

# Guidance on the Operation of the CMA's UK Internal Market Functions

21 September 2021

OIM1

Office for the Internal Market

Part of the Competition and Markets Authority

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# 1. Introduction

## Purpose and scope of the Guidance

- 1.1 This guidance document sets out general advice and information, pursuant to section 39(1) of the UK Internal Market Act (the Act), about how the Competition and Markets Authority expects to approach the exercise of the internal market functions assigned to it in Part 4 of the Act.
- 1.2 This guidance explains the CMA's functions as set out in the Act, which are to carry out independent advice, monitoring, and reporting, to support the effective operation of the UK internal market following the return of powers from the EU to the UK Government and devolved administrations.
- 1.3 The purpose of this document is to:
  - Guide those seeking information on how and in what circumstances they can access advice and technical reports from the CMA, and the timescales and procedures associated with that.
  - Provide stakeholders with an overview of how the OIM will discharge its functions set out in the Act, including some of the technical concepts and analytical approaches involved, and our approach to targeting and prioritising our resources.
- 1.4 This document is not a definitive statement of, or substitute for, the law itself. Reference should be made to the relevant legislation and guidelines and, if necessary, independent legal advice should be sought.

## The CMA

- 1.5 The Enterprise and Regulatory Reform Act 2013 established the CMA as the UK's competition authority responsible for ensuring that competition and markets work well for consumers. The CMA is an independent non-ministerial department. Its work is overseen by a Board and led by the Chief Executive and senior team.

## The OIM

- 1.6 The CMA's functions and powers under Part 4 of the Act are to be undertaken by the **Office for the Internal Market (OIM)** which will sit within the CMA. For the remainder of this document, we use the term OIM when referring to the CMA discharging its internal market functions.

- 1.7 The scope of the OIM's functions is set out in detail in this guidance. In summary, its role will include monitoring and reporting on the health of the UK internal market. It will provide non-binding technical and economic advice to all four governments of the UK on the effect on the internal market of specific regulatory provisions that they introduce. Its work will assist governments in understanding how effectively companies are able to sell their products and services across the four nations of the UK, and the impact of regulatory provisions on this, including the impact on competition and consumer choice, for assessment alongside wider policy considerations.
- 1.8 The Act establishes an OIM panel, consisting of a panel chair (who will sit on the CMA Board) and a number of panel members. The OIM's panel chair may, as necessary, set up OIM task groups to undertake the OIM's work in line with any authorisation from the CMA Board. Each OIM task group must consist of at least three members of the OIM panel. The OIM task groups must act independently of the CMA Board.<sup>1</sup> The CMA Board will produce Guidance for the OIM panel on task group procedure.

***An advisory, not a decision-making, role***

- 1.9 The aim of the OIM is to assist relevant national authorities across the UK, through technical advice, to manage the potential evolution of different regulatory approaches in a way which protects the effective operation of the internal market.
- 1.10 To achieve this, the OIM will ensure that it demonstrates transparency, independence, analytical rigour and even-handedness and works to become a centre of expertise on internal market matters which, consistent with its statutory functions, can be a resource for businesses, policy makers and other stakeholders across the whole of the UK.

***Commitment to ongoing review***

- 1.11 Given that the internal market functions conferred on the OIM are new, the OIM expects it to be necessary to update this guidance periodically to reflect emerging experience as well as any changes in best practice and the law.

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<sup>1</sup> See Schedule 3 to the Act.

## Structure

1.12 The remainder of this document is structured as follows:

- **Chapter 2** describes the legal framework as it applies to the duties, powers and functions of the OIM set out in Part 4 of the Act. These include the provision of independent advice or reports to governments across the UK on specific regulatory provisions, either before or after they are made, the structured monitoring of how the UK internal market is working, and discretionary powers to conduct ad hoc reviews relevant to the effective operation of the UK internal market.
- **Chapter 3** outlines the technical concepts and gives an overview of the analytical approach that the OIM will adopt in discharging its functions.
- **Chapter 4** sets out prioritisation principles which it will use to decide what requests to accept and what monitoring work to undertake.
- **Chapter 5** sets out the procedures for requesting advice from the OIM and the key processes it will use.
- A **Glossary** is provided which defines some key terms.

## Definitions

1.13 Throughout the document, some words are both **underlined and emboldened**. These are words to which a specific working definition has been applied within the context of discharging the internal market functions set out in Chapter 2. Further details on these are included in the Glossary.

## 2. Legal Framework

### What this Chapter does

2.1 This Chapter describes the legal framework that applies to the functions and powers of the OIM pursuant to Part 4 of the Act. It does not provide an exhaustive or definitive interpretation of any Part of the Act or the Act's effects. In summarising the legislative provisions, it is not a substitute for the legislation and should not be considered legal advice.

### Overview of the OIM's functions

2.2 The OIM's main functions fall into the following two categories:

- monitoring and reporting on the operation of the UK internal market;<sup>2</sup> and
- providing reports (or **advice**<sup>3</sup> as applicable) on specific regulatory provisions, including proposals regarding such provisions, upon the request of a **relevant national authority**,<sup>4</sup> that is the UK Government, the Scottish Government, the Welsh Government and a Northern Ireland Department.

2.3 When carrying out its functions, the OIM must have regard to the following objective: to support, through the application of economic and other technical expertise, the effective operation of the internal market in the UK with particular reference to the purposes of Parts 1, 2 and 3 of the Act.<sup>5</sup> Moreover, when carrying out its functions, the OIM must have regard to the need to act even-handedly in relation to the relevant national authorities.<sup>6</sup>

2.4 Information on Parts 1 to 3 of the Act can be found in the Explanatory Notes accompanying the Act. To provide some context to the scope of the OIM's main functions set out in Part 4 of the Act, a brief introduction to Parts 1 to 3 of the Act is provided below.

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<sup>2</sup> See section 33 of the Act.

<sup>3</sup> See Glossary.

<sup>4</sup> See Glossary – Also see sections 34 to 36 of the Act.

<sup>5</sup> See section 31(2) and (3).

<sup>6</sup> Section 31(4).

## **Parts 1 to 3 of the Act**

2.5 Parts 1 to 3 of the Act establish the **market access principles**<sup>7</sup> of **mutual recognition** and **non-discrimination** across the four nations of the UK. Briefly, the mutual recognition principle ensures that, without further requirements, a product that has been legally produced in, or imported into, and can be legally sold in one part of the UK, can be sold in any other part of the UK, or that a service that can be legally provided in one part of the UK can be provided in another part of the UK. The non-discrimination principle ensures that goods or services coming from other parts of the UK are not directly or indirectly discriminated against (in favour of local goods or services). In broad terms, Parts 1 to 3 of the Act cover the following matters:

- **Part 1** of the Act defines and establishes the market access principles in relation to goods.
- **Part 2** of the Act defines and establishes the market access principles in relation to services.
- **Part 3** of the Act introduces a system for the recognition of professional qualifications across the UK.

## **What is the OIM required to do?**

### ***Monitoring and reporting on the operation of the UK internal market***

2.6 The monitoring and reporting function, referred to in paragraph 2.2 above, has two strands. Firstly, it encompasses reviews and reports that the OIM may undertake at its own discretion. Secondly, it comprises two mandatory reporting cycles, annual and five-yearly. These functions are covered in turn below.

#### ***Discretionary reviews and reports***

2.7 Under section 33(1) of the Act, the OIM may undertake a review of any matter that it considers relevant to assessing or promoting the effective operation of the internal market in the UK and/or provisions of Parts 1 to 3 of the Act.<sup>8</sup>

2.8 When considering whether to exercise its discretion to undertake a review of a particular matter (or matters) under section 33(1), the OIM will have due

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<sup>7</sup> See Glossary.

<sup>8</sup> See section 33(1).



regard to its objective to support the effective operation of the UK internal market, with particular reference to the purposes of Parts 1 to 3 of the Act (see paragraphs 2.3 to 2.5 above). A review under section 33(1) may also be undertaken in response to a proposal by a third party, including the UK Government or any devolved administrations.<sup>9</sup> However, the OIM cannot undertake a review of the Northern Ireland Protocol or of legislation implementing it (see also paragraphs 2.13 and 2.17 below).

- 2.9 The OIM may prepare a report on the matters considered and publish it, in a manner the OIM considers appropriate, which will include at a minimum publication on its website.<sup>10</sup>
- 2.10 Chapter 5 of this guidance sets out further information on the OIM's procedural approach to handling proposals that third parties may make to undertake a review under section 33(1).<sup>11</sup>

#### *Annual and five-yearly reports*

2.11 The OIM must, by 31 March 2023, and following that at least once every year, prepare a report on:

- the operation of the internal market in the UK, and
- developments as to the effectiveness of the operation of that market.<sup>12</sup>

2.12 In addition, the OIM must, by 31 March 2023, and following that at least once in every five years, prepare a report on:

- the effectiveness of the operation of provisions of Parts 1 to 3 of the Act;
- the impact of the operation of Parts 1 to 3 of the Act on the operation and development of the internal market in the UK;
- any interaction between the operation of Parts 1 to 3 of the Act and **common framework agreements**;<sup>13</sup> and

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<sup>9</sup> Section 33(2) provides 'The CMA may receive and consider any proposals that may be made or referred to it for undertaking a review in exercise of its powers under subsection (1)'.

<sup>10</sup> See section 33 (3) and (4).

<sup>11</sup> See paragraph 5.12.

<sup>12</sup> Section 33(5).

<sup>13</sup> See Glossary.

- the impact of common framework agreements on the operation and development of the internal market in the UK.<sup>14</sup>

2.13 Both the annual and five-yearly reports must be laid before the legislatures in each of the UK nations.<sup>15</sup> It should be noted that these reports will not review the impact of the Northern Ireland Protocol (or legislation necessary to implement it) on the operation of the UK internal market.

2.14 Chapter 3 sets out the matters that the OIM is likely to consider in reports produced through these processes as well as an illustrative approach to undertaking them and other important metrics.

### ***Reports/advice on specific regulatory provisions upon request***

2.15 Under sections 34 to 36 of the Act, the OIM has the function to provide reports or advice (as applicable) on **regulatory provisions** (as defined and which fall within the scope of Part 4) upon request of a relevant national authority.

2.16 In summary, in addition to the monitoring and reporting on the operation of the UK internal market functions considered at paragraphs 2.6 to 2.13 above, the OIM has the following functions:

- Under section 34, on the request of a relevant national authority, to advise or provide a report on a proposed ‘regulatory provision’;
- Under section 35, on the request of a relevant national authority, to provide a report after a ‘regulatory provision’ is passed or made; and
- Under section 36, on the request of a relevant national authority, to provide a report on a ‘regulatory provision’ they consider to have **detrimental effects**<sup>16</sup> to the effective operation of the internal market in the UK.

2.17 For the purpose of Part 4 of the Act, regulatory provision<sup>17</sup> is defined as follows:

- a provision contained in legislation, or

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<sup>14</sup> Section 33(6).

<sup>15</sup> Section 33(7).

<sup>16</sup> See Glossary.

<sup>17</sup> See Glossary.

- a provision not of a legislative character but made under, and given effect by, legislation, but
- excludes a provision so far as it contains anything that is necessary to give effect to the Northern Ireland Protocol.<sup>18</sup>

2.18 A regulatory provision is within scope of Part 4 (and so the OIM reporting functions under sections 34 to 36 of the Act) if it meets the following two conditions:

- it must be a requirement or a provision which is covered by Parts 1 to 3 of the Act (see paragraph 2.5 above).<sup>19</sup> For example, in relation to goods, a regulatory provision will fall within the scope of sections 34 to 36 if it imposes ‘a relevant requirement’ as defined in Part 1 (see sections 3 and 6)<sup>20</sup> for the purposes of the mutual recognition or non-discrimination principle for goods; and
- it must apply to one or more of the four nations but does not apply to the whole of the UK.<sup>21</sup>

2.19 Subject to meeting the conditions above, in principle, a regulatory provision (as defined) which has the effect of reducing existing legislative requirements may be within scope of Part 4.<sup>22</sup>

#### *Advising or reporting on proposed regulatory provisions on request*

2.20 Under section 34 of the Act, the OIM may, at the request of a relevant national authority (or two or more acting jointly), give advice or provide a report on a proposed regulatory provision of the requesting relevant national authority or of a person or body on whose behalf the requesting authority makes the request.<sup>23</sup> The regulatory provision must, if passed or made, apply to the requesting relevant national authority’s territory (that is, in the case of a request from (a) Scottish Ministers it must apply to Scotland, (b) Welsh

<sup>18</sup> See section 30(8) and (9).

<sup>19</sup> See section 30(2), 30(3), 30(5) and 30(6).

<sup>20</sup> In very broad terms, a ‘relevant requirement’ is any legislative provision that relates to and regulates goods and their sale (e.g. presentation/labelling requirements; transportation requirements; necessary approvals etc) such that it could restrict the ability of a good from one part of the UK being sold in another part.

<sup>21</sup> See section 30(4).

<sup>22</sup> In addition, a proposed regulatory provision which would revoke an existing regulatory provision, without any provision being made to modify or to revise it, may fall within the scope of section 34 only (see in particular section 30(2) and (3)). Subject, of course, to the proposed regulatory provision meeting the conditions referred to above.

<sup>23</sup> See section 34(2). Note only the relevant national authority can make a request.

Ministers apply to Wales, (c) a Northern Ireland department apply to Northern Ireland, or (d) the Secretary of State apply to any part of the UK).<sup>24</sup>

2.21 The request for a report or advice to the OIM must set out the reasons for making it.<sup>25</sup> Before making such a request, it must appear to the requesting relevant national authority that the proposed regulatory provision:

- would fall within the scope of Part 4;
- is within its **relevant competence**;<sup>26</sup> and
- should be further considered in light of the significance of its potential effects on the operation of the internal market in the UK.<sup>27</sup>

2.22 In its advice or report, the OIM may consider, among other things, the potential **economic effects**<sup>28</sup> of the proposed regulatory provision on the effective operation of the internal market in the UK including:

- indirect or cumulative effects;
- distortion of competition or trade; and
- impacts on prices, the quality of goods and services or choice for consumers.<sup>29</sup>

2.23 In its advice or reports under section 34 the OIM expects that its primary focus will be on considering the economic effects of the proposed regulatory provision. In any event, the OIM will only consider the effects of a regulatory provision in so far as these impact on the effective operation of the internal market.

2.24 If the OIM declines to provide a report requested under section 34(1), it will give the requesting relevant national authority (or authorities) reasons for doing so in a notice and publish the notice in a manner it considers appropriate<sup>30</sup> which will include at a minimum publication on its website.

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<sup>24</sup> See sections 34 (2) and section 34(11) for the meaning of 'relevant part of the United Kingdom'.

<sup>25</sup> See section 34(6).

<sup>26</sup> For the meaning of 'relevant competence', see section 45(5) and section 45(7) to (11). See Glossary

<sup>27</sup> See section 34(3)(a) and (b).

<sup>28</sup> See Glossary

<sup>29</sup> See section 34(4).

<sup>30</sup> See section 34(7).

- 2.25 The OIM must provide its advice or report to the requesting relevant national authority (or authorities). The OIM must also provide a copy to any non-requesting relevant national authorities within a further 15 days.<sup>31</sup> Reports will also be published.<sup>32</sup>
- 2.26 Chapter 4 sets out the prioritisation approach to requests and Chapter 5 sets out how the OIM will manage and process its reports and advice.

*Provision of report on request after regulatory provision is passed or made*

- 2.27 Under section 35 of the Act, the OIM may, at the request of a relevant national authority (or two or more acting jointly), provide a report to the authority on the impact on the effective operation of the internal market in the UK of a regulatory provision which:
- is passed or made after the day on which section 35 comes into force;
  - falls within the scope of Part 4 (see paragraph 2.18 above);
  - applies to the relevant part of the UK,<sup>33</sup> for example, if the request is made by a Scottish Minister, the regulatory provision applies to Scotland (see paragraph 2.20 above); and
  - is within the requesting authority's relevant competence.<sup>34</sup>
- 2.28 A relevant national authority must consider whether any other person or body is qualified to provide an independent report on the regulatory provision in question before requesting a report from the OIM under section 35.<sup>35</sup> The request must set out the reasons for making it.<sup>36</sup>
- 2.29 In its reports under section 35, the OIM expects that its primary focus will be on considering the economic effects of the regulatory provision and will consider the effects of a regulatory provision in so far as these impact on the effective operation of the internal market.
- 2.30 If the OIM declines to provide a report requested under section 35(1), it will give the requesting relevant national authority (or authorities) reasons for

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<sup>31</sup> See section 34(8) and (9).

<sup>32</sup> See section 34(10).

<sup>33</sup> See section 35(7).

<sup>34</sup> Section 35(1)(c) refers to 'relevant competence' which is defined in section 45(5) and section 45(7) to (11).

<sup>35</sup> Section 35(2).

<sup>36</sup> Section 35(4).

doing so in a notice and publish the notice in a manner it considers appropriate.<sup>37</sup>

- 2.31 The Act also requires that after the report is provided to those who requested it, the report must be published.<sup>38</sup>

*Report on request on provision considered to have detrimental effects*

2.32 Under section 36 of the Act, the OIM may, at the request of a relevant national authority (or two or more acting jointly), provide a report to the relevant national authority on the **economic impact**<sup>39</sup> of a regulatory provision which the relevant national authority considers is, or may come to be, detrimental to the effective operation of the internal market in the UK.<sup>40</sup> This provision applies only to regulatory provisions, within scope of Part 4,<sup>41</sup> which have been passed or made after section 36 comes into force.

2.33 In contrast to requests made under sections 34 and 35, the request is not limited to the relevant part of the UK of the requesting relevant national authority. Nor does the regulatory provision, which is the subject of the request, need to be within the relevant competence of the requesting relevant national authority. Therefore, under section 36, for example, a relevant national authority could make a request relating to a regulatory provision that applies to another part of the UK or is adopted by another relevant national authority.

2.34 The request can be made regardless of whether a relevant national authority has previously made a request under section 34(1) (see paragraph 2.20 above).<sup>42</sup>

2.35 A relevant national authority must consider whether any other person or body is qualified to provide an independent report on the regulatory provision in question before requesting a report from the OIM under section 36.<sup>43</sup> The request must set out the reasons for making it.<sup>44</sup>

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<sup>37</sup> Section 35(5).

<sup>38</sup> Section 35(6).

<sup>39</sup> See Glossary.

<sup>40</sup> Section 36(1).

<sup>41</sup> See paragraphs 2.18 to 2.19.

<sup>42</sup> Section 36(2).

<sup>43</sup> Section 36(3).

<sup>44</sup> Section 36(5).

- 2.36 If the OIM declines to provide a report requested under section 36(1), it will give the requesting relevant national authority (or authorities) reasons for doing so in a notice and publish the notice in a manner it considers appropriate<sup>45</sup> which will include at a minimum publication on its website.
- 2.37 The report must be shared simultaneously with all relevant national authorities including those who did not make the request,<sup>46</sup> and must be published and be laid before all legislatures.<sup>47</sup> Chapter 5 sets out the procedural approaches relating to producing these reports.

## **Informal discussions**

- 2.38 The OIM is willing to discuss with national authorities matters pertaining to its functions. Such discussions may cover general or procedural matters. For example, a discussion between the OIM and a relevant national authority, who is considering whether to make a request under sections 34 to 36 of the Act, may be appropriate before the request is made. However, when engaging in any discussions pertaining to its functions with national authorities, the OIM will have regard to its statutory duty in section 31(4) of the Act to be even-handed as regards the relevant national authorities in carrying out its functions.
- 2.39 Such discussions will not in any way bind the OIM and are not a substitute for national authorities making their own assessment or taking appropriate advice. The possibility of the OIM engaging in such discussions is subject to the nature of the matter to be covered. In particular, informal discussions will not be held in lieu of providing an advice or report under the statutory functions of the OIM.

## **Information gathering powers**

- 2.40 In order to fulfil its functions, the OIM may need to gather information from businesses, public authorities, or individuals. The OIM may do this in a range of ways. For instance, it may decide, depending on the circumstances, to obtain this information through informal requests, or invite relevant parties to attend meetings or phone calls.

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<sup>45</sup> Section 36(6).

<sup>46</sup> Section 36(7).

<sup>47</sup> Section 36(8) i.e. each House of Parliament, the Scottish Parliament, Senedd Cymru and the Northern Ireland Assembly.

- 2.41 Under section 41 of the Act, the OIM also has the power to issue a notice requiring a person to provide information or documents, for the purposes of assisting in carrying out its functions of reporting, monitoring and advising under Part 4 of the Act, or using section 5 of the Enterprise Act 2002 (EA02) for these purposes.
- 2.42 More specifically, for the purpose of assisting the OIM to carry out its functions under section 33 to 36 of the Act, the OIM has the power to send a written notice requiring:
- any person to produce documents, which are in their custody or control, as specified in the Notice;<sup>48</sup> and
  - any person who carries on a business to provide any information as specified or described in the notice.<sup>49</sup>
- 2.43 A brief introduction is given in Chapter 5 as to the circumstances where the OIM may make use of these information gathering powers in the discharge of its functions. Before the OIM uses these information gathering powers it will have due regard to the impact of any such request on businesses, public authorities, or individuals.
- 2.44 As required under section 42 of the Act, the OIM has published a statement of policy setting out how it will undertake the enforcement of its information gathering powers.<sup>50</sup>

### ***Use of Information Gathered***

- 2.45 Part 9 EA02 imposes a general restriction on the disclosure of information which the CMA obtains during the exercise of any of its functions (referred to as ‘specified information’) to other persons. This includes the functions of the OIM.<sup>51</sup> Guidance on the application of Part 9 EA02 and when disclosure of specified information may be permitted is set out in [Transparency and Disclosure: Statement of the CMA’s policy and approach \(CMA6\)](#).<sup>52</sup>

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<sup>48</sup> See section 41(2).

<sup>49</sup> See section 41(3).

<sup>50</sup> OIM, [Statement of Policy on the Enforcement of the OIM’s Information Gathering Powers](#) September 2021

<sup>51</sup> This is by virtue of section 41(10) of the Act which amends schedule 14 EA02 to extend the scope of Part 9 EA02 to OIM functions.

<sup>52</sup> Whilst the general principles apply, a specific OIM statement will be prepared later.



## ***Advice to the Secretary of State***

2.46 Section 31(6) of the Act provides that the OIM may give information or advice to the Secretary of State on matters relating to any of its functions. We may provide such information or advice, as appropriate, in relation to issues concerning the effectiveness or otherwise of the OIM's powers in discharging its internal market functions and meeting its internal market aims and objectives. When giving such information or advice, the OIM will have due regard to the need to act even-handedly as respects the relevant national authorities.

### 3. Analytical Framework

3.1 The OIM will assess a wide range of evidence in carrying out its functions. This Chapter provides an overview of our approach to this analysis, and the types of evidence it is likely to seek.

#### Overarching principles

3.2 Much of the OIM's analytical work will relate to the impact of divergent regulatory approaches on the 'effective operation of the internal market'.<sup>53</sup> The nature and scope of the OIM's analysis will need to be tailored to the circumstances including, for example, the nature and context of the regulatory divergence and the function being exercised. Nevertheless, in the context of the OIM's overall responsibilities, and acknowledging the balance to be struck between frictionless trade and devolved policy autonomy, it considers that 'effective operation' includes the following:

- Minimised barriers to trade, investment and the movement of labour between all parts of the UK (subject to relevant exclusions in the Act).
- Ensuring that businesses or consumers in one part of the UK are not favoured over others.
- Effective management of regulatory divergence (including through the use of common framework agreements).

#### Regulatory divergence as a barrier to trade

3.3 Differences in regulation can have the equivalent effect of a tax or tariff on products or services from other jurisdictions because they introduce an additional cost for producers. The OECD<sup>54</sup> identifies three types of direct costs facing businesses as a result of regulatory differences: specification costs;<sup>55</sup> information costs;<sup>56</sup> and conformity costs.<sup>57</sup>

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<sup>53</sup> See for example sections 33(1)(a), 34(4) and 35(1).

<sup>54</sup> OECD, [International Regulatory Co-operation and Trade: Understanding the Trade Costs of Regulatory Divergence and the Remedies](#) (2017).

<sup>55</sup> Specification costs arise where firms need to change the specification of their product, production process or labelling to comply with regulations different from those prevailing in their home market.

<sup>56</sup> Information (or familiarisation) costs include for example the costs of understanding different regulatory requirements in different territories.

<sup>57</sup> Conformity costs include for example the costs involved in meeting tests to prove that a product is fit for sale.

- 3.4 Costs resulting from regulatory differences may take the form of fixed costs (which tend to increase barriers to market entry) and/or variable costs (which tend to increase prices). New regulatory divergence and increased costs could affect trade between regions and nations and weaken competitive constraints, including on producers whose costs are not directly affected. Ultimately, these costs could translate into higher prices, quality impacts and may reduce choice for consumers.
- 3.5 The OIM's view is that variation in regulatory provisions (including sales restrictions) with the potential to affect trade in goods may include:<sup>58</sup>
- packaging, labelling or design regulations;
  - testing, inspection and certification procedures; or
  - environmental, safety or quality regulations.
- 3.6 Potential regulatory barriers to trade in services may include:<sup>59</sup>
- local presence requirements;
  - local qualification requirements;
  - restrictions on business structure; or
  - variations in testing, inspection and certification procedures.
- 3.7 The market access principles aim to limit trade costs of regulatory divergence for both goods and services, by facilitating market access.

## **Monitoring**

- 3.8 The OIM will monitor relevant developments relating to the operation of the internal market to inform its work. This will include:

### ***(a) Internal Market monitoring***

- 3.9 Undertaking market monitoring to inform an assessment of relevant changes and developments in the internal market environment over time and to identify sectors or industries where these are occurring, including studying the impact of common framework agreements on the development of the internal market.

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<sup>58</sup> This list is not exhaustive.

<sup>59</sup> This list is not exhaustive.

This will include using existing data sources and developing other bespoke sources as necessary. In particular, the OIM will work with stakeholders to enhance intra-UK trade data and will commission its own surveys of businesses across the UK.

### ***(b) Regulatory monitoring***

3.10 The OIM will develop toolkits and processes to capture the evolution of relevant regulatory regimes across the UK. This is without prejudice to the aims and objectives, benefits or otherwise, of the different regulatory choices that different national authorities make. This may include commissioning research to establish baselines and benchmarks, and to understand flows and barriers to flows of capital, trade and labour to develop an evidence base.

### ***(c) Online Gateway***

3.11 The OIM will launch an online **Gateway** whose purpose it will be to gather intelligence from consumers, suppliers, and producers (amongst others) about relevant issues relating to the effective operation of the internal market. The OIM will promote the use of the Gateway as it engages with stakeholders across the UK.

### ***(d) Intelligence***

3.12 Information submitted via the Gateway will complement intelligence gathered from other sources (e.g. through routine stakeholder interaction). This will help the OIM build a dynamic economic understanding of the development of the internal market and issues being experienced by businesses, consumers and others. The OIM will regularly review the intelligence gathered through the full range of sources and may decide, on the basis of these reviews, to commence a discretionary review and report (under section 33(1) of the Act). Intelligence gathered by the OIM may also inform decisions about the acceptance or refusal of external requests across each of our functions and assessments of significance or impact of such work (see Chapter 4).

## **Overall approach**

3.13 Taken together, strategic market and regulatory monitoring, alongside relevant information and evidence gathered via the online Gateway and intelligence from other sources, will allow the OIM to undertake comparative analyses. This will assist in identifying particular and relevant sectors, markets and other issues to review against the OIM's prioritisation principles, or to consider further in its annual and five yearly mandatory reporting. The evidence gathered may include the volume and nature of regulations introduced;

regulatory complexity and degree of divergence, measures of intra-UK trade in goods and services, and other areas of potential interest and relevance such as: investment flows; industry structure; labour markets; and consumer outcomes.

## **Annual reports**

- 3.14 As set out in Chapter 2, the OIM will produce an annual report on (a) the operation of the internal market in the UK; and (b) developments as to the effectiveness of the operation of the market.<sup>60</sup> The annual report is intended to provide an annual ‘health of the market’ assessment which will set out broad trends and developments in the UK internal market, including levels of integration across different sectors, regions and nations.<sup>61</sup> The report will contain a combination of quantitative and qualitative analysis of relevant evidence.
- 3.15 The report may present and provide commentary on data and other evidence collected through our monitoring tools (see paragraphs 3.8 to 3.13). It may include commentary on specific major regulatory changes with broad impacts across sectors, as well as narrower sector-level developments. The report may include evidence from OIM-commissioned surveys of businesses and/or consumers or other OIM research, and analysis of relevant survey and research evidence published by external sources. The report may also provide analysis of, and commentary on, submissions received from external parties during the relevant annual period.

## **Periodic (five-yearly) reports**

- 3.16 As set out in Chapter 2, the OIM will produce a 5-yearly report on (1) the effectiveness of the operation of Parts 1 to 3 of the Act; (2) the impact of the operation of those parts on the operation and development of the internal market in the UK; (3) any interaction between the operation of those Parts and common framework agreements; and (4) the impact of common framework agreements on the operation and development of the internal market in the UK.<sup>62</sup>
- 3.17 This report will provide a systemic review of the impact of the market access principles. This may include the effectiveness of, and levels of familiarity with,

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<sup>60</sup> Section 33(5).

<sup>61</sup> Internal Market Act Explanatory Notes – paragraph 283.

<sup>62</sup> Section 33(6).

the mutual recognition and non-discrimination principles, including whether improvements may be necessary. The review will consider the views of all relevant stakeholders to present an overview of how well the internal market is serving interested parties across the UK.<sup>63</sup>

- 3.18 As with the annual reports, this report may present and provide commentary on data and other relevant evidence collected through our monitoring tools (see paragraphs 3.8 to 3.13). The report is likely to incorporate findings from OIM-commissioned survey research, and from both targeted and general stakeholder engagement.
- 3.19 The report will also review the impact of common framework agreements on the internal market, and any interaction between the operation of the market access principles and common framework agreements. The scope of this analysis relating to common framework agreements may include: identifying the relevant respective regulatory and market conditions in each of the nations; the scope of permitted and actual divergence; the existence, extent and impact of any related exclusions from the market access principles; and assessment of impacts on trade and other economic variables. This is an illustrative, not an exhaustive list, and we will adapt our analytical approach as we learn from operational experience.

### **Discretionary reviews and reports under section 33(1)**

- 3.20 The analytical approach to these reviews will be flexible and determined by their specific focus. It is likely that the OIM will use similar sources of evidence, and apply similar types of analysis, as for its other reporting and advisory functions.

### **Reports for advice or reports on specific regulatory provisions upon request**

- 3.21 As set out in Chapter 2 (paragraphs 2.15 to 2.37), there are three types of reports which may be provided by the OIM at the request of relevant national authorities. The analytical framework used is likely to be broadly similar in each case (albeit that a wider selection of data may be available to measure impacts in section 35 and section 36 reports).

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<sup>63</sup> Internal Market Act Explanatory Notes, paragraph 284.

## ***Illustrative approach to assessing regulations impacting goods or services markets***

3.22 In relation to requests from relevant national authorities, the OIM will seek to establish the likely economic impacts of the regulatory provisions under consideration so far as these impact on the effective operation of the internal market, in light of the market access principles. At each stage of analysis, the type and depth of analysis undertaken will be shaped by the nature of the issue, and the availability of relevant data and other evidence.

### ***Nature of the regulatory provision and affected products***

3.23 The OIM will first consider the essential elements of the provision(s) being considered, in particular the nature of the regulatory provision, its intended effects, and the categories of products that are the subject of the provision.

### ***Extent of intra-UK trade***

3.24 The OIM will seek to establish existing trade patterns, including the current extent (direction, volumes, values, trends) of intra-UK trade in the affected products and the trade patterns between the different nations.

### ***Cost changes or other trade impacts, and likely responses***

3.25 Regulatory divergence may often be expected to impact the costs of affected suppliers, relative to those who are not directly affected by the change. The OIM will consider what impact the regulation would have on affected suppliers in terms of their relative costs (quantified if possible), or their wider ability to engage in intra-UK trade, including whether the regulation potentially discriminates against suppliers based in other nations.

3.26 If there are additional costs, the OIM will consider what type of costs are involved,<sup>64</sup> and whether they are fixed or variable costs. The OIM will also consider the potential business responses in terms of price- and quality-setting decisions, or whether to exit (or enter) different parts of the UK due to regulatory divergence, and whether the market access principles are likely to be engaged to facilitate market access.

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<sup>64</sup> See paragraph 3.3.

### ***Wider market effects and market outcomes***

- 3.27 The OIM will consider the wider set of products, suppliers, and/or geographic areas which may be affected due to demand-side substitution<sup>65</sup> or supply-side substitution.<sup>66</sup>
- 3.28 The OIM will assess the market outcomes that might be anticipated (including potential beneficial economic effects) in terms of changes in relative prices, quality or availability of products/providers, and the potential impacts on trade flows, competition, or investment.

### ***Cumulative and indirect effects***

- 3.29 The OIM will consider whether cumulative effects arise from the existence of a number of regulatory divergences occurring within the same sector.
- 3.30 The OIM will consider whether there are indirect effects on upstream suppliers or downstream customers of the directly affected suppliers, as well as any broader supply chain impacts from regulatory divergence.

### ***Services markets***

- 3.31 For regulatory provisions which relate to services, the fundamental approach will be the same as for regulations affecting goods markets, but the detail of the analysis undertaken by the OIM may differ. Issues may relate more to the identity of the service providers and the way in which services are provided, in contrast to the characteristics of goods.

### ***Evidence gathering***

- 3.32 In addressing these analytical steps and questions, the OIM may seek information from a wide range of sources. Where advice or a report is requested by a relevant national authority, that authority will be expected to provide detailed information about the relevant regulatory provision, its intended and expected effects, and which parties may be affected.
- 3.33 Information and data may be requested from suppliers whose businesses are likely to be affected by the regulation. Other sources from which information may be sought (through targeted information requests or more general calls

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<sup>65</sup> Demand-side substitution is where customers switch some of their purchases from the affected product to other substitute products.

<sup>66</sup> Supply-side substitution is where suppliers who do not currently supply a product or a geographic area may begin to do so.



for evidence) include customers, trade associations, business and consumer organisations, government bodies, regulators, and other interested and informed third parties.

- 3.34 The OIM may request the provision of relevant data, documents, forecasts, estimates, and responses to questions through both formal and informal methods. The OIM's information gathering powers are set out in more detail at paragraphs 2.40 to 2.45.

### ***Recognition of professional qualifications***

- 3.35 In providing advice or reports on regulatory provisions, upon request of relevant national authorities, which relate to the recognition of professional qualifications, the focus is likely to be on access of individuals to professional practice in different parts of the UK, rather than on the characteristics of products or how they are supplied.
- 3.36 However, the fundamental aim will be consistent: to identify potential impacts on the functioning of the internal market, including interactions between the regulation and the relevant market access framework (automatic recognition and equal treatment), and how market participants might be impacted and expected to respond.

## 4. Prioritisation Principles

- 4.1 The principles set out in this chapter will be used to ensure that the OIM targets its resources on issues with the most relevance to the effective operation of the internal market and which have the greatest importance to consumers, businesses and public authorities in all nations of the UK.
- 4.2 These principles will be used to inform decisions about what discretionary work the OIM will carry out, in particular should there be significant numbers of proposals for the OIM to undertake discretionary reviews and reports<sup>67</sup> or requests for reports or advice on specific regulatory provisions (on request from relevant national authorities),<sup>68</sup> and to inform decisions about intelligence or information identified by the OIM through its own monitoring activity. These principles will be further used to assess such proposals, requests and information.
- 4.3 In developing these principles, existing CMA experience has been built on and the CMA Prioritisation Principles used as a starting point for the design of OIM principles.
- 4.4 This is, though, a new function and it is expected that this approach to prioritisation will evolve with experience. The factors listed under each principle are illustrative and not exhaustive. The principles will not be applied in a mechanical way: judgment and a reasoned balancing exercise are required for each case which necessitate that the OIM consider the principles in the round and on a case-by-case basis. Where appropriate, other relevant factors may be considered, including the OIM's overall portfolio at that time.
- 4.5 An assessment against these principles will continue over the life of a project and consideration given to whether a project warrants the continued commitment of resources, especially when weighed against other potential work that the OIM could take forward.

### Principle 1 – Significance

- 4.6 The relative significance of the matter, which may include, amongst other relevant factors its:

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<sup>67</sup> Section 33(2) of the Act.

<sup>68</sup> Section 34 to 36 of the Act.

- **Relevance:** such as to what extent can the identified economic effects be related specifically to the effective operation of the internal market and the objectives of the OIM.
- **Appropriateness:** whether the OIM is best placed to advise.
- **Timeliness:** to what extent there are internal market issues that require timely advice to aid a resolution.
- **Novelty and contribution to knowledge growth:** whether the work will increase the OIM's knowledge-base in relation to internal market matters, generally or across economic sectors; for example, whether it raises novel or complex legal or economic tests, or allow new analytical approaches to be tested.
- **Partnership:** whether it potentially fosters or facilitates new partnership approaches between relevant national authorities on internal market matters. In particular whether there has been a request by more than one relevant national authority to inform joint regulatory approaches.
- **Future proofing:** whether it could assist relevant national authorities to prevent or mitigate future impacts on the internal market.

## Principle 2 – Impact

4.7 Closely allied to the test of a matter's significance is the extent of its described impact (or likely impact) and how this manifests itself across the internal market. In assessing this, consideration will be given to, amongst other factors, the impact on:

- **Consumers:** both generally and with a particular focus on disadvantaged or vulnerable consumers in terms of price, quality, range or service.
- **Enterprises:** in terms of barriers to trade, supply and access to goods, or impacts on competition.
- **Trade:** between nations and regions within the UK and within and across sectors.
- **Investment:** between nations and regions of UK as well as Foreign Direct Investment (FDI), within and across sectors.
- **General economic efficiency** of markets, productivity and any consequential or relevant impacts on the wider UK economy.

4.8 An assessment will also be made of whether in taking forward this work, the OIM is acting in the **least intrusive** way necessary to achieve its aims and objectives, consummate with its statutory duties. This may, for example, mean at times prioritising reports or advice (as applicable) on proposed regulatory provisions<sup>69</sup> or initiating discretionary reviews and reports<sup>70</sup> at an early stage to provide a report prior to a regulation becoming potentially detrimental.

### **Principle 3 – Even-handedness<sup>71</sup>**

4.9 Consideration will be given to how the matter contributes to a fair and balanced programme of work across the four nations and across the internal market generally. This may mean prioritising work in different sectors, or across different regions, where the magnitude of the market impact would not otherwise justify it.

4.10 Weight will be given to features of the economic and regulatory environment in each nation that lead to different outcomes for cross-border trade, competition, consumers and markets. This will extend beyond measures of absolute impact. In doing so the aim will be to ensure that the work of OIM reflects the needs, interests and priorities of all nations in the UK equally.

### **Principle 4 – Resources**

4.11 Consideration will be given to the resource implications of any proposal. This includes whether the resource requirements of the work are proportionate to the benefits from doing the work, the period over which the resources will be needed and any savings created for the OIM enabling it to meet its objectives more efficiently.

4.12 When considering the resource implications of proposed new work, all resources required to undertake the work will be taken into account. Over the course of a piece of work, the resources allocated to it may change, depending on its requirements and the requirements of other projects, so that the OIM's resources are allocated in the most efficient way to cover all of our work.

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<sup>69</sup> Under section 34 of the Act.

<sup>70</sup> Under section 33(1) of the Act.

<sup>71</sup> This is a reference to the OIM's prioritisation principle of "even-handedness" which has due regard, amongst other things, to the OIM's statutory duty when carrying out its functions under the Act to "act even-handedly as respect the relevant national authorities" (s.31(4)).

## 5. Procedural Arrangements

5.1 This chapter sets out the procedures the OIM will adopt in carrying out its functions under Part 4 of the Act. It explains how the OIM expects to receive and manage requests for reports or advice (as applicable) on specific regulatory provisions upon request from relevant national authorities.

### Reports/advice on specific regulatory provisions upon request

5.2 As described in Chapter 2, relevant national authorities, including where they act jointly, may request advice or reports on relevant matters from the OIM in a number of circumstances. The section below sets out how the OIM will process such requests and the minimum information requirements they must include. It describes the specific requirements related to each of the distinct functions (under sections 34 to 36 of the Act), before describing the general procedure and requirements for the OIM in dealing with such requests.

#### *Request for report / advice under section 34*

5.3 As set out in the legal framework in Chapter 2, the Act provides that relevant national authorities may request either ‘advice’ or a ‘report’ on a proposed regulation. The OIM will not substantially distinguish procedurally between these two concepts, except, where it is appropriate to do so in application of the relevant statutory requirements.<sup>72</sup>

5.4 Requests from relevant national authorities must at least include:

- a description of the proposed regulation (and a copy if available), its intended scope and the purpose it aims to achieve, proposed date of commencement, and any other relevant matters including other regulations with which it intersects, the primary sectors of the economy to which it will apply, other interested statutory bodies and the equivalent regulatory provisions in the other UK nations, if known.
- reasons for the request including why it appears to the relevant national authority that the proposed regulatory provision would fall within scope and why it appears to them that the proposed regulatory provision should be further considered in the light of the significance of its potential effects on the operation of the UK internal market.

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<sup>72</sup> See section 34 (7) and (10).

- confirmation that it appears to the relevant national authority that the proposed regulatory provision would be within relevant competence.
- information to appropriately demonstrate that the matter relates to the requesting relevant national authority's territory.<sup>73</sup>

### ***Request for report under section 35***

5.5 Requests from relevant national authorities must at least include:

- a copy of the regulation, its date of commencement (or proposed date), including whether it is a new regulation or an amendment to a regulation that was made prior to 31 December 2020.
- a description of the regulation, its intended scope and any other relevant matters including other regulations with which it intersects, the primary sectors of the economy to which it will apply, other interested statutory bodies and the equivalent regulatory provisions in the other UK nations, if known.
- reasons for the request including why the relevant national authority believes the regulation may fall within scope.
- information to appropriately demonstrate that the regulatory provision is within relevant competence and that the matter relates to the requesting relevant national authority's territory.
- confirmation that the requesting relevant national authority has considered whether any other person or body (i.e. other than the OIM) is qualified to provide an independent report on the matter.
- any findings made by any Court or other legal authority in relation to the operation of the regulation.

### ***Request for report under section 36***

5.6 Requests from relevant national authorities must at least include:

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<sup>73</sup> Referred to in the Act as 'the relevant part of the UK', see sections 34(2) and 34(11) and paragraph 2.20.

- a copy of the regulation, its date of commencement, including whether it is a new regulation or an amendment to a regulation that was made prior to 31 December 2020, if known.
- a description of the regulation, its scope and any other relevant matters including other regulations with which it intersects, the primary sectors of the economy to which it will apply, other interested statutory bodies and the equivalent regulatory provisions in the other UK nations, if known.
- reasons for the request including why the requesting relevant national authority believes the regulation may fall within scope and why it considers that the operation of the regulatory provision is, or may come to be, detrimental to the effective operation of the UK internal market.
- confirmation that the requesting relevant national authority has considered whether any other person or body (i.e. other than the OIM) is qualified to provide an independent report on the matter.
- any findings made by any Court or other legal authority in relation to the operation of the regulation.

## Reasons for refusal

5.7 If in a particular matter, the OIM exercises its discretion to decline a request for a report from a relevant national authority, it will publish a notice setting out clearly the **reasons for refusal**.<sup>74</sup> This may include, amongst other factors, the following:

- insufficient information has been provided to allow us to make an informed decision on the request;
- as a matter of law, the OIM does not consider that the regulation falls within scope;
- where applicable, there are grounds which appropriately demonstrate that the regulatory provision does not fall within the relevant competence of the requesting relevant national authority;
- another person or body is better placed to provide an independent report;

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<sup>74</sup> See Glossary

- the request has been assessed against the prioritisation principles in Chapter 4 and has not been prioritised for action.

## Timescales

- 5.8 The OIM will aim to provide an initial response to all requests for reports or advice (as applicable) under sections 34 to 36 of the Act stipulating whether it accepts them or not within **20 working days**.
- 5.9 If the OIM agrees to provide a report or advice (as applicable) it will aim to complete all reviews within **26 weeks**, or sooner, depending upon the complexity and urgency of the matter. The OIM may however, in some circumstances, need to extend this timeframe and if so will contact the requesting relevant national authority in good time explaining the reasons, and setting out a revised timeframe which may not exceed a further **26 weeks**.
- 5.10 The OIM recognises that the nature of any legislative development process may require it to adopt a more flexible approach to requests for reports or advice under section 34 which it will agree with the requesting relevant national authority.
- 5.11 Upon providing a report or giving an advice under section 34, the Act requires that the OIM copy any advice or reports it provides to other relevant national authorities (within 15 days, beginning with the day after the report or advice was provided to the requesting relevant national authority). The OIM will give the requesting relevant national authority an opportunity to comment on the factual accuracy of this document before it does so.

## Monitoring and reporting function on the operation of the internal market

- 5.12 Chapter 3 sets out, amongst other things, the analytical approach to the monitoring and reporting functions under section 33 of the Act including the annual and five-yearly reports the OIM is required to produce. In addition, public bodies and other key stakeholders may wish to propose that we undertake a review of an internal market matter.<sup>75</sup> All such proposals will be assessed against the OIM Prioritisation Principles set out in Chapter 4.

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<sup>75</sup> Under section 33(1) and (2) of the Act.



## Information gathering procedure

5.13 Chapter 2 sets out the legal basis of the OIM information gathering powers. Further procedural detail is provided below and in the OIM's Statement of Policy.<sup>76</sup>

### ***Written information requests***

5.14 The OIM will, where appropriate, send out formal information requests (section 41 notices) in writing to obtain information from businesses, public authorities, or individuals.

5.15 Under this power, the OIM may ask for information or documents under the person's custody or control, as well as information that is not already written down, such as market share estimates based on knowledge or experience. The OIM may also require the business to provide an explanation of any document that is produced. Examples of the types of information the OIM may request include internal business reports, strategy documents and other internal data.

5.16 The OIM's section 41 notices will set out their purpose and the relevant OIM function to which the request relates, specify or describe the documents and/or information that the OIM requires, give details of where and when they must be produced and set out the consequences, if any, that may apply if the recipient does not comply.

5.17 The OIM will seek to set a reasonable deadline for all information requests and take into account comments from recipients on the request. Section 41 addressees should contact the OIM as soon as possible after receiving a request and make known any difficulty in responding – for instance, given the nature of the information requested, or the resources available to them. The OIM will discuss any queries raised by addressees including any difficulty in submitting the information in the requested format or within the requested timeframe.

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<sup>76</sup> OIM, [Statement of Policy on the Enforcement of the OIM's Information Gathering Powers](#), September 2021.

## **6. Glossary**

6.1 The Act introduces a series of new concepts in the UK domestic context. This Glossary gives a guide as to how they can be understood in relation to the OIM functions.

### **Advice**

6.2 The Act provides, in Section 34 that the OIM may give advice at the request of a relevant national authority with respect to a qualifying proposal. It defines 'advice' distinctly from 'report', for example, by requiring that reports be published by the OIM whereas advice has no such requirement. However, advice given by the OIM at the request of one relevant national authority (or authorities) must be shared with the other (non-requesting) relevant national authorities (see section 34(9)). It should be distinguished from advice the OIM may give to the Secretary of State under section 31(6) (see para. 2.43).

### **Common framework agreements**

6.3 A common framework agreement is defined in the Act as 'a consensus between a Minister of the Crown and one or more devolved administrations as to how devolved or transferred matters previously governed by EU laws are to be regulated after IP completion day' (section 18(4)). 'IP completion day' being 31 December 2020 at 11.00pm.

### **Detrimental effects**

6.4 Any regulation which either does, or has the potential to create any barriers, restrictions, distortions and impediments to trade which come into being after the enactment of the Act as potentially having an impact on the effective operation of the internal market.

### **Economic impact and economic effects**

6.5 As set out in section 34 and 36 respectively of the Act, encompasses:

- Effects on competition or trade;
- Impacts on prices, quality of goods or services, or choice for consumers.

These could include effects on: price, quality, output, trade flow volumes, supply chains, mobility of people and human capital, financial capital flows, flows of knowledge and intellectual capital, and appreciable changes in the

competitive landscape (e.g. barriers to entry, reduction in the number of suppliers).

- 6.6 These impacts or effects may be direct, indirect or cumulative (arising from the interplay of regulations).

## Gateway

- 6.7 Online Webform devised to permit businesses and other stakeholders to submit information and evidence to the OIM.

## Market access principles

- 6.8 The market access principles are defined in section 1(2) of the Act as: “(a) the mutual recognition principle for goods (see sections 2 to 4); and (b) the non-discrimination principle for goods (see sections 5 to 9)”. See further paragraph 2.5. The same principles apply to services (see Part 2 of the Act).

## Mutual recognition

- 6.9 The mutual recognition principle means for example in relation to goods that if a good complies with relevant statutory requirements in the part of the UK where it was produced or imported into, it can be sold in any other part of the UK without having to comply with the relevant statutory requirements there.

## Non-discrimination

- 6.10 The non-discrimination principle means for example in relation to goods that a relevant statutory requirement will have no effect if, and to the extent that, it either directly or indirectly discriminates against goods with a relevant connection with another part of the UK.

- **Direct discrimination** occurs when, due to the incoming goods having a relevant connection with another part of the UK, a relevant requirement applies to those goods but does not or would not apply to local goods; and places the incoming goods at a disadvantage relative to local goods.
- **Indirect discrimination** occurs, in general terms, when a relevant requirement, which does not directly discriminate, disadvantages incoming goods compared to local goods and as a result has a significant adverse effect on competition for those goods.

## **Reasons for refusal**

- 6.11 The OIM is required for example by section 34(7) of the Act to give the requesting relevant national authority a notice of its reasons for declining to provide a report on a qualifying proposal.

## **Regulatory provision**

- 6.12 For the purpose of Part 4 of the Act a 'regulatory provision' is defined as a provision contained in legislation, or a provision not of a legislative character but made under, and given effect by, legislation, but excludes a provision so far as it contains anything that is necessary to give effect to the Northern Ireland Protocol (section 30(8) to (9) of the Act).

## **Relevant competence**

- 6.13 Means in relation to the Scottish Ministers, Welsh Ministers and a Northern Ireland department their respective devolved competence. In relation to the Secretary of State it means reserved competence (i.e. matters which are not devolved). The Act sets out how Scottish, Welsh and Northern Ireland devolved competence (respectively) and reserved competence are to be interpreted (sections 45(7) to (11)).

## **Relevant national authority**

- 6.14 Means the Secretary of State; the Scottish Ministers; the Welsh Ministers; and a Northern Ireland department, as the case may be (section 45(6) of the Act).