis of co-decision and consent. The UK Government, on the other hand, grants veto powers to the relevant UK ministers to rule on exclusions, with input from other Cabinet ministers.

## Deposit Return Schemes in Northern Ireland and Wales

Under the terms of the Windsor Framework, Northern Ireland is required to comply with EU law with respect to packaging and goods, including recycling. A new EU Packaging and Packaging Waste Regulation (PPWR) is in the process of being adopted and will include new rules on the composition of packaging and its reusable and recoverable nature, with ambitious new targets for recycling and recovery.

---

<sup>39</sup> [Policy statement: Scottish Deposit Return Scheme - UK internal market exclusion.](#)



The DRS being developed by the UK Government is also being developed for Northern Ireland and is likely – once implemented – to satisfy the requirements of the EU Directive. Ireland introduced a DRS scheme ('Re-Turn') in February 2024, covering PET plastic bottles, aluminium and steel cans between 150ml and 3ltrs, but excluding glass. Under the current proposals for the UK scheme, its container sizes will align with those in Ireland; this will, in the view of the UK Government 'make it easier for businesses and consumers to engage with DRS across the UK and Ireland.'<sup>40</sup>

The Welsh Government remains committed to introducing a DRS and has from the outset decided to do so in coordination with the other governments across the UK. Like its Scottish counterpart, it remains committed to a scheme including glass, in light of its already high recycling rates and the obligations under the Wellbeing of Future Generations Act, which requires evidence-based decisions for the longer term. To be effective, this will necessitate an exclusion from the UKIMA market access principles if glass is kept out of the scheme being designed by the UK Government for England and Northern Ireland.

'Whilst our preference remains the aligned scheme previously agreed, I note the threat the UK Government have made to repeat their actions in Scotland by using the Internal Market Act to restrict our ability to go further and impose a watered-down DRS on Wales... The misuse of the Internal Market Act as a means to restrict devolution is not about the market... Our objection to the Act lies in the fact that it is open to abuse as it places all the power with the UK Government and goes far beyond the structures needed to ensure economic and regulatory cooperation between the nations of the UK. Innovation is a key part of a successful common market; it does not serve the interests of the UK as a whole to stifle Wales' ability to innovate and seek to tie it to the lowest common denominator.'

Huw Irranca-Davies MS, Cabinet Secretary for Climate Change and Rural Affairs

In April 2024, the four administrations published a joint policy statement setting out a timeline for the design and delivery of a joint scheme. The UK and devolved governments are now committed to a coordinated approach to ensure interoperability of schemes, including the deposit level, the size of containers in scope, an exemption for low volume products, registration and reporting, labelling and return points. The inclusion of glass in the DRS for Wales and Scotland remains an unresolved issue. The joint statement outlines that the two governments will set out their respective positions in separate statements. The new Department for Environment Food and Rural Affairs (DEFRA) minister, Mary Creagh, confirmed that an update on DRS would be forthcoming, as part of a broader package of measures to support the circular economy.

---

<sup>40</sup> [Deposit Return Scheme for drinks containers: joint policy statement.](#)

## 3.4 Goods: Glue Traps

### Wales

The Agriculture (Wales) Act 2023 is the legal basis for the ban on glue and snare traps in Wales. The Welsh Government opted to prohibit only the use of these traps, rather than to ban (or restrict) their sale and supply. The effect of this approach is to reduce (if not entirely eliminate) the risk of conflict with the UKIMA market access principles. Legislation regulating the use of products appears to fall outside the scope of the UKIMA. Section 15 of that Act expressly links the application of the market access principles with measures regulating the sale and/or supply of goods using wording that, adopting the ordinary, literal approach to statutory interpretation, does not extend to capture product usage.

### Scotland

The Scottish Parliament also introduced legislation on glue traps. The Wildlife Management and Muirburn (Scotland) Bill entered into force on 30 April 2024. It went further than the ban in Wales, prohibiting not just the use of traps, but also their sale and possession. In contrast to the position in Wales, the extension to include a ban on sale and possession brings the Scottish legislation within the scope of the UKIMA market access principles.

Recognising this intersection, the Scottish Government sought an exclusion from the UKIMA to allow it to implement the ban on all trade within Scotland, including that originating in another part of the UK. This was rejected by the then Secretary of State for Environment, Food and Rural Affairs, Steve Barclay, in a letter to the Scottish Government:

‘The UK Government does not consider that the evidence presented demonstrates that a ban on the sale of glue traps would be substantially more effective than a ban focused on their use and possession. The UK Government therefore does not believe that the case has been made that an exclusion under the UKIM Act is necessary to deliver the policy aims of restricting the use of these traps in Scotland.’<sup>41</sup>

The UK Government’s denial was challenged by Deputy First Minister Shona Robison who described the UKIMA as ‘an arbitrary and unaccountable tool for policing and constraining the Scottish Parliament’s powers.’<sup>42</sup> Robison’s letter also took particular issue with the timing of the UK Government’s intervention, with the exclusion only being denied after the legislation had been passed at Holyrood.

### Northern Ireland

While the Windsor Framework requires the continued application of an EU Regulation banning the use of leghold traps on animals, there are no EU rules on glue traps at present.

---

<sup>41</sup> Extract cited in response to the letter for the Scottish Government Deputy First Minister.

<sup>42</sup> Robison 31 March 2024.

The Northern Ireland Executive has not introduced, nor indicated plans to introduce, legislation prohibiting the use of glue traps.<sup>43</sup> When the Executive was restored in February 2024, the new Minister for Agriculture, Environment and Rural Affairs committed to ‘modernise’ and bring ‘animal welfare legislation [in Northern Ireland] into line with other jurisdictions,’ but it is not yet clear if fulfilment of this pledge will include action on glue traps.<sup>44</sup>

## 3.5 Goods: Precision Breeding

### England

In 2023, the UK Government enacted the Genetic Technology (Precision Breeding) Act 2023. This regulates – for the English market – the release and marketing of precision bred plants and animals and the marketing of food and food products derived from such plants and animals.

The Impact Assessment associated with the legislation noted ‘whilst this legislative change will only take effect in England, the mutual recognition element of the United Kingdom Internal Market (UKIM) Act means that products entering the market in England would also be marketable in both Scotland and Wales.’

Both the Scottish and Welsh Governments introduced legislative consent motions citing the legislation’s effects on devolved competences. Both governments noted that by virtue of the market access principles, precision-bred goods produced in (or entering through) England may be lawfully marketed and sold in Scotland and Wales notwithstanding their continued prohibition in Scottish and Welsh law.

The Scottish Parliament Rural Affairs, Islands and Natural Environment Committee agreed with the Scottish Government’s recommendation to withhold consent, and the Parliament voted to withhold consent on 25 January 2023. This had no impact on the passage of the Bill in the UK Parliament.

Its counterpart, the Senedd Cymru, concurred with the Welsh Government’s assessment of the practical effects of the market access principles on devolved competences in Wales but challenged the Welsh Government’s assessment that the Genetic Technology (Precision Breeding) Bill made ‘relevant provision for Wales’ (the legal test under Standing Order 29 for determining legislative consent). The effects of the proposed legislation in Wales, it argued, would result entirely from the application of the UKIMA market access principles. The Senedd rejected the motion on legislative consent in plenary on 17 January 2023.<sup>45</sup>

---

43 Council Regulation (EEC) No 3254/91 of 4 November 1991 prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold trapping methods which do not meet international humane trapping standards (OJ L308 9.11.1991 p.1) continues to apply in NI under the Windsor Framework.

44 DAERA (2024, Feb 7) ‘Stopping animal cruelty should be a priority for all – Muir’ [daera-ni.gov.uk](https://daera-ni.gov.uk).

45 Plenary 17/01/2023 at [515].

Despite contrasting positions on consent between Edinburgh and Cardiff, there is broad agreement that the Genetic Technology (Precision Breeding) Act 2023 affects the exercise of devolved competences in Scotland and Wales. This example also highlights how devolved policy choices can be crowded out by policy choices made by the UK Government for England, given the dominance of the English market vis-à-vis the others, and the ability of goods regulated within England to trade freely across (most of) the UK internal market.

## Northern Ireland

Market access to Northern Ireland for goods produced in, or imported into, England, Wales and Scotland is modified by the Protocol and the Windsor Framework. Northern Ireland is obliged to follow EU rules on genetically modified foods (GMOs). As a result, the effects of the Genetic Technology (Precision Breeding) Act 2023 will be felt differently in Northern Ireland in comparison to Scotland and Wales, where the market access principles guarantee access to in-scope products from England.

However, revisions to the Protocol under the Windsor Framework reintroduced the prospect that regulatory differences within the UK internal market might have an effect in Northern Ireland too. Under the Windsor Framework, EU rules on GMOs are listed among those laws which may be 'disapplied' for goods entering Northern Ireland via the 'UK internal market lane' (previously 'green lane') from Great Britain. This only affects goods entering Northern Ireland; it does not affect the obligation for producers in Northern Ireland to comply with EU rules. EU regulatory developments are therefore also relevant. In July 2023, the European Commission published a proposal outlining possible revisions to existing EU rules on GMOs, with the aim of making these less restrictive. If adopted, the proposed changes to EU rules would likely reduce the potential impact of the Precision Breeding Act for/in Northern Ireland under the Windsor Framework.

## 3.6 Goods: Agricultural Policy

### Wales

Agricultural policy is a further policy area affected by the UKIMA, with developments in Wales at the foreground. Several provisions of the Agriculture (Wales) Act 2023 intersect directly with the Act's market access principles. Most notably, section 34 empowers Welsh Ministers to make regulations regarding the marketing of certain agricultural products in Wales, including with respect to their presentation, packaging, and farming and production methods.

The UKIMA market access principles apply to any regulations enacted under section 34 of the 2023 Act. The practical effect on Welsh law is the same as that on other in-scope goods such as single-use plastics: the market access principles preclude the application of new Welsh marketing standards to in-scope agricultural goods entering Wales from other parts



of the UK.<sup>46</sup>

Once again, the Welsh Government publicly refuted the potential for conflict between section 34 of the 2023 Act and the UKIMA market access principles.<sup>47</sup> Key stakeholders, including NFU Cymru, have challenged this account, recognising the practical effects of the market access principles on Welsh Ministers' future use of section 34 as a legal basis to introduce new restrictions on the marketing of in-scope agricultural products in Wales.<sup>48</sup>

In Wales, the UKIMA has also recently featured in discussions around changes to the labelling of free-range eggs. In response to renewed concerns about Avian Flu, and in alignment with EU initiatives, the UK and Scottish governments have proposed extending the 16-week maximum period during which eggs laid by hens housed indoor under mandatory housing orders may be labelled 'free range.' At the time of reporting, the Welsh Government had no plans to change (or consult on changes) to product labelling for Welsh eggs.

Should the UK and Scottish governments make changes, the market access principles would enable eggs housed indoors in England and/or Scotland beyond the current maximum 16-week period to be sold as free range on the Welsh market, placing Welsh producers at a potential competitive disadvantage.

The (then) Minister for Rural Affairs and North Wales, and Trefnydd, Lesley Griffiths (Welsh Labour), acknowledged the practical impact of the UKIMA market access principles in this eventuality, noting: '[the UKIMA] would apply, and the reality would be that eggs fit for sale in one part of the UK would be fit for sale in another part, even if the marketing regulations were different.'<sup>49</sup>

'Welsh ministers can increase standards here [in Wales] but, of course, products produced elsewhere, perhaps to lower standards in some of the other home nations, can still come in [to Wales] and they [the Welsh Government] won't be able to prevent that happening.'

NFU Cymru, Evidence to Senedd Economy, Trade and Rural Affairs Committee

Regardless of whether any changes are made to egg housing periods outside Wales, the Minister's comments are notable for their admission that the UKIMA market access principles bite. As previously noted, the Welsh Government has, on the whole, refuted the impact of the Act on devolved competences in Wales. The Minister's admission on practical effects may indicate a gradual shift in the Welsh Government's reasoning on the UKIMA.

<sup>46</sup> See here LJC Committee report on Agriculture Bill Jan 23 (notes for quote). At the time of reporting, s.34 of the Agriculture (Wales) Act 2023 has been used only once and in a manner that does not conflict with the UKIMA. See The [Wine \(Amendment\) \(Wales\) Regulations 2024](#), implementing, in Wales, new UK-wide restrictions on the marketing of 'ice wine.'

<sup>47</sup> See [Legislative, Justice and Constitution Committee Report on Report on the Agriculture \(Wales\) Bill, January 2023](#) at [57]-[58].

<sup>48</sup> [Economy, Trade and Rural Affairs Committee, Agriculture \(Wales\) Bill Committee Stage 1 Report January 2023](#) at [41].

<sup>49</sup> [Economy, Trade, and Rural Affairs Committee 06/03/2024](#) at [171].

## Northern Ireland

The regulation of trade in, and production of, agricultural goods in Northern Ireland is within the scope of the Windsor Framework. A significant number of EU laws on agriculture therefore continue to apply in Northern Ireland. Some of these EU agriculture laws are among those 'disapplied' to goods moving into Northern Ireland from Wales, England or Scotland via - and according to the conditions of - the 'UK internal market scheme' for the movements of goods for use or consumption in Northern Ireland (see Part 2, above). These changes ease trade flows into Northern Ireland from the rest of the UK. However, the UKIMA rules mean that any changes adopted elsewhere in the UK in respect to relevant agriculture policies which lower costs or regulatory burdens that apply in the EU can be expected to have a detrimental impact on producers of these products within Northern Ireland.

### 3.7 Horizon Scanning: Future Policy Innovations

The UKIMA is relevant to a range of future policy initiatives across devolved areas, with evidence of emerging interactions with services and the regulated professions alongside further proposals on goods.



Image © Bennphoto - stock.adobe.com

## Goods: Tobacco and Vapes

In October 2023, the UK, Scottish and Welsh governments and Northern Ireland's Department of Health launched a joint consultation on proposals to tackle the public health and environmental impacts of vapes. The decision to consult jointly points to an emerging trend in relation to the UKIMA: a shift to a 'four nations' approach to shaping policy through multilateral coordination, rather than through unilateral initiatives that remain subject to the constraints of the Act's market access principles.<sup>50</sup>

In March 2024, the UK Government introduced the Tobacco and Vapes Bill – a UK Bill – to

<sup>50</sup> <https://ukandeu.ac.uk/the-uk-internal-market-a-four-nations-strategy-on-vaping/>

implement an agreed four nations approach to tackling tobacco and vaping across the four nations of the UK. Following the announcement of elections to the UK Parliament scheduled for 4 July 2024, the 2024 Bill was dropped in the pre-dissolution ‘wash up’ for want of parliamentary time.

As introduced to Parliament, the Tobacco and Vapes Bill would have given the UK Government the power to adopt UK-wide regulations on the packaging of tobacco and vapes, subject to the consent of ministers in the devolved institutions (though without a requirement for consent from the devolved legislatures). These regulatory powers intersect directly with the market access principles as ‘relevant requirements’. A UK-wide approach eliminates the need to apply the MAPs, but these principles would bite should devolved consent be withheld in favour of an alternative approach.

In July 2024, the new Labour-led UK Government announced plans to bring forward similar legislation that will impose limits on the sale and marketing of vapes and also progressively increase the age at which people can purchase cigarettes. A resumption of an intergovernmental approach is now anticipated, bolstered by the new UK Government’s commitment to strengthen work with the devolved governments in Scotland, Wales and Northern Ireland.

## Goods: Food Environment

The UKIMA market access principles are relevant to discussion of plans to introduce new food environment legislation. All of the UK’s administrations are presently considering how to regulate the placement, price and promotion of high fat, sugar and salt products (HFSS). The Welsh Government had indicated its intention to bring forward new legislation in the autumn of 2024 to restrict the placement and pricing of HFSS products, including meal deals.<sup>51</sup> This forms part of the Government’s Healthy Weight: Healthy Wales strategy 2022-2024.

The Welsh Government intends to align its proposals tackling HFSS products with English legislation to ‘make it easier for the food industry to operate across borders.’<sup>52</sup> However, scope remains for more ambitious Welsh initiatives, and the Welsh Government has previously set out its ambition to introduce stricter product labelling requirements on alcohol, infant foods and, more generally, to promote healthier food choices.<sup>53</sup>

In Scotland, there have been a series of consultations on HFSS foods since 2018, and the Scottish Government’s broad approach was set out in the Good Food Nation Act (2022), targeting Scottish nutritional outcomes as well as environmental sustainability in food production. This led to a consultation on ‘Out-of-Home Action Plan’ on nutritional labelling and another on restricting multi-buys, meal deals, unlimited refills, and goods for sale at

---

51 See eg [Senedd Cymru Record of Proceedings written question tabled on 03/11/2023, Rhys ab Owen, South Wales Central](#).

52 See [Welsh Government Press Release 27 June 2023](#).

53 [Healthy Weight: Healthy Wales: Taking our Next Steps Moving ahead in 2022 – 2024](#) at p.7 (National Priority Area 1).

checkouts and the front of stores.<sup>54</sup> The 2022 consultation recorded an industry preference for alignment on requirements throughout the United Kingdom, with non-industry responses centred on policy ambition.<sup>55</sup>

For Northern Ireland, EU rules on food labelling and nutritional information continue to apply under the Windsor Framework. EU regulatory proposals are therefore relevant here. As part of its 'Farm to Fork Strategy', the EU is planning to revise requirements regarding HFSS products.<sup>56</sup> Should the EU legislate to introduce new restrictions on HFSS products, these would likely apply to Northern Ireland by default under the Windsor Framework. This may have broader implications for the UK internal market. Northern Ireland alignment with EU rules on HFSS products may also influence the design of future restrictions applicable in England, Scotland and Wales – further evidence of a 'Brussels effect' on intra-UK policymaking.

The impact of the UKIMA on devolved and/or joint UK and devolved government proposals for new restrictions on HFSS products will depend on the specifics of their design. The introduction of distinctive labelling requirements for HFSS products between jurisdictions would unquestionably trigger the application of the market access principles. Conversely, proposals for new restrictions on the placement and pricing of HFSS products would likely escape the application of the mutual recognition principle as a 'manner of sale requirement.'<sup>57</sup> This category references legislation that governs any aspect of the circumstances or manner in which goods are sold (such as where, when, by whom, to whom, or the price or other terms on which they may be sold). Such measures are not caught by the market access principle of mutual recognition, though they would potentially fall within the scope of the principle of non-discrimination. The category of 'manner of sale' requirements provided cover for the introduction of new or amended legislation on minimum pricing, including on the unit price of alcohol.<sup>58</sup>

In July 2024, the new Labour-led UK Government announced plans to bring forward legislation to restrict advertising of junk food to children along with the sale of high caffeine energy drinks. This may lead to the adoption of UK legislation following further joint consultation with the devolved governments. Alternatively, if the UK Government opts to legislate for England-only, the UKIMA will have practical consequences for devolved policymaking through the application of the MAPs.

## Goods: Product Regulation and Metrology

On 4 September 2024, the UK Government introduced the Product Regulation and Metrology Bill (PRMB) into the Lords.<sup>59</sup> Among other things, this UK Bill would grant the

---

54 [Scot Gov: Improving the nation's diet.](#)

55 [Scot Gov: Restricting promotions of food and drink high in fat, sugar, or salt: consultation analysis.](#)

56 [European Commission 'Proposal for a revision of the Regulation on Food Information to Consumers' \(FIC\) food.ec.europa.eu](#)

57 [s.5\(4\) UKIMA.](#)

58 The market access principles do not apply to existing Scottish legislation on the minimum unit pricing of alcohol, subject to the proviso in s4(4) UKIMA.

59 [Product Regulation and Metrology Bill \[HL\].](#)



UK Government new powers to enact UK-wide regulations on the marketing and use of products, as well as on the units of measurement and quantities in which goods may be sold. EU alignment is a key legislative objective, and the PRMB proposes the introduction of new powers for the UK Government to keep pace with applicable EU legislation.

The subject of much of this Bill – product safety standards and units of measurement – is reserved to the UK Parliament. However, the new powers that the Bill proposes for UK ministers would extend beyond reserved matters into areas of devolved competence; for example, regulating the environmental impact of products.

Notably, when the powers bestowed by this Bill are exercised by UK ministers in a way that affects devolved matters, there is no requirement on them to secure the consent of the devolved governments or parliaments before adopting UK regulations on product marketing and use. This departs from more recent approaches to the design of UK Bills regulating domestic trade in areas of devolved competence, which have included statutory obligations to obtain the consent of the devolved governments before regulating; for example, under the Tobacco and Vapes Bill (above).<sup>60</sup>

The UK Government is not proposing to add the PRMB to the list of ‘protected enactments’ which the devolved parliaments are precluded from repealing or modifying. Accordingly, if enacted as introduced, the devolved parliaments could, in principle, legislate to override UK Government choices on product regulations to the extent that these address non-reserved matters. However, where devolved legislation is adopted within scope of the PRMB, this would remain subject to the application of the MAPs under the UKIMA.

The UK Government has requested legislative consent from the devolved governments. Legislative consent motions (LCM) are expected ahead of the Bill’s second reading in the House of Lords on 8 October 2024. The Welsh Government laid its LCM on 20 September 2024, with the Scottish Government following soon after.<sup>61</sup> These point to a divergence between the Scottish and Welsh governments, perhaps influenced by the latter’s political party alignment with the UK Government. The Welsh Government’s is “supportive of this bill with respect to its role in facilitating the smooth functioning of the UK Internal Market” albeit that it underlined the need for further engagement on its impact on devolved powers. By contrast, the Scottish Government’s position is that consent be withheld, pending negotiations, given the absence of mechanisms to recognise properly devolved responsibility for key matters.

## Services and the Professions

Most attention around the operational impact of the UKIMA has been in relation to goods. However, the Act also extends to regulate intra-UK trade in services and certain professional activities. The Office for the Internal Market identified 192 regulated

---

<sup>60</sup> For discussion, see [UK Constitutional Law - Thomas Horsley: Relations Reset or Regression? Devolution and the Product Regulation and Metrology Bill](#).

<sup>61</sup> Senedd Cymru [Legislative Consent Memorandum, Product Regulation and Metrology Bill](#); Scot Gov [Legislative Consent Memorandum, Product Regulation and Metrology Bill](#).

professions in the UK, of which 81 are regulated on a UK-wide basis. Of the others, some, like the legal and teaching professions, are excluded from UKIMA.<sup>62</sup>

The Welsh Government is considering a range of regulatory proposals that potentially intersect with the UKIMA provisions on services. These measures include plans for new (or revised) licensing schemes with respect to the provisions of specific services falling within the scope of the UKIMA, including taxi and private hire vehicles;<sup>63</sup> short-term lets;<sup>64</sup> certain cosmetic procedures;<sup>65</sup> and activities involving animals. With the exception of taxi and private hire licensing, Welsh Government proposals in each of these areas run alongside parallel consultations launched in at least one of the UK's other three national markets.<sup>66</sup> This follows developments in relation to goods (see above), where there is also presently a high degree of alignment between the UK and/or other devolved nations in terms of the identification of broad policy objectives (e.g. on the circular economy; food environment). In part, this may explain the lack of progress and/or apparent pausing of specific proposals; eg on the regulation of specific cosmetic procedures.

Several consultations pertaining to services have been initiated in Scotland. These include a licensing scheme for non-surgical cosmetic procedures;<sup>67</sup> dog walking, grooming and canine fertility services; and livery services.<sup>68</sup> It is not yet clear whether these would align with, or be distinctive from, those set elsewhere in the internal market. Controversial new regulations for short-term lets came into force in 2023<sup>69</sup>, and the programme for government reiterated support to local authorities to introduce a visitor levy. These have been identified by the Office for the Internal Market as potentially interacting with UKIMA where the regulations differ between jurisdictions and where this creates implications for cross-border trade.

In Northern Ireland, the Windsor Framework does not generally apply to services. That said, UK Government obligations under Article 2 – concerning individual rights – may have implications for aspects of services regulation in future. More significant is the effect of the two-year hiatus in the operation of devolution in Northern Ireland. This has left the legislative agenda in Northern Ireland underdeveloped, including in relation to services. The only potentially significant item for UKIMA provisions on services at present is a draft plan for a 'Good Jobs' Employment Rights Bill – on which the NI Department of the Economy is currently inviting stakeholder views.<sup>70</sup> Going forward, any future evolution of services regulation in Northern Ireland – either via devolved or UK-wide initiatives – will be obliged to consider and potentially accommodate the realities of the shared and fluid land border on the island of Ireland.

---

62 [Annual Report on the Operation of the UK Internal Market Act 2023-2024](#), p.43-44.

63 [Consultation](#) closed 1 June; [oral statement](#) to Senedd on 3 October 2023.

64 [Consultation](#) closed 17 March 2023.

65 [Consultation](#) closed 19 April 2023; [second consultation](#) closed 8 April 2024. [The Special Procedure Licences \(Wales\) Regulations](#) (Draft legislation).

66 For an overview of parallel initiatives for England, Scotland and Northern Ireland, see [Annual Report on the Operation of the UK Internal Market 2023-2024](#), 20 March 2024 OIM11, pp. 112-115.

67 [Response from Neil Gray to Health, Social Care and Sport Committee](#).

68 [Licensing of activities involving animals: consultation response analysis](#)

69 [The Civic Government \(Scotland\) Act 1982 \(Licensing of Short-term Lets\) Order 2022](#).

70 [NI Department for the Economy \(2024\) 'The 'Good Jobs' Employment Rights Bill' economy-ni.gov.uk](#).

In sum, the UKIMA has the potential to ensure smoother trade flows for producers, service providers and professionals across the UK's internal market than might be possible without the legal underpinning that it provides. But there is a lack of consensus among the four administrations of its purpose and necessity. And in its current form, it gives precedence to business interests over the policy choices of the devolved institutions.

The operational impacts of UKIMA are likely to intensify over time, as more legislation falls within its scope. Already we are seeing a trend towards regulatory coordination and harmonisation. This is not necessarily a bad thing; collaboration and coordination across jurisdictions can produce many positives. But harmonisation to avoid UKIMA-induced problems risks putting the brakes on devolved policy development and stifling the scope for policy innovation and experimentation that was a welcome by-product of devolution. It could also mean policy is developed at the pace of the slowest or with the lowest levels of ambition.

Processes have developed, most notably the exclusions process, to act as a devolution counterweight to the centralising pull of UKIMA. But the developments outlined above shine a light on the divergent views on the scope and timing of that process, its interaction with the Common Frameworks, and the power it gives to the UK Government to grant or deny an exclusion. The lack of transparency around the process has also undermined the law-making and oversight functions of the devolved legislatures, and created uncertainty, costs and confusion within wider civil society.

The UK Labour Government entered office with a commitment to reset relationships with the devolved governments. The realisation of that commitment requires recognition of the operational impacts of the UKIMA, its effect on the policy and law-making capacity of the devolved institutions, and the fact that it was imposed by the UK Parliament without devolved consent, in breach of the Sewel Convention.





## 4. Reforming the UKIMA





In this final section, we consider the options open to the new UK Government to meet the challenge that UKIMA presents. For completeness, we present both repeal of the Act and the choice of 'doing nothing' in favour of maintaining the status quo as available options. But, in our view, neither of these would be satisfactory. We also offer a range of legislative and intergovernmental options for meaningful reform that could support the resetting of relationships and begin to restore some of the authority to the devolved institutions that the UKIMA has undermined.

## Option 1: The Status Quo

There was no commitment to changing the UKIMA in the Labour manifesto, nor has there been any suggestion of a change. The complexities of the legislation and its operational impacts make it appear a rather technical piece of legislation with low political salience. The temptation may therefore be to do nothing. Accordingly, UKIMA structures would continue to operate in their present form, perhaps bolstered by improved intergovernmental relations between the governments. The new Council of the Nations and Regions pledged in the manifesto might be given a mandate to oversee the operation of the domestic market, especially if proposals for greater devolution in England increase the likelihood of regulatory difference within the UK internal market.

While we would welcome improvements in intergovernmental relations, maintaining the status quo carries considerable risks, particularly for the devolved governments. The design of the UKIMA remains fundamentally antagonistic towards devolution, with the UK Government (now and in the future) retaining a powerful gatekeeping role over how devolved institutions exercise their policy and law-making powers. The reliance on political relationships to lubricate the operation of UKIMA structures and principles is a weak safeguard for the effectiveness of devolved government under the UK constitution. The fact that UKIMA has strengthened the UK Government's hierarchical role vis-à-vis the devolved governments also acts as a barrier to sustaining improved, productive and collaborative intergovernmental relations.

Governing without consent is always likely to carry risks. The UKIMA does not have the consent of the devolved institutions. And yet, it has challenged their authority and some of the principles and ambitions upon which they were founded.

## Option 2: Repeal the Act

At the other end of the spectrum of possibilities, the Act can be repealed. Repealing the UKIMA is the favoured option of the Scottish Government and the Scottish Parliament; in a largely symbolic vote, every party, except for the Scottish Conservatives, supported the motion.

‘That the Parliament notes that both the Scottish Parliament and the Welsh Parliament refused to give consent to the Internal Market Act because of concerns over its potential to undermine democratic decisions of the devolved legislatures; agrees that those fears have been realised to the detriment of the people of Scotland, and that the devolution settlement has been fundamentally rolled back by the Act; calls for the repeal of the Internal Market Act and for the UK Government to stop taking back control to the UK Parliament of policy decisions that should be made in Scotland; agrees that the people of Scotland are best served by both the UK and Scottish governments working together cooperatively, and calls on the UK Government to develop a more consensual means of preserving common standards and safeguards across the UK that does not undermine devolution in any part of the UK.’

Meeting of the Scottish Parliament, 3 October 2023<sup>71</sup>

The UKIMA was a response to a challenge created by the UK Government’s decision to leave the EU Internal Market. Repealing the Act would not remove the challenge that it was designed to address: the risk of regulatory difference between the four administrations creating barriers to trade and mobility. Instead, it would place the burden of managing those challenges on intergovernmental processes, agreement and, in particular, the Common Framework process.

Whilst repeal of the Act would demonstrate a commitment to devolution and to more cooperative intergovernmental working, it would place a heavy burden on a machinery of intergovernmental relations that is, as yet, ill-equipped to cope. It could also risk destabilising the delicate balance of giving legal underpinning to Northern Ireland’s role within the UK domestic market whilst implementing the access to the EU single market for goods given by the Protocol/Windsor Framework.

Repealing the Act would also raise questions for UK trade policy, and there appears little political willingness within Westminster and Whitehall to reopen contentious Brexit-era debates. In particular, repeal may necessitate a review of recently concluded trade agreements, for example, between the UK and Australia, and the UK and New Zealand. Repealing the UKIMA would also require the UK Government to give up its ultimate gatekeeping functions in relation to intra-UK trade management, and either rely on trust,

<sup>71</sup> [Meeting of the Parliament Tuesday, October 3, 2023](#)

goodwill and best endeavours, or find alternative mechanisms to exert its authority.

The option of repeal seems both unlikely and sub-optimal. The option of doing nothing appears equally unsatisfactory. It may be risk-free for the market, but it carries significant risks for the functioning and, ultimately, the stability of devolution. As the positions of the Welsh Labour Government – and indeed the Scottish Labour Party and Scottish Liberal Democrats - have made clear, it is not only nationalists that object to hierarchical power the UKIMA has given the UK Government over its devolved counterparts (see box below). Between these two poles there are a range of legislative and intergovernmental changes that could help to secure a more consensual approach to governing the UK Internal Market.

‘The WG supports the proper regulation of the internal market, which we agree needs to be protected... Our objection to the [UKIMA] lies in the fact that it is open to abuse as it places all the power with the UKG and goes far beyond the structures needed to ensure economic and regulatory cooperation between the nations of the UK... The UKIMA should not be used to seek to impose policy on devolved governments, regardless of our own policy aims or very different domestic context.’<sup>72</sup>

Huw Irranca-Davies MS, Cabinet Secretary for Climate Change and Rural Affairs  
25 April 2024

---

<sup>72</sup> <https://www.gov.wales/written-statement-update-development-deposit-return-scheme>.

# Option 3: Legislative Change

Legislative change represents a third option, or more properly a set of options. The UKIMA may be significantly modified in two ways: first, through the use of existing delegated powers and/or secondly, through new primary legislation at Westminster.

## (i) Delegated Legislation

UK Ministers may modify aspects of the UKIMA using existing delegated powers. These powers include the key provisions set out in the box on the right. These extensive powers remain, however, one of the most controversial aspects of the legislation for two reasons. First, in procedural terms, these provisions require the Secretary of State to seek the consent of devolved ministers, although there is no requirement to secure their consent: if consent is not given by any of the devolved governments after one month, the UK Government can proceed without their consent.

Second, even these limited consent procedures are designed to engage devolved ministers only. There is no Sewel-style obligation to seek the consent of the devolved parliaments. Relying on these powers alone would thus appear an insufficient mechanism for addressing the grievances and concerns that the UKIMA has posed for devolution, *unless* the decision to make changes via this route was the outcome of an agreed intergovernmental process, backed by the consent of the devolved legislatures.

### Existing powers to exclude policy areas in whole or in part

- **s.10:** UK ministers may modify Schedule 1 which excludes the application of the market access principles in specific instances with respect to intra-UK trade in goods. This provision includes – but is not limited to – giving effect to intergovernmental ‘common framework agreements’ (i.e. the existing exclusions process – see Part 2 of this report).
- **s.18:** UK ministers may modify Schedule 2 which excludes the application of the market access principles in specific instances with respect to intra-UK trade in services. Again, this provision is not limited to giving effect to intergovernmental ‘common framework agreements’ (i.e. the existing exclusions process – see Part 2 of this report)

### Existing powers to modify the scope of the Market Access Principles

- **s.6(5):** UK ministers may amend the scope of the non-discrimination principle for goods as this applies to specific regulations.
- **s.8(7):** UK ministers may add to the list of legitimate requirements justifying indirectly discriminatory measures in the regulation of goods; for example, by inserting environmental protection and/or animal welfare as additional public interests justifying restrictions on intra-UK trade.
- **s.21(8):** UK ministers may add to the list of legitimate requirements justifying indirectly discriminatory measures in the regulation of services; for example, by inserting environmental protection and/or animal welfare as additional public interests justifying restrictions on intra-UK trade.



## **(ii) Primary Legislation**

Delegated powers, by their nature, are subject to less scrutiny than primary legislative change, and do not alter the substance of a law. The new UK Government may therefore consider – as an alternative or an additional option - bringing forward primary legislation to modify the UKIMA more radically. Primary legislation could effect changes that are beyond the scope of existing powers under that Act, as set out in the box above.

Various aspects of the UKIMA could be amended through primary legislation, including the controversial spending powers that are, at best, only tangentially related to the internal market. But, in line with the rest of this report, we focus here on changes that could modify the impact of the market access principles. Such modifications might include the introduction of additional principles that help to redress the balance between market access and policy-making autonomy. This could include principles similar to those embedded within the EU internal market, including the principles of proportionality and subsidiarity. These would modify the impact of the existing UKIMA principles on devolution.

### **A proportionality test**

Introducing a proportionality test would require decisionmakers to balance the effects of regulatory variations on trade across the UK's borders with the protection of recognised public interests. This would require the UK and devolved governments – and in the event of a challenge, the courts – to scrutinise whether:

- A. the specified public interest requirement is sufficiently important to justify the potential limits it poses to intra-UK trade;
- B. the regulations are designed to address this public interest; and
- C. the same objective could not be achieved using a measure less restrictive of intra-UK trade

Proportionality features as a test in other internal markets, including the EU internal market, and in international trade agreements. The onus is on the government seeking to defend legislation that adversely affects trade to demonstrate that the relevant measure meets the requirements of the proportionality test and is not a disguised restriction on trade.

A proportionality test could be introduced into the UKIMA framework in tandem with legislative changes to expand the set of legitimate public interest requirements justifying restrictions on intra-UK trade; for example, to recognise considerations such as environmental protection, public health and animal welfare. Taken together, this would create additional space to moderate the impact of the market access principles on a case-by-case basis through a structured, evidenced-based assessment.

## An example from the European Union: Proportionality

The French ban on genetically modified organisms serves as an example of a restriction introduced on free movement of goods within the EU on the basis of environmental concerns. In justifying the more stringent regulations, the French Government invoked the precautionary principle, suggesting that the long-term risks of GMOs are unknown. Additionally, member states may restrict the import of hazardous waste from other EU countries on the basis of concerns about environmental and health protection as well as public safety, but imports cannot be restricted generally.<sup>73</sup>

## A subsidiarity test

Primary legislative change could also include the introduction of a subsidiarity test into the UKIMA framework. Subsidiarity protects the regulatory authority of lower-tier bodies in a system of multi-level governance from overreach by decision makers and law-makers at the centres of power. It does so typically by restricting the adoption of common or 'harmonised' standards to situations where the absence of common approaches (i) is likely to have an appreciable distorting effect on cross-border trade and (ii) where the added value of adopting harmonised regulations is clearly evidenced.

The subsidiarity principle can help to rebalance the commitments to market access alongside the principles of devolution. The presumption would be in favour of maintaining the authority of the devolved legislatures to pass laws as they see fit, removing the veto power that the UKIMA gives to the UK Government over the exercise of those law-making powers that intersect with the market access principles. It would leave open the possibility of common standards and harmonised regulations, but the burden of proof to demonstrate the necessity of these would fall to the UK Government, should they face resistance from one or more devolved governments.

Both tests – proportionality and subsidiarity – are familiar trade law principles and often work together to structure the review of regulations adversely affecting cross-border trade – they sit alongside each other in the EU internal market. The two principles operate (explicitly and implicitly) to manage the limits of regulatory divergence within systems of multilevel government, including the EU, whilst also preserving the democratic authority of governments and parliaments to make their own policy choices.

---

<sup>73</sup> [EUR-Lex Access to European Union law](#)

## **An example from the European Union: Subsidiarity**

In the European Union, proportionality and subsidiarity arguments are often invoked in conjunction. France argued that the ban on GMOs was necessary for environmental protection and that the unique agricultural system of France necessitated more stringent requirements.

## **Northern Ireland**

Any legislative reforms, whether through delegated powers or in primary legislation, need to have special regard for the 'unique circumstances' of Northern Ireland and its place in the UK internal market alongside the requirements of the Protocol/Windsor Framework (see Part 2 of this report, above). It is, for example, likely that areas considered for potential exclusion from the market access principles in a reformed UKIMA would also be areas in which EU laws still apply in Northern Ireland under the Windsor Framework. Any such overlaps would not necessarily undermine a hypothetical initiative to either widen the scope for UKIMA exclusions or introduce new principles, but the likely requirement for Northern Ireland-specific accommodations should be part of the consideration.

## **Option 4: Procedural Changes**

A final set of options may supplement or act as alternatives to legislative change. These concern the procedural workings of the UKIMA that have been found wanting in the early years of the UKIMA's implementation. We offer two suggestions here, neither of which is dependent on legislative change.

### **(i) Reforming the Exclusion Process**

The exclusion process has been a subject of significant disagreement between the UK and devolved governments. The Scottish DRS process (see Part 3 of this report, above) is illustrative of differing understandings of the process by which exclusions are secured, with no consensus on timing and triggers. In the DRS example, this led to significant wasted resources, has generated considerable uncertainty and left few satisfied.

A clearer exclusion process could be developed, including the introduction of an exclusion request form, submitted to an impartial body, alongside requirements for timing and format in which the relevant parties are required to respond. This could be accompanied by an agreed evidence base required to evaluate exclusion decisions to grant or withhold an exclusion. The Office of the Internal Market could potentially expand its role to include assessing proposed exclusions, in addition to regulatory proposals.<sup>74</sup> Alternatively, the

---

<sup>74</sup> As the OIM was created by the Act, a change in its remit may require a change to the wording of the Act.

independent secretariat established recently to support intergovernmental relations – and accountable to the UK and devolved governments – could commission evidence to support the exclusion process in a way similar to its role in resolving intergovernmental disputes. Such evidence should be published and reported to parliaments, to aid the transparency of the decision-making process.

One of the most contentious aspects of the exclusion process has been around the timing of decisions. In previous instances, the UK Government has awaited the completion of devolved legislative processes prior to making decisions, on the basis that only then can an assessment of their impact on the internal market be made. This is clearly unsatisfactory and has increased uncertainty among businesses and other stakeholders.

A parallel can be made with the process of seeking legislative consent under the Sewel Convention. When the UK Parliament intends to pass a law that affects devolved matters, by convention, it (normally) seeks the legislative consent of the devolved legislatures before doing so. Those legislatures are required to make that decision before the law has gone through all of the law-making stages in parliament – in other words, before the final details of the law are known.

It is not unreasonable, in our view, to expect a decision to be made with regard to a proposed exclusion from the market access principles whilst the legislation is underway within the devolved parliaments. Indeed, it is arguably vital to enable parliamentarians, and other stakeholders, to make informed decisions on the Bill or regulations before them.

## **(ii) Legislative Tracking**

Advanced notice where future regulatory difference is intended, either at a UK-level (legislating for England) or within the devolved legislatures, is essential to the proper functioning of the UK internal market. Yet, the present approach relies on political commitments on information sharing set out in intergovernmental agreements, rather than on any formalised framework.

A new framework for legislative tracking would support coordination and planning between the UK and devolved governments. It could provide a platform for increased intergovernmental coordination in areas of shared regulatory concern at an early stage of policy development and encourage cooperation and shared learning; for example, through agreements on joint consultations.

‘We suggest a role for the Office for the Internal Market as a suitable repository for legislative tracking. The OIM operates as an independent regulatory body. Its statutory functions already include monitoring the operation of the UK internal market.

The OIM could manage legislative tracking independently of its statutory responsibility to provide expert, technical and independent to the UK and devolved governments. The OIM is already mapping regulatory divergence in its Annual Reports.



Alternatively, the UK and devolved governments could charge the IGR Secretariat with responsibility for legislative tracking. The Secretariat is committed to serving the four governments equally and to act impartially in the exercise of its functions, and legislative tracking would sit well with its mission to promote transparency and accountability in inter-governmental relations. A further option would be to engage parliamentary mechanisms, specifically the Inter-Parliamentary Forum. The Forum's initial priorities (2022) included oversight of the UK internal market, including the UKIMA and the Common Frameworks.<sup>75</sup>

## Conclusion

---

There are, therefore, a plethora of options available to the UK and devolved governments that could both improve the functioning of the UK Internal Market whilst restoring the authority of the devolved institutions that the UKIMA has challenged directly.

Doing nothing is not a viable option if the UK Government is to hold true to its commitment to reset its relationship with the devolved governments. Conversely, abandoning the legislation entirely would not remove some of those post-Brexit challenges it was intended to address.

Between these two poles, we have suggested a range of reform options that can go somewhere to redressing the balance between devolved political autonomy and market access. Key to securing consent for the way ahead will be to work collaboratively across the four administrations – and with the oversight of the four parliaments – in the spirit of cooperation, compromise and mutual respect.

---

<sup>75</sup> [Constitution, Europe, External Affairs and Culture Committee Inter-Parliamentary Forum.](#)

# About this report

This report was written by:

Dr Coree Brown Swan - [coree.brownswan@stir.ac.uk](mailto:coree.brownswan@stir.ac.uk)

Professor Thomas Horsley - [thomash@liverpool.ac.uk](mailto:thomash@liverpool.ac.uk)

Professor Nicola McEwen - [nicola.mcewen@glasgow.ac.uk](mailto:nicola.mcewen@glasgow.ac.uk)

Dr Lisa Claire Whitten - [l.whitten@gub.ac.uk](mailto:l.whitten@gub.ac.uk)

It was published by the Centre for Public Policy at the University of Glasgow on 3 October 2024.

This is an open access report licensed under [Creative Commons Attribution 4.0 International](https://creativecommons.org/licenses/by/4.0/).

DOI:

We are very grateful to the Economic and Social Research Council and the [UK in a Changing Europe](https://www.ukinacheaningeurope.org/) for funding the research underpinning this report

## Contact

If you would like more information about this report, please contact [public-policy@glasgow.ac.uk](mailto:public-policy@glasgow.ac.uk).

Find out more about the Centre for Public Policy

Visit the Centre website at [gla.ac.uk/publicpolicy](https://gla.ac.uk/publicpolicy). Follow the Centre on [LinkedIn](#) and [X](#).



Centre for  
Public Policy

UK IN A  
CHANGING  
EUROPE



UNIVERSITY of  
STIRLING

