Brexit and Revolution: a Re-centralization of Power at the Expense of Scotland?

Le Brexit, une révolution: recentralisation du pouvoir aux dépens de l’Écosse ?

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Introduction

1 On June 23rd 2016, 62% of Scottish voters voted in favour of continuing membership of the EU while 52% of British voters endorsed Brexit. The majority of Members of the Scottish Parliament (MSPs) willing to remain in the EU was even higher.¹

2 As a result, shortly after the referendum, Nicola Sturgeon, the First Minister and the leader of the pro-independence Scottish National Party (SNP), claimed that her Government would have to “find - or create - a solution that enables Scotland’s distinctive voice to be heard and our interests to be protected within the UK”.² She clearly indicated that Scotland should remain in the single market to continue to take advantage of its four freedoms: the free movement of goods, services, capitals as well as people. Failing that, her Government could “consider again the option of independence”. Scotland’s place in the UK, supposedly settled during the referendum on independence that had taken place on September 18th 2014, would be at stake.

3 During the following five years, none of her wishes were fulfilled as Brexit was handled by the British Governments led by Theresa May and by Boris Johnson from July 2019, with little or no consultation of their devolved counterparts. In addition, they introduced pieces of legislation that would enable them to make decisions related to devolved matters. Meanwhile they would not allow the Scottish Parliament to gain additional powers to try and mitigate the consequences of Brexit. In a nutshell, Brexit would seem to lead to a re-centralization of power within the UK, which will affect
Scotland in particular, as it has been the nation benefiting from the most advanced form of decentralisation since 1999.

This side-effect has been denounced by pro-independence politicians from the SNP – who hold a majority of seats in the Scottish Parliament (Holyrood) and also a majority of Scottish seats in the House of Commons – and the Greens, as well as pro-Union parties, Labour and the Liberal Democrats. The Conservatives who have replaced Labour as Scotland’s main opposition party at every election, will be increasingly at pains to reconcile their membership of a British party with their Scottish identity.

This paper will assess a possible re-centralization, from a Scottish perspective, drawing extensively on parliamentary debates and official sources up to September 2021. It will argue that the consent of the Scottish Parliament was neglected and that the use of its powers is likely to be constrained, before turning to the future of Scotland within the UK.

The consent of the Scottish Parliament, a trivial matter?

According to Article 50 of the Treaty on the European Union, Brexit would first have to be triggered by the British Government. The Scottish Government expected it to make use of the mechanisms that were developed from the outset of devolution to deal with matters likely to have an impact on devolved competences. Indeed, at ministerial level, there was a Joint Ministerial Committee (JMC) on Europe to try and devise common British lines before European Councils. In Parliament, the Scottish Parliament was consulted by the British Parliament and gave consent through Sewel motions, also called Legislative Consent Motions (LCMs).

After the June 2016 referendum, there was a new JMC on Exit Negotiations (JMC-EN) but the British Government convened it on an irregular basis and was not prone to compromise. Indeed there were 10 meetings in 2018, but only 5 in 2019 and three in the first half of 2020.

As for non-binding LCMs, they were repeatedly voted down by the Scottish Parliament at every stage of the negotiating process - yet the British Government carried on regardless.

This began when Article 50 was about to be triggered. As the British Government did not intend to consult the British Parliament, this decision was challenged by ordinary citizens before the High Court of Justice and then before the Supreme Court. The Scottish Government was party to the legal proceedings before the latter. Yet the Supreme Court ruled that the British Government would have to take into account the British Parliament, while the latter would not have to seek LCMs. Michael Russell, the Minister for UK Negotiations on Scotland’s Place in Europe, put emphasis on the subordinate position of the Scottish Parliament:

The Court has ruled that the operation of the Sewel convention is a political, not a legal, matter and is therefore outside the court’s remit. Yesterday’s ruling demonstrates how empty were the assurances that we are a partnership of equals. The UK Government merely reinforces the old view - the supremacy of Westminster and its immunity from constraint by law or courts or respect for this Parliament.
Unsurprisingly, a few weeks later, Michael Russell lodged a motion encouraging the Scottish Parliament to reject the LCM on the EU (Notification of Withdrawal) Bill as the British Government would notify the President of the European Council of its intention to leave the EU without requesting any specific deal for Scotland. The single market and the free movement of people were particularly singled out.

That the Parliament agrees that the UK Government’s EU (Notification of Withdrawal) Bill should not proceed, as the UK Government has set out no provisions for effective consultation with the devolved administrations on reaching an agreed UK approach to the negotiations on implementing Article 50, has refused to give a guarantee on the position of EU nationals in the UK, has left unanswered a range of detailed questions covering many policy areas regarding the full implications of withdrawal from the single market [...].

The motion was passed by most MSPs except the Conservatives who were keen on respecting the overall results of the referendum and were confident that the two governments would be able to work together.

The letter was duly sent out in late March 2017, opening up a two-year period of negotiations over withdrawal. Yet as the agreement signed by Theresa May repeatedly failed to be ratified by the British Parliament, the negotiating period was extended and May was succeeded by Johnson to lead the negotiations, which led to an agreement in October 2019.

The first agreement was due to be ratified at Westminster under an EU (Withdrawal Agreement) Bill which was rejected at Holyrood in December 2018 as most MSPs claimed that it could be improved and that there were alternatives – the Conservatives being the only politicians prepared to defend it. But the second agreement did not suit Scottish politicians either. Michael Russell, the Cabinet Secretary for Government Business and Constitutional Relations from June 2018, lodged a motion urging the Scottish Parliament to reject the LCM on the second EU (Withdrawal Agreement) Bill. He insisted on the fact that Scotland would be forced to leave the single market – whereas Northern Ireland would remain within it – and that important rights would be weakened or lost. Indeed, employment law would not be aligned with EU law and asylum-seeking children would no longer benefit from the Dublin agreement, which benefited those who had relatives in the UK:

That the Parliament considers that the Withdrawal Agreement negotiated by the UK Government would cause damage to Scotland’s environment, economic and social interests; regrets that the EU (Withdrawal Agreement) Bill has been amended to remove important protections for workers’ rights and asylum-seeking children; regret that it is to proceed through Parliament with minimal scrutiny, failing to respect the role of the Scottish Parliament; [...] therefore does not support the Withdrawal Agreement and Political Declaration.

Most MSPs passed the motion, apart from the Conservatives who were satisfied that there was a deal and had little concern for matters beyond the remit of the Scottish Parliament.

Nevertheless, this second agreement was ratified by the British Parliament in early 2020 and Britain left the EU on January 31, while remaining in EU institutions, especially the single market, until the end of the year in order to negotiate an agreement on the future relationship between the UK and the EU. Negotiations took place on-line because of the Covid-19 pandemic. A Trade and Cooperation Agreement was signed on Christmas Eve and had to be ratified immediately in order to come into
force on January 1st 2021. Nicola Sturgeon thus urged the Scottish Parliament to reject it:

That the Parliament considers that the Future Relationship Agreements negotiated by the UK Government would cause severe damage to Scotland’s environmental, economic and social interests; the bill will receive very limited scrutiny in the UK Parliament, failing to respect the important role of the Scottish Parliament [...] therefore does not consent to the Bill. 10

The motion was passed by all MSPs except the Conservatives who rejected it, arguing that a deal was far better than no deal and that the Scottish Parliament had to move on. 11 As a result, SNP politicians blamed the Conservatives for betraying all Scottish interests, including those of fishermen, one of the very few pro-Brexit industries in Scotland. They would be unable to recover “their” waters – in spite of promises repeatedly made by Brexiteers – as EU vessels would retain access, albeit with diminished quota rights.

From 2016 to 2021, successive British Governments acted according to a narrow interpretation of the distribution of competences, which underlined that foreign policies were reserved matters. 12 This was mostly due to the difficulties they experienced in coping with deep divisions within their own party. In response, there was a consensus at Holyrood between pro-independence and pro-Union parties to defend past practices based on co-operation over European matters. The Scottish Conservatives who had praised the single market in the run-up to the 2016 referendum were increasingly embarrassed and were prepared to endorse every deal because it was better than having none.

Meanwhile, Scottish politicians also had to face new UK legislation allowing British authorities to interfere over devolved matters.

Possible infringements on devolved matters?

Infringements on devolved matters could result from three new policy directions resulting from the willingness to enhance a British market, to restrain the ability of Scottish institutions to remain aligned with EU law, and to provide public funds across the whole UK.

First there were controversies over the future British market. Tensions were initially fuelled by the EU (Withdrawal) Bill drafted by the British Government in order to deal with the repatriation of competences that used to be run from Brussels. 13 Of them were policy areas where EU law intersected with devolved competences, especially agriculture and fisheries. 14 The British Government wanted 106 of them to be handled by British institutions to create a proper British market. Conversely most Scottish politicians – including Conservative ones 15 – contended that they should be devolved immediately. After months of disagreement, the British Government reckoned that most of them should be devolved, while a few would be “frozen” ie reserved (24). Devolving all of them would enable Nicola Sturgeon to gain a “veto” 16 over British policies, generating uncertainty for businesses and individuals. Two constraints were added under section 12 to try and reassure Scottish politicians: a time limit of two years after Brexit before these frozen areas were devolved, and the obligation for the British government to request a “consent decision” – yet these LCMs would have to be lodged though not necessarily passed by the Scottish Parliament.
Consequently, the Scottish Government did not encourage MSPs to approve of the final LCM on the Bill. Michael Russell, then Minister for UK Negotiations on Scotland’s Place in Europe, read the following motion:

That the Parliament [...] because of clause 15 (formerly 11) and schedule 3, which constrain the legislative and executive competence of the Scottish Parliament and Scottish Government, does not consent to the EU (Withdrawal) Bill. [...] The newly reformulated clause still makes it clear how the UK Government sees power being exercised on withdrawal from the EU and how it views the Scottish Parliament – and that view is unacceptable. It would abandon the way in which we have all operated for almost two decades and break our devolution settlement.¹⁶

Tensions further increased in mid-2020 with another, more comprehensive bill, the UK Internal Market Bill, which would force Scottish institutions to abide by two principles that were likely to constrain some decisions made in devolved matters. Michael Russell, the Cabinet Secretary for the Constitution, Europe and External Affairs, thus introduced a motion which stated:

That the Parliament agrees not to consent to the UK Internal Market Bill, as it reduces and constrains the competence of the Scottish Parliament and breaches international law. [...] The bill contains sweeping new blanket mutual recognition and non-discrimination provisions. Regardless of the views of the Scottish Parliament, they would require Scotland to accept lower standards relating to food, the environment, and building materials.¹⁷

In the House of Commons, Ian Blackford, the leader of the SNP group, explained that “this centralising obsession” would prevent the Scottish Parliament from passing legislation that was ahead of the rest of the UK, such as the minimum price of alcohol.¹⁸

Moreover, Russell praised the common frameworks that had first been mentioned in 2017 in order to recognize policy divergence between the British Parliament acting for England and devolved assemblies in policy areas formerly under EU law. Indeed, not only would they focus on specific fields, but they would result from negotiations:

We have to return to the voluntary common frameworks process that was devised by the devolved and UK Governments, on which it has been possible to make progress over the past few years, despite our differences over EU exit. Frameworks are based on the principles of equal negotiation and agreement.¹⁹

The LCM was voted down by the vast majority of MSPs apart from the Conservatives who praised the bill as a “default mechanism” for matters that would not be dealt with by common frameworks and they underlined that the British market was much more important for Scotland than the EU single market.²⁰

By July 2021, four common frameworks had come into force.²¹

Second, in the meantime, the Scottish Government had introduced a UK Withdrawal from the EU (Legal Continuity) Scotland Bill that was passed very quickly at Holyrood, in order to enable the Scottish Parliament to keep pace with EU law while putting pressure on the British Government. As Michael Russell, then Minister for UK Negotiations on Scotland’s Place in Europe, put it at stage 3:

Our bill will ensure that Scots law continues to operate effectively following withdrawal. In asking the Parliament to support the bill; I emphasise what the Government has made clear from the outset: our aim remains to reach agreement to satisfactory changes to the UK Bill. It would show that devolution will be properly respected.²²
The bill was passed by all MSPs but the Conservatives who reckoned that Brexit should not “undermine the integrity of the UK internal market”.21

Yet the British Government contended that the bill infringed on reserved matters and brought legal proceedings before the Supreme Court. In response to the ruling published in December 2018, the Lord Advocate, the Scottish Government’s legal adviser, made the following comment:

It is important to look at the bill in two stages. When the Scottish Parliament passed the bill, the bill in its entirety – with the exception of one section – was within the competence of this Parliament. [ie, section 17 that required the consent of Scottish ministers for UK subordinate legislation in devolved matters]. The UK law officers mounted a wholesale attack on the bill [which] was comprehensively rebuffed. After the Scottish Parliament passed the bill the UK Government invited the UK Parliament to pass the EU (Withdrawal) Act 2018. This Act contains new limits on the powers of the Scottish Parliament and, in particular, makes the Withdrawal Act a protected enactment. As a result certain provisions of the bill can now no longer come into force.24

In other words, many provisions had become unlawful because of amendments added at Westminster after Holyrood had passed the bill. In particular, the Scottish Parliament would not be allowed to preserve the Charter on Fundamental Rights. Undeterred, the Scottish Government took into account the ruling and drafted another bill, the UK Withdrawal from the EU (Continuity) Scotland Bill.

At stage 3, Michael Russell, the Cabinet Secretary for the Constitution, Europe and External Affairs, referred to the ignorance of Scottish priorities at every stage of the Brexit process and said:

It is against the backdrop of instability [the end of the transition period] that we can see why this bill is vital. Part 1 will provide ministers with the power to align the law in Scotland with that in the EU when that would be in Scotland’s best interests. [...] The power has a clear purpose and is both operable and transparent.25

Part 2 incorporated into Scots law guiding environment principles. The bill was passed in December 2020 by most MSPs except the Conservatives. They denounced the Scottish Parliament as a “passive rule-taker”, willing to remain subordinate to “a supranational body”.26

Finally, Scottish politicians feared the new financial powers that the British Government might gain over devolved matters.

On the one hand, as for the amount of funding, they had doubts about the British funds that were due to replace European funds – ie funds from the Common Agricultural Policy, the Common Fisheries Policy, and structural funds that were higher per head than the British average. Drew Henry, an SNP MP, voiced these concerns in the House of Commons:

We need clarity about the details of the so-called Shared Prosperity Fund. We need to know whether the devolution settlement will be protected. Currently, until 2020, communities and charities can access funding of over £2.4 billion a year. The fund’s budget must be no less in real terms than the EU and UK funding streams it replaces, and the devolved shares should not be reduced and it should remain a devolved matter. UK ministers should commit to work with devolved administrations.27
Only the Scottish Conservatives praised the use of British taxpayers’ money by British authorities, with far less “bureaucracy” than in Brussels, and with a guarantee for the future.  

On the other hand, as for the type of funding, the Internal Market Bill contained provisions for direct British funding in devolved matters benefiting local authorities for instance, and potentially bypassing the Scottish Government and Parliament even though the underlying principles of their policies were poles apart. As Alan Brown, an SNP MP, put it in the House of Commons at the very last stage, when House of Lords amendments were being scrutinised:

Westminster is now allowed to provide infrastructures at places in the UK. That infrastructure includes water, which is still publicly-owned in Scotland, sewerage, also publicly-owned in Scotland, railway facilities and road and other transport facilities. As [Wendy Chamberlain (LibDem MP)] said, that paves the way for the glorious Union bridge or Union tunnel that we do not want or do not need, because we can invest better in transport infrastructure ourselves.

 MSPs are answerable to the people who elected them. Unfortunately we have a right-wing Tory Government that Scotland did not elect, and now they are free to overrule us. […] The Bill allows Westminster to spend not only in Scotland but in Wales, overruling devolved Governments on health, housing, education, court or prison facilities, and housing. We are leading the way in building social housing in Scotland. We ended the right to buy. How dare Westminster legislate to provide housing in Scotland.  

Only the Scottish Conservatives paid tribute to the additional spending in favour of Scotland.  

As the current devolution settlement seemed to be at risk, various improvements were demanded.

**What future for Scotland in the UK?**

The growing discontent generated three distinctive views of Scotland’s future, ranging from mere administrative arrangements, to additional powers including the power to hold a second independence referendum.

The British Government was prepared for some new administrative arrangements that were repeatedly recommended. In 2019, they had been advocated by the multi-party Scottish Affairs Committee of the House of Commons and in the report commissioned by Theresa May when she was Prime Minister, although the latter was only published in early 2021 (Dunlop report). Both called for a reform of JMCs in order to make sure that there would be proper discussions, on a regular basis, between the governments of the UK:

There is now widely-held view that the JMC structure sitting above the technical level forums needs to be fundamentally reset. What has become a forum largely for airing grievances and managing disputes needs to evolve into a forum for fostering more effective collaboration.

The JMC should be replaced by a UK Intergovernmental Council (UKIC) with a number of sub-committees. Mutual respect and trust are central to effective intergovernmental relations and a new structure is needed to reset relationships for the future. This structure should look to provide regular and high-level ministerial engagement above, and in addition to, the wider interactions between administrations. […] The new UKIC should look to take on a decision-making role
via co-decision by consensus. Whenever it is not possible there should be complete transparency on why consensus was not possible. [...] The new UKIC should have a clear dispute-handling process. Consideration should be given to including an independent element where there is a benefit to all parties, to address concerns about one party being both judge and jury.  

Such a close co-operation had worked for a few weeks during the first lockdown resulting from the Covid-19 pandemic in the spring of 2020. Rows soon resumed when it came to dealing with successive restrictions.

Besides, the Scottish Government demanded the devolution of additional competences from December 2016, especially in the fields where MSPs intended to lead policies that were at odds with those conducted at Westminster, such as immigration and trade. These two fields were also singled out by the multiparty Scottish Affairs committee of the House of Commons, calling respectively for more “differentiation” and more “engagement”.

As for immigration, in early 2020, the Scottish Government published detailed proposals for a Scottish visa, i.e., a UK visa delivered according to Scottish priorities and valid for Scotland only. As Stuart C. McDonald, an SNP MP, put in in the House of Commons:

The case for a devolved, or at least a tailored, immigration system for Scotland is powerful. [...] It would be for the Scottish Government to draft the criteria and to consider applications for a Scottish visa [based on the principles of dignity, fairness and respect].

We are at a pivotal moment. The overarching objective of the UK Government is to reduce migration. Nobody in this Chamber can dispute that this goal is inappropriate for Scotland. [...] Only since 2001 has the country seen a sustained period of net in-migration, driven by a growth in both the number of EU citizens and the number of people from the rest of the UK.

Scottish politicians regard immigrants as economic, social and cultural assets. They wanted to exempt EU citizens from any application to remain in the UK and to continue to welcome immigrants from the EU, which was demanded both by Ben MacPherson, the Minister for Europe, Migration, International Development and by Stuart C. McDonald in the House of Commons. They also intend to protect Scotland from the consequences of increasingly restrictive UK policies especially regarding asylum seekers and to distance it from policies likely to breach international as well as “moral” obligations.

These requests were ruled out by British authorities even though Michael Gove, one of the leading Brexiteers in the 2016 referendum campaign, had then promised more powers over immigration for Scotland after Brexit. The Conservatives – both in Scotland and in the rest of Britain – were only prepared for sectoral schemes – for students, or seasonal workers – benefiting Great Britain as a whole.

As for trade agreements dealing with devolved matters, the Scottish Parliament endorsed existing deals negotiated by the EU whereas the Scottish Government wanted to have a say over new ones and published a White Paper on its Scottish vision. Such a request had wide support as Ivan McKee, the Minister for Trade, Innovation and Public Finance, explained before the Scottish Parliament:

Although the Citizens Assembly of Scotland has strongly called for the Scottish Government and the Scottish Parliament to seek greater powers to negotiate our own trade relations, currently we must press for Scotland’s interests to be properly identified, protected and enhanced in the UK’s trade negotiations. [...] At the heart
of our approach sits a set of five principles that will be our constant guide in our future decisions on international trade: inclusive growth, well-being, sustainability, net zero and good governance.\(^{43}\)

MSPs put emphasis on standards, fair work and environmental protection. SNP MPs castigated the British Government for signing its first post-Brexit trade agreement – with Australia – without consulting devolved administrations even though Scottish farmers feared the resulting consequences of increasing imports of beef and lamb and felt betrayed.\(^{44}\) Likewise the Scottish Government disagreed with the free ports that the British Government wanted to establish, as businesses would not be selected according to the kind of jobs they offered.\(^{45}\)

Eventually there was one power that was much more controversial, the power to hold a second independence referendum demanded by SNP and Green MSPs. Indeed, in late 2019, these MSPs passed a bill regulating referenda held in Scotland (Referendum (Scotland) Act). They then wanted the British Government to grant the Scottish Parliament the power to hold referenda on independence. Such a power, which was conferred to Holyrood for one referendum only with the Edinburgh agreement signed in mid-October 2012, that paved the way for the 2014 referendum, should become permanent according to them. This focus on self-determination was the main reason why Unionist MSPs had voted down the bill on referenda.\(^{46}\)

From March 2017, when the first LCM on Article 50 was ignored, Nicola Sturgeon repeatedly put forward such a prospect. She contended that Brexit had been a game changer. Indeed, in 2014, a majority of Scottish voters had endorsed the Unionist position in favour of a Scotland within the UK that was in the EU. Brexit thus justified another poll that would enable the Scots to choose between two unions. Indeed, the UK a union state relying on the consent of its peoples. Moreover the First Minister contended that there were two sets of increasingly diverging values in many fields on both sides of the Tweed. She felt vindicated by the mandate gained by her party at every election, such as the December 2019 general election (48 Scottish seats out of 59)\(^{47}\) or the May 2021 election to the Scottish Parliament (64 seats out of 129):

The future should be in Scotland’s hands. There is a choice now between two very different futures. There is the Westminster choice of a hard Brexit that costs jobs, hits living standards and holds back recovery; trade deals that threaten our rural communities; social security cuts that put children into poverty, callous dawn raids, and an increase in nuclear warheads while overseas aid is cut. All that is against the wishes of most people who live here. Or there is the alternative - not a panacea, but a future in which this Parliament has the full range of powers to shape and build a fairer and more prosperous country. In that future, we are an equal partner with our friends in the rest of the UK and across Europe.

The path that Scotland takes must be the decision of the people. That is why, once the crisis is over, people in Scotland should have the right to make that choice. The election results [on May 6\(^{th}\) 2021] delivered a substantial majority in the Parliament for an independence referendum in the current parliamentary session. There is no justification for the UK Government to block that mandate - to do so would suggest that the Tories no longer consider the UK to be a voluntary association if nations, and it would be profoundly undemocratic.\(^{48}\)

The SNP and the Greens did have an overall majority in the Scottish Parliament. But unionist parties were opposed to a second poll. The Conservatives had turned their opposition into an electoral issue, put forward at every election since 2014 and they
had become the second largest party.⁴⁹ They were supported by the British Government which claimed that the matter had been settled in 2014.

Yet in mid-2021, some British ministers reportedly contemplated a second referendum with new constraints, such as extending the vote to Scottish people living anywhere in the UK, quite likely to have unionist views.⁵⁰ This would contrast with the 2014 poll that had been designed in Scotland, when the vote concerned residents of Scotland allowed to vote at elections to the Scottish Parliament ie British nationals, nationals from the Commonwealth, the Republic of Ireland and from the EU, while the voting age was lowered to 16.⁵¹ Such a move – that was ruled out by Sturgeon – would be highly divisive for the nationalist movement – forcing the SNP into ethnic definitions of Scottish identity. It would also divide rival parties. Kenny MacAskill, a former SNP MP and minister, who had joined Alba, the new party founded by Alex Salmond, Sturgeon’s predecessor, immediately condemned this prospect and criticized the Scottish Government who was supposedly so keen on having a lawful referendum that it was prepared to accept external interference and thus re-centralization.⁵²

**Conclusion**

Devolution was regarded as “a process, not an event” when the first Scotland Act was passed in 1998 and eponymous acts were enacted in 2012 and in 2016. Competences were granted in response to demands voiced in Scotland by multi-party commissions. This process seemed to come to a halt with Brexit. Some even argued that there was a backward movement – amounting to re-centralization – because of the way Brexit had been handled. SNP politicians repeatedly claimed that the Scots had been dragged out of the EU against their will by a British Parliament that remained sovereign and powerful. But beyond this nationalist rhetoric, most of their fellow MSPs reckoned that the very devolution settlement was at stake as Scottish autonomy was weakened. British politicians were willing to interfere over Scottish affairs in the aftermath of Brexit, which contradicted the pledges made by the then Labour Government in the White Paper endorsed by the Scots in the referendum held on September 11th 1997, both for devolved matters (“democratic control”) and for reserved matters: “The guiding principle which the UK Government sets out to establish in the relationship with the Scottish Executive on EU matters in that there should be the closest possible relationships and involvement.”⁵³ The Conservative Government led by Boris Johnson promoted a unionism that tended to centralize power instead of accommodating differences even though their party had never managed to recover legitimacy in Scotland. It tended to “finish Margaret Thatcher’s job” according to Michael Russell, the recently-appointed SNP president.⁵⁴ Consequently the very future of the Union was still at stake in order to try and re-establish the “partnership of equals” that was promised by Theresa May in early 2017.

In late August 2021 this remained on the agenda in the government agreement signed between the Scottish Government and the Scottish Greens, which stated: “while independence is the surest way to protect and enhance the powers of the Scottish Parliament, we are in the meantime committed to doing all we can within the UK to prevent further damage to the devolution settlement.”⁵⁵
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NOTES


3. Under this convention based on a Memorandum of Understanding, then incorporated into the Scotland Act 2016, the UK Government would not normally legislate with regard to devolved matters except with the consent of the devolved legislature. Such a consent would be obtained through LCMs passed by the Scottish Parliament.

11. *Idem*, Ruth Davidson. Alex Neil, an SNP MSP, abstained as he was quite Euro sceptical.
15. House of Commons, *Hansard*, 14 June 2018, David Mundell, then Secretary of State for Scotland.
21. Food and feed, safety, hygiene; emission trading system; hazardous substances planning; nutrition labelling, composition and standards.
28. *Idem*, Bill Grant.
29. The Scottish Government is only one of the bodies that would be consulted, along with local authorities and businesses. Alex Nice, Akash Paun and Dan Hall, *The UK Shared Prosperity Fund: Strengthening the Union or Undermining Devolution?* (London, Institute for Government, 2021), p. 19.
32. Lord Dunlop, *Review of UK Government Union Capability* (London, Cabinet Office, January 2021 [November 2019]). Andrew Dunlop had been chief adviser to David Cameron, especially in the run-up to the 2014 referendum, and then junior minister for Scotland in the Scottish Office. JMCs should have permanent secretariats according to House of Commons, Scottish Affairs committee, *The Relationship between the UK and the Scottish Governments*, 1586, 7 June 2019, 54.
44. House of Commons, Hansard, 17 June 2021, col. 464, Brendan O’Hara, SNP MP.
47. House of Commons, Hansard, 24 March 2021.
51. In 2020, MSPs extended the vote for elections to the Scottish Parliament to young people from the age of 16, as well as refugees and prisoners serving short sentences.
52. In the House of Commons before the election he had quoted Charles Parnell, the leader of the main Irish party in the second half of the 19th century when Ireland was part of the UK. House of Commons, Hansard, 17 March 2021, col. 354.
55. Common frameworks and LCMs had to be protected, while the Internal Market Act was “extremely challenging”. Scottish Government and Scottish Green Party, Working Together to Build a Greener, Fairer, Independent Scotland (Edinburgh, August 2021), p. 5. They would have to deal with the newly-appointed Minister for Intergovernmental Relations, Michael Gove, a seasoned politician born in Scotland.

ABSTRACTS

Since 2016, successive British Governments have been disrupting the operation of devolution. They negotiated Brexit with the EU on their own, without consulting their devolved counterparts. They also intend to interfere over devolved matters to cope with the legal and financial consequences of Brexit. These moves are at odds both with the autonomy of the Scottish Parliament and with the public policies that its members promote. They fuel unwavering demands for additional autonomy or even full independence.

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