Constitution, Europe, External Affairs and Culture Committee

Scottish Parliament

United Kingdom Internal Market Act 2020

Written Evidence

Memorandum submitted by Professor Kenneth A. Armstrong, Professor of European Law, Faculty of Law, University of Cambridge

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Summary

- The governance architecture introduced by the United Kingdom Internal Market Act 2020 is limited to the review of new regulatory divergences after those requirements have entered into force. Yet the governance architecture for an internal market requires a more expansive set of governance tools and techniques, particularly in the management of divergent regulatory policies before rules are formally adopted.
- The design choices made by the Act place limits on the exercise of devolved regulatory powers through the disapplication of those rules to economic actors located in another jurisdiction in the UK. To the extent that local rules continue to apply to local economic actors, there is also potential for regulatory competition to further undermine local regulatory policymaking.
- While the reach of the Act is limited by the delineation of competences between the UK and devolved governments, it is readily apparent that important devolved initiatives – measures related to an alcohol policy framework, environmental protection, human health and safety, animal welfare – are vulnerable to varying degrees through the application of the market access principles enshrined in the Act.
- The legal discipline which the Act imposes is different in important respects from that applicable to the EU Internal Market. In particular, the Act applies a strong and blunt variant of the mutual recognition principle in ways which give extraterritorial effect within a jurisdiction to rules promulgated in another jurisdiction (home country control).
- The management of regulatory divergence in the United Kingdom requires a further recalibration of the governance architecture of the internal market. Three pillars of reform are proposed
    - Amendment of the Act to reconfigure the mutual recognition principle to mandate acceptance of the **equivalence of rules**, with judicial review of the reasons why equivalence not accepted.
    - Rebalancing of economic and social values through stronger recognition of **environmental protection** as a legitimate restriction on trade.
    - A new **horizontal instrument** that builds on the experiences of the common frameworks programme, focused on managing pre-legislative draft regulations through intergovernmental collaboration and dialogue.

Disciplining Divergence – What Design for a Governance Architecture?

1. Any internal market that seeks to remove barriers to trade or restrictions on the provision/receipt of services across jurisdictions has to find a way of managing the proliferation and application of locally-formulated regulatory policy.
2. An obvious approach is to seek to eliminate or reduce divergence through agreement on common binding rules. That entails a transfer of political authority and responsibility to centralised decision-making structures. Particularly where there is a shared understanding of the sorts of risks that regulation seeks to control and common world views about the best ways of managing those risks, centralisation of regulatory policymaking may be likely.
3. Nonetheless, and typically for constitutional reasons, political systems may want to limit the centralisation of decision-making and instead place a stronger emphasis upon the decentralisation and devolution of decision-making to allow regulatory policy to be more sensitive to local preferences. Divergences in regulatory policy may be particularly acceptable in areas where there is no obvious cross-border trade or the impacts of regulation on producers/providers located outside the jurisdiction are no more than those that would apply to producers/providers within a jurisdiction e.g. rules that relate to where and when shops may open or certain goods can be sold or services provided. Once it is clear that, in the absence of common binding rules, regulatory divergence does potentially restrict trade in goods and services, then the design of an internal market has to consider the options available for the management of divergence.
4. As set out in the table below, a broad distinction may be made between ex ante techniques that focus on draft rules and ex post technques that manage adopted rules:

Techniques that manage divergence <u>before</u> regulations adoped	Techniques that manage divergence <u>after</u> regulations adoped
• Pre-legislative notification and consultation about planned regulatory changes to allow for the representation of external interests in local regulatory policymaking (e.g. 'notice and comment' processes may attach to local rulemaking); • Authorization processes to allow for regulatory divergences where other jurisdictions within the internal market are willing to accept divergence; • A stand-still that prevents adoption of draft rules pending the outcome of notice and comment processes.	• Disapplication of regulations that inhibit cross-border movement of goods or provision of services; • Coordination of regulation through active consideration of the equivalence of different regimes; • Review clauses and sunset clauses to allow for further information to be gained about the experience of regulatory divergence and for the reconsideration of decisions in light of new knowledge.

5. These techniques can be deployed to different extents and in different ways. **These choices are fundamentally constitutional and political choices that have significant implications for the distribution of political authority among the jurisdictions that supply regulatory policy within an internal market.**

The Design Choices of the United Kingdom Internal Market Act 2020

6. What is striking about the Act is that it is neither intended to manage regulatory divergences in the UK that existed before the entry into force of the Act, nor does it seek to manage new draft regulatory initiatives before they enter into force. In other words, the techniques noted in the left-hand column of the table above do not form part of the statutory UK internal market. Rather, the market access principles enshrined in the Act – the mutual recognition principle and the non-discrimination principle – are triggered by new 'relevant requirements' once they are in force. The application of these principles leads to the disapplication of local rules that are inconsistent with these principles.
7. The reach of these two principles in respet of goods is summarised in this table:

	Mutual Recognition	*Non-Discrimination*
Relevant Requirements caught by the Act	Characteristics of the goods or their performance; Presentation of the goods; Production of the goods; Animal tracing; Registration or approval or authorisation; Maintaining records or information; Anything else relating to the goods before they can be sold.	Circumstances or manner of sale (when, where, by whom, to whom, the price or other conditions of sale); Transportation, storage, display, handling of goods; Registration or approval or authorisation; Regulation of businesses selling certain types of goods.
Exclusions and Exceptions	Requirements that are: Necessary to reduce or prevent the movement of a pest or disease into that part of the UK; or Necessary to reduce or prevent the movement of unsafe food or feed into that part of the UK; or An authorisation covered by REACH regulation (chemicals) or the regulation of pesticides and fertilisers under retained EU law; Related to a tax, duty or similar charge.	Requirement that are: Directly discriminatory but a response to a public health emergency; or Indirectly discriminatory and pursues a legitimate aim of the protection of the life or health of humans, animals or plants, or protects public safety or security

8. The effect of these principles is that producers and providers located outside of the local jurisdiction do not need to comply with local rules and instead only need to comply with those rules applicable in their own jurisdiction. The effect is to give extraterritorial effect to rules beyond the jurisdiction in which they are made.
9. Local rules remain law and are applicable to local producers and service providers. But the extraterritorial effect of rules in force elsewhere can also serve to create regulatory competition with attendant pressures on local regulatory authorities to adjust rules so as not to put local producers and providers at a competitive disadvantage. **In this way, the Act embodies a 'competitive' model of economic unionism in contrast to a more 'collaborative' model premised on intergovernmental coordination and dispute-resolution.**

10. This disapplication of local regulatory policy choices is also not the result a process of investigation by a public or statutory agency or regulator – the powers of the Competition and Markets Authority under the Act do not extend to enforcement of the market access principles – but is instead ultimately left to the courts at the instigation of economic actors. **To the extent that businesses perceive a local rule to be a restriction on their economic freedom to conduct a business across a border, it will be vulnerable to litigation.**

Practical Implications

11. The table below summarises the potential reach of the Act to exercises of devolved powers. The table focuses on measures that have either already been adopted or which might emerge as the Scottish Government develops its programme for government. Insofar as the analysie relates to proposals or potential future changes it is speculative but it is intended to indicate the potential reach of the Act.

Area	**Mutual Recognition**	**Non-Discrimination**	**Effect of the Act**
Alcohol Framework			
Minimum Unit Pricing (following any post-review change)	Not applicable	Constitutes a "manner of sale' requirement"	Only triggered if there is a substantial modification but that could include any increase in level of pricing. If triggered, the non-discrimination principle would apply and issue would be about the competitive effects of the measure.
Container Labelling	Applicable		Goods that comply with labelling requirements and sold lawfully in another part of UK could be sold lawfully in Scotland. Protection of public health not a reason for insisting on application of Scottish labelling rules.
Advertising and Marketing	Not expressly listed. But could fall within the general definition	Only applies to the extent that mutual recognition doesn't apply.	Unclear. EU law treats advertising and marketing analogous to manner of sale requirements. Possible that the Act seeks to take a different approach. If applicable could apply to any tightening of rules on advertising and promotion of sales of alcohol. Litigation possible to test the reach of the Act.
Environmental Protection			
Deposit and Return Scheme	Applicable to producer obligations in respect of registration and authorization of compatible drinks containers and	Applicable to the payment of a deposit insofar as this is treated as an aspect or pricing. Other retailer obligations to store	Given that environmental protection is not expressly recognised as a legitimate aim that can limit the application of the Act, good reasons to believe that core aspects of the regime could be disapplied as a consequence of the Act.

	to create and retain data.	containers and facilitate a take-back scheme could be affected.	
Regulation of microplastics (new EU initiative – keeping pace power) or other initiatives on plastics.	Applicable to labelling requirements or product composition requirements		Would allow producers in another part of the UK to sell microplastic-containing products according to rules of the jurisdiction of production or import. No capacity to invoke environmental protection as a reason for application of Scottish rules.
Ban on the sale of horticultural compost containing peat.	Applicable as it relates to the composition of the product		Ban on sales in England and Wales also likely. Issue is, therefore, whether more immediate action in Scotland could be undermined by the Act. The Act ould allow producers in another part of the UK to sell compost containing peat in Scotland rendering any ban on sale of no practical effect. No capacity to invoke environmental protection as a reason for application of Scottish rules. Would not put local producers at competitive disadvantage as not obvious that there are Scottish producers of compost containing peat.
Human Health and Safety			
Fireworks and Pyrotechnics (see consultation on a new Bill)	Applicable to licensing of sale of fireworks or to any prohibition on their sale	Applicable to rule on the days, time or place in which fireworks could be sold	Act could disapply licensing requirements or prohibitions on sale. Rules restricting days or times of sale more likely to survive application of the Act either because no competitive disadvantage or because protection of public health is a legitimate aim (this exception does not apply to the mutual recognition principle).
Good Food Nation (Scotland) Bill	Not applicable	Not applicable	There is no direct regulation of the production or composition of food nor rules relating to their sale.
Animal Welfare			
Animal transport legislation	If 'handling' of livestock includes transportation then potentially applicable	Applies to transportation of goods.	Previously governed by EU rules and UK and devolved governments have consulted jointly on any changes. Divergences may not in practice arise. Any future action may include strengthening guidance which is non-statutory and as such any change would not trigger the application of the Act.

12. The conclusion from the analysis is that some exercises of devolved rulemaking will clearly fall within the scope of the Act. Where the mutual recognition principle is triggered there is little to stop the disapplication of these rules where producers located outside of Scotland comply with their own local regulatory requirements. If the non-discrimination principle is triggered it is far more speculative whether the result would be the disapplication of Scottish rules.
13. **There is an incidental risk that can be identified. Where the Scottish Government has a legitimate choice between a statutory and a non-statutory response, the potential for new rules to be disapplied as a consequence of the application of the Act could push Ministers to prefer a non-statutory option**.

The Different Disciplines of EU and UK Law

14. The most useful available comparison from which to make sense of the UK internal market is the EU internal market. Indeed, when we also compare the EU internal market with the alternative of a simple free trade area between states, it becomes clear that an internal market imposes a stronger legal discipline on its constituent jurisdictions. What makes an internal market different from a simple free trade area is the balance that it strikes between: (1) common rules; (2) the application of rules of the state of origin of goods and services ('home country control'); and (3) the application of rules of the state of destination of goods and services ('host country control').
15. The weaker legal discipline of a free trade regime implies limited centralisation of rule-making and greater regulatory autonomy by the 'host' jurisdiction. The result is a greater tolerance of regulatory diversity but at the risk of greater obstacles to trade. This makes a free trade area approach a template for managing looser economic cooperation between states. For example, it is this logic which underpins the EU-UK Trade and Cooperation Agreement as a substitute for membership of the UK internal market.
16. The stronger discipline of an internal market entails both a greater role for centralised rule-making and tighter controls on the autonomy of the host state to insist on the application of local rules. Regulatory diversity is either eliminated or its effects on trade is subject to greater legal control. This makes the model of an internal market more suitable to manage divergences between jurisdictions that pursue a closer form of economic integration.
17. However, in any given internal market the strength of that discipline depends on its calibration of the elements of harmonisation and host/home state control. The EU and UK internal markets are calibrated differently as summarised in this table:

EU Free Movement Principles	UK Market Access Principles
Adoption of harmonised rules across EU limits extent of judicially-enforced free movement principles. Outside of harmonised rules free movement principles applicable across a wide range of regulatory intervention (and areas of	Reservation of competence at UK-level in areas like product standards and consumer protection together with the legaccy of common EU rules as 'retained EU law' sets legal and practical boundaries to areas where the market access principles will apply. Impact on devolved authorities is

welfare and healthcare not immune from effects).	necessary limited to areas of devolved regulatory powers, typically human, animal and plant health, environmental protection.
Wide scope and discretion for EU courts to balance public interest regulatory goals against market integration objectives.	Restricted and circumscribed capacity for UK courts to take into account statutorily-recognised exclusions, derogations and legitimate regulatory aims.
Mututal recognition – clear presumption in favour of country of origin regulation but can be rebutted on good public interest grounds. Requirements on local regulators to actively take into account the equivalence between different regulatory systems.	Mutual recognition – its sphere of operation is defined in statute but when triggered takes on a more absolute form with limited capacity to derogate.
Low threshold to trigger free movement priniciples	Much higher threshold needs to be reached to demonstrate that an indirectly discriminatory regulatory provision should be disapplied. More significant evidential burden to prove disadvantage and effects on competition.
High level of judicial discretion.	Limited judicial discretion. Discretion vests in UK Executive to change the balance of the Act through regulations (with consent of devolved authorities to be sought(.

18. Despite borrowing some of the language of EU free movement law, it is clear that the discipline exerted on local regulatory jurisdictions under the UKIM Act is different from that under EU law. In particular, **a strong version of the mutual recognition principle in the Act affords little scope for devolved authorities to protect local regulatory policymaking from disapplication if challenged by producers and providers located in other parts of the UK**.

19. The continuing application of local rules to local producers/providers exposes those entities to regulatory competition from producers/providers offering goods and services on the local market but in compliance with regulatory policies in force outside of the local jurisdiction. **Albeit that this exposure to regulatory competition is limited by the domains in which regulatory policy is itself devolved, the exercise of devolved policymaking is disciplined both by the potential for rules to be disapplied and by the forces of regulatory competition.**

20. On the other hand, where local rules are disciplined not by the mutual recognition principle but by the non-discrimination principle, there is a higher threshold to be crossed under the Act in terms of the need to demonstrate 'a significant adverse effect on competition'. Under EU law, there is a lower threshold to trigger the application of the free movement principles but this is balanced by the open-ended scope of legitimate aims which a local jurisdiction can claim to be protecting providing the interference with trade is proportionate to the regulatory aim. Under the Act, there is a greater onus on the claimant to demonstate an adverse effect on

competition in the first place. But once the threshold is crossed, the local jurisdiction has a somewhat more restricted capacity to protect its regulatory policy.

21. It is worth repeating that the market access principles which form the centrepiece of the governance architecture of the Act focus on regulatory divergences after they have occurred. **The mechanisms of notification of draft regulations – and the standstill procedures that apply to notifed drafts – that feature prominently in EU law – are not reproduced in the Act**.
22. The Act does give the Competition and Markets Authority – acting through its Office for the Internal Market (OIM) – a potential role where a national authority opts to seek the advice of the OIM on a draft proposal (the OIM can also be asked to provide a report on the effects of rules after they have been adopted). But there is no obligation to seek such advice or to act upon it and the OIM may decline a request for its advice. While there may be something potentially interesting and useful in engaging the OIM in this way, there is also a clear risk that the OIM – like the courts – become embroiled in charged controversies about the boundaries of political authority when that authority is exercised in ways that produce regulatory divergences.

Managing Divergence by Other Means – Common Frameworks

23. The Common Frameworks programme is a means of managing future regulatory divergences from the baseline of retained EU law as it existed at the end of the transition period. The programme now consists of 32 frameworks, of which 29 are non-legislative. 29 frameworks apparently have provisional agreement with 1 framework – Hazardous Substances (Planning) – in final form. Unlike the 'horizontal' governance approach of the UKIM Act, the common frameworks programme is more sectoral in nature in that it produces a topic-by-topic intergovernmental agreement on what types of domesticated EU rules are in scope and how any future modifications to those rules are to be managed.
24. Unlike the statutory internal market, the common frameworks programme is a means of managing divergences <u>before</u> new rules are adopted. But unlike EU techniques for managing new draft regulatory requirements which legally mandate notification and stand-still obligations, the cooperation envisaged under common frameworks do not take binding legal form.
25. The problematic relationship between common frameworks and the UKIM Act should be obvious. At a political level, the analysis of proposed new rules through intergovernmental cooperation within the auspices of a common framework may result in new regulatory divergences. However, legal enforcement of the Act leads to the disapplication of new rules if they are inconsistent with the market access principles. That has the potential to undermine common frameworks, with intergovernmental negotiations conducted in the shadow of the reach of the Act.
26. Belatedly during its legislative passage, the UKIM Bill acknowledged the common frameworks' programme. Nonetheless, amendments that would take the outcome of common frameworks entirely outside the scope of the Act were resisted and instead, UK ministers are afforded a discretion to amend the Act by regulations to take account of the outcome of a 'common frameworks agreement'. Whether or not to do so remains a power of the UK Executive.

27. How this power will be exercised has been clarified by a Written Statement made in December 2021. If an agreement emerges as to a new divergence, then this agreement is to be put in writing – likely to be an exchange of letters – and then the Secretary of State will exercise the discretion contained in the Act to include that agreement in the Schedules to the Act through a statutory instrument. Note that it is not the new regulatory divergence itself which is excluded from the scope of the Act, nor the common framework as a whole, but simply the agreement to permit the divergence.

Towards a New Governance Architecture

28. The ambition to secure open trade between the constituent jurisdictions of an internal market is a perfectly acceptable ambition. But as in any internal market important balances need to be struck:
    - Between market liberalisation and market regulation;
    - Between centralised and decentralised decision-making;
    - Between uniformity and diversity;
    - Between regulatory competition and regulatory collaboration;
    - Between political and legal authority.

    The design of the UKIM, and the balances it strikes, needs reconsideration and recalibration. Three proposals are outlined below:
    - Mutual recognition as the search for regulatory 'equivalence';
    - Rebalancing economic and social values;
    - Consolidating the experience of common frameworks into a horizontal instrument to enhance ex ante management of draft regulations.

An 'Equivalence' Approach to Mutual Recognition

29. As currently conceived, the UKIM Act's mutual recognition principle places too much emphasis on market liberalisation over local rights to regulate. It provides a legal framework for regulatory competition that is in tension with the collaborative intergovernmental approach to managing regulatory diversity. But mutual recognition does not need to be conceived as simply synonymous with a strong principle of home jurisdiction regulatory control.
30. Mutual recognition is more generally recognised as a means of managing regulatory diversity through obligations to respect the equivalence of regulation between jurisdictions. An 'equivalence' approach to mutual recognition respects the right of each jurisdiction to regulate its own market. But it places demands on local regulators to investigate the regulatory history of a good or service and not to insist on the full application of local rules if that history evidences that a good or service has already complied with equivalent regulatory standards in the jurisdiction in which it has already been lawfully placed or offered on the market. To the extent that a good or service already meets local standards by meeting the standards of the jurisdiction of origin then there is no good reason not to allow such goods or services access to the local market.
31. This equivalence approach is being used to manage financial services between the UK and the EU. Both sides assert their autonomy to regulate but seek a pragmatic approach to allow market access based on compliance with regulatory standards

that are equivalent to one another. This leads to formal ex ante equivalence decisions setting out which standards are equivalent, but this is not a necessary feature of the approach. In other words, an ex post approach would suggest that formal decisions only need to be adopted where there is a denial of equivalence. It would only be where a producer or service provider was denied market access that this would be required to be formalised in a decision.

32. The merit of this approach is that it remains faithful to the intuition that goods or services lawfully available on the market in another jurisdiction should in principle be able to access other markets based on compliance with rules of the jurisdiction of origin. Indeed, where local rules are equivalent to those mandated elsewhere, there should be unrestricted market access.
33. A particular advantage of this methodology would be that it would require local regulators to adopt a decision to deny market access. That decision and the reasons behind it would be open to judicial review. But the role the courts would play would be largely process oriented in that they would be reviewing the reasoning of local decision-makers. **The function of judicial review would be to test the legality of a decision. Instead of courts simply disapplying local rules, the function of courts would be to test whether there was a good reason to exclude the good or service including whether there was a real absence of equivalence between rules**.
34. There would, nonetheless, remain a substantive role for the court in applying the non-discrimination principle to any attempt to impose local rules that purport to impose higher standards. As suggested previously, the approach taken in the Act is one that arguably sets a higher threshold before local rules would be disapplied for breach of the principle. Overall, the discipline would be tighter than that which applies in international economic law to free trade areas. It would be legally identifiable as an internal market.

Rebalancing Economic and Social Interests

35. The design of the UKIM is open to the critique that it prioritises market liberalisation over the regulation of markets in line with local preferences. This is more the case with respect to the mutual recognition principle where there is limited scope to derogate from the principle in terms of Schedule 1. But even in respect of the non-discrimination principle, there is no recognition of protection of the environment as a legitimate regulatory aim (although it might be read into the protection of human, animal or plant health).
36. It seems clear that the intention behind a statutory internal market was to limit judicial discretion to recognise a wider set of public interest goals that regulators might wish to pursue. The idea of an exhaustive list of statutorily recognised legitimate aims of regulation is not itself objectionable. The proposal here would be to extend this list to include environmental protection and to recognise these legitimate aims as good reasons for denying or limiting access to the local market. The non-discrimination analysis would apply to any relevant requirement that was not otherwise rendered inapplicable using the equivalence approach to mutual recognition. The combination of the need to show competitive disadvantage combined with determinations of the reasonableness of any restriction having record to its legitimate aims would offer a better balance of economic and social values.

Consolidating the Experience of Collaboration

37. When proposed, it was said that the merit of a UKIM would be its horizontal rather than its sectoral application. To that end, it would capture all future regulatory norms – including novel rules – and not just those that modify retained EU law. By contrast, the common frameworks approach is sectoral and is focused on managing post-Brexit changes to retained EU law.
38. In reality, the UKIM's framework will apply in a more sectoral way in practice given that some sectors are devolved while others are reserved to Westminster. Conversely, while common frameworks are policy specific, there may be common elements that could usefully be consolidated into a horizontal instrument. Moreover, there is no reason of principle to only apply the common frameworks approach to modifications of retained EU law. The logic of intergovernmental collaboration can be extended to all and any future divergences.
39. The important distinction is in fact between tools and techniques to manage regulatory diversity that are either ex ante – they manage divergences before they occuer and while regulation is at the draft stage – or ex post – they seek to remove divergences after they have occurred. The merit of common frameworks is that they are ex ante and engage governments collaboratively in seeking solutions that can promote regulatory consistency and coherence while accepting that divergence is a legitimate outcome. But there may be ways of extending this approach beyond modifications to retained EU law; of drawing together the experiences of different common frameworks; and of formalising a control mechanism in a horizontal instrument.
40. A horizontal instrument of ex ante control would require the notification of new draft regulations which would then be the subject of intergovernmental dialogue. If desired, a stand-still could be observed while this dialogue took place. Time limits could also attach to this process.
41. Three outcomes of intergovernmental dialogue can be envisaged:
    i. Coordination action – where appropriate, national authorities could seek to take coordinated action. To the extent that each jurisdiction established separate but equivalent regimes, the equivalence approach highlighted previously would ensure that compliance with rules of the jurisdiction of origin could also secure access across the internal market.
    ii. Agreement to diverge – even if there was no agreement on a coordinated approach, intergovernmental dialogue could acknowledge the legitimacy of a divergence. It might be helpful to clarify whether the basis for an agreement to divergence was either the absence of an impact on cross-jurisdictional trade or an acceptance that there was such an impact but one that was accepted for non-economic reasons. As with the approach to common frameworks, a mechanism could be devised to bring agreed divergences outside the scope of the Act. Consideration should be given, however, to whether the mechanism currently contained in the Act could be improved.
    iii. Disagreement – this could simply be left to economic actors to decide whether any new regulation introduced breach the UKIM Act. However, an alternative would be to subject the new rule to a sunset or review clause. The OIM could be tasked with providing a report on the operation of the new

rule and its impact on the UKIM prior to the review date. That could lead to a future revision of the rule when it came up for review.

Summary – Three Pillars of Reform

42. The three pillars of the proposed recalibration are summarised in the table below. Each individual process requires further development to optimise the interaction of governance tools and techniques. There is a need to clarify the instutitonal mechanisms for intergovernmental decision-making as well as how best to relate the non-governmental advisory role of the OIM with intergovernmental political structures. But the ambition is to build a governance architecture that goes beyond the ex post disapplication of local regulatory choices as provided for through the UKIM Act. Rather the intention is to rebalance and recalibrate the internal market to manage regulatory diversity through a governance architecture that deploys a range of governance techniques at pre- and post-legislative stages.

Pre-Legislative	Post-Legislative Review under the UKIM Act	
Notification and Intergovernmental Dialogue	*An Equivalence Approach to Mutual Recognition*	*Rebalancing Economic and Social Values*
Notification of new draft regulations that if enacted could be within the scope of the UKIM Act. Not limited to modifications of retained EU law but all regulatory initiatives. Intergovernmental dialogue to seek: (1) coordinated action and recognition of equivalence of rules; (2) acceptance of divergence; (3) sunset or review of measures where divergence results from disagreement. Stand-still could be applied as intergovernmental dialogue undertaken.	Reformulation of the mutual recognition principle as an active consideration of the equivalence of rules from different jurisdictions. Judicial review of the processes leading to decisions to deny recognition of equivalence. Non-discrimination principle assumes a significant role where local regulators seek to impose higher regulatory standards and where the equivalence approach reaches its limits.	Non-discrimination principle applicable where equivalence approach reaches limits. Any rules left subject to review in light of non-discrimination principle could be protected provided they pursue a legitimate aim. Express inclusion of the protection of the environment as a legitimate aim of regulatory policy.