

OFFICE FOR THE INTERNAL MARKET

**GUIDANCE ON THE OPERATION OF THE CMA'S UK INTERNAL
MARKET FUNCTIONS**

CONSULTATION DOCUMENT

27 May 2021
CMA140con

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ABOUT THIS CONSULTATION

This consultation seeks views on draft guidance on the CMA's UK internal market functions.

The guidance explains the role of the Office for the Internal Market (OIM), a new CMA function that was created by the UK Internal Market Act to carry out independent advice, monitoring and reporting in support of the effective operation of the UK internal market following the return of powers from the EU to the UK Government and Devolved Administrations.

The OIM will monitor and report 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 4 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.

Chapter 2 of the guidance explains what the OIM is required to do under the Act, which is to:

- Provide governments, upon request, with independent advice or reports on specific regulatory provisions, either before or after they are made
- Regularly monitor the overall picture of how, over time, the UK internal market is working.
- At its discretion, conduct ad hoc reviews relevant to the effective operation of the UK internal market or the market access principles established through the UK Internal Market Act.

Chapter 3 provides an overview of the analysis that the OIM expects to undertake. Chapter 4 describes on what basis the OIM will decide which requests for advice to accept and what monitoring work to carry out.

Chapter 5 describes how governments are to request advice from the OIM and what procedures the OIM will adopt for handling those requests. It describes an online information collecting system which will provide a route for information to be submitted to the OIM by businesses and other interested parties. The OIM's information gathering powers are also explained.

The CMA is also required to publish a Statement of Policy in relation to how it will use its information-gathering enforcement powers as set out in sections 42-43 of the Act and will do so in due course.

How to respond

We encourage you to respond to the consultation in writing (by email) using the contact details provided at the end of this document.

When responding to this consultation, please state whether you are responding as an individual or are representing the views of a group or organisation. If the latter, please make clear who you are representing and their role or interest.

In pursuance of our policy of openness and transparency¹ we will publish nonconfidential version of responses on our webpages. If your response contains any information that you regard as sensitive and that you would not wish to be published, please provide a non-confidential version for publication on our webpages which omits that material and which explains why you regard it as sensitive at the same time.

Duration and contact details

The consultation will run for 8 weeks² from 27 May 2021 to 22 July 2021.

Responses should be submitted by email no later than 23:59 on 22 July 2021 and should be sent to: ProjectOIMExternal@cma.gov.uk. Any queries about the consultation should also be sent to this email address.

Statement about how we use information and personal data that is supplied in consultation responses

Any personal data that you supply in responding to this consultation will be processed by the CMA, as controller, in line with data protection legislation. This legislation is the General Data Protection Regulation 2016 (GDPR) and the Data Protection Act 2018. 'Personal data' is information which relates to a living individual who may be identifiable from it.

We are processing this personal data for the purposes of our work under Part 4 of the UK Internal Market Act 2000. This processing is necessary for the performance of our functions and is carried out in the public interest, in order to take consultation responses into account.

For more information about how the CMA processes personal data, your rights in relation to that personal data, how to contact us, details of the CMA's Data Protection Officer, and how long we retain personal data, see our Privacy Notice.

Our use of all information and personal data that we receive is also subject to Part 9 of the Enterprise Act 2002.

We may wish to refer to comments received in response to this consultation in future publications. In deciding whether to do so, we will have regard to the need for excluding from publication, so far as practicable, any information relating to the private affairs of an individual or any commercial information relating to a business

¹ [CMA 6 - Transparency and disclosure: Statement of the CMA's policy and approach.](#)

² It is usual CMA practice to consult on guidance for a period of 4 weeks and this remains our standard approach, which we adapt in accordance with the purpose and context of the consultation in line with Cabinet Office principles

which, if published, might, in our opinion, significantly harm the individual's interests, or, as the case may be, the legitimate business interests of that business. If you consider that your response contains such information, please identify the relevant information, mark it as 'confidential' and explain why you consider that it is confidential.

Please note that information and personal data provided in response to this consultation may be the subject of requests by members of the public under the Freedom of Information Act 2000. In responding to such requests, we will take fully into consideration representations made by you here in support of confidentiality. We will also be mindful of our responsibilities under the data protection legislation referred to above and under the Enterprise Act 2002.

If you are replying by email, this statement overrides any standard confidentiality disclaimer that may be generated by your organisation's IT system.

After the consultation

After the consultation, we will decide whether to make changes to the Draft Guidance. We will publish a final version of the Guidance and a summary of the responses received that fall within the scope of the consultation on our webpages. As noted above, we propose to publish non-confidential versions of the responses received. These documents will be available on our webpages and respondents will be notified when they are available.

CHAPTER 1: INTRODUCTION

Purpose and scope of the Guidance

- 1.1 Pursuant to section 39(1) of the UK Internal Market Act (the Act), the CMA has set out in this guidance document general advice and information about how it expects to approach the exercise of the internal market functions assigned to it in Part 4 of the Act. The purpose of this document is to:
- Guide those seeking advice, particularly public authorities, 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 public authorities and stakeholders with an overview of how we will discharge the advice, monitoring and reporting 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.
- 1.2 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

- 1.3 The Enterprise and Regulatory Reform Act 2013 established the Competition & Markets Authority (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

- 1.4 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.
- 1.5 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.³

An advisory, not a decision-making, role

- 1.6 The aim of the OIM is to assist 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. To achieve this, we will ensure that we demonstrate transparency, independence, analytical rigour and even-handedness.

³ See Schedule 3 to the Act.

Structure

1.7 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.
- **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 we will use to decide what requests to accept and what monitoring work to undertake.
- **Chapter 5** sets out the procedures for requesting our advice and the key processes we will use.
- A **Glossary** is provided which defines some key terms.

Definitions

1.8 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.

Commitment to ongoing review

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

CHAPTER 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.⁴ 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;⁵ and
- providing reports (or advice as applicable) on specific regulatory provisions, including proposals regarding such provisions, upon the request of a relevant national authority,⁶ that is the UK Government, the Scottish Government, the Welsh Government and the Northern Ireland Executive.⁷

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 United Kingdom with particular reference to the purposes of Parts 1, 2 and 3 of the Act.⁸ Moreover, the OIM must have regard to the need to act even-handedly in relation to the UK Government and all the devolved administrations.⁹ This is explored more fully in our proposed approach to prioritisation.

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, we provide a brief introduction to Parts 1 to 3 of the Act below.

Parts 1 to 3 of the Act

2.5 Parts 1 to 3 of the Act establish the **market access principles 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:

⁴ At the time of publication, these powers are not yet in force.

⁵ See section 33 of the Act.

⁶ See sections 34 to 36 of the Act.

⁷ Section 45(6) defines 'Relevant national authority' for the purpose of Part 4 as 'any of the following – (a) the Secretary of State; (b) the Scottish Ministers; (c) the Welsh Ministers; (d) a Northern Ireland department'.

⁸ See section 31(2) and (3).

⁹ Section 31(4).

- **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 from time to time undertake a review of any matter 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.¹⁰

2.8 When considering whether to exercise its discretion to undertake a review of a particular matter (or matters) under section 33(1), the CMA will have due regard to its objective to support the purposes of Part 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.¹¹ 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.¹²

2.9 Chapter 5 of this guidance sets out the procedures by which third parties may request that the OIM undertake a monitoring review, how the OIM will process and prioritise these requests and the timescales associated with them.

Annual and five-yearly reports

2.10 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 United Kingdom, and
- developments as to the effectiveness of the operation of that market.¹³

¹⁰ See section 33(1).

¹¹ 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 power under subsection (1).'

¹² See section 33 (3) and (4).

¹³ Section 33(5).

2.11 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 United Kingdom;
- any interaction between the operation of Parts 1 to 3 of the Act and **common framework agreements**; and
- the impact of common framework agreements on the operation and development of the internal market in the United Kingdom.¹⁴

2.12 Both the annual and five-yearly reports must be laid before the legislatures in each of the UK nations.¹⁵

2.13 Chapter 3 sets out the matters that the OIM will 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

2.14 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**, that is the UK Government, the Scottish Government, the Welsh Government and the Northern Ireland Executive.

2.15 In summary, in addition to the monitoring/reporting 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' (ex-ante function);
- Under section 35, on the request of a relevant national authority, to provide a report after a 'regulatory provision' is passed or made (ex-post function); 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 to the effective operation of the internal market in the UK.

2.16 For the purpose of Part 4, 'regulatory provision' is defined as follows:

- 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.¹⁶

¹⁴ Section 33(6).

¹⁵ Section 33(7).

¹⁶ See sections 30(7) and (8).

2.17 A regulatory provision is within scope of the OIM reporting, advisory and monitoring functions under sections 33 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). For example, in relation to goods, a regulatory provision will only fall within the scope of Part 4 if it imposes ‘a relevant requirement’ as defined in Part 1 (see sections 3 and 6)¹⁷ 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.¹⁸

Advising or reporting on proposed regulatory provisions on request (“Ex ante”)

2.18 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 that is relevant to the requesting national authority. A regulatory provision is relevant to the requesting authority, when, if passed, it would apply to its territory (that is, in the case of a request from the (a) Scottish Government it would apply to Scotland, (b) the Welsh Government apply to Wales, (c) the Northern Ireland Executive apply to Northern Ireland, or (d) the UK Government apply to any part of the UK).¹⁹

2.19 The request for a report or advice to the OIM must set out the reasons for making it.²⁰ Before making such a request, it must appear to the requesting national authority that the proposed regulatory provision:

- would fall within the scope of Part 4;
- is within its legislative competence; and
- should be considered in light of the significance of its potential effects on the operation of the internal market in the United Kingdom.²¹

2.20 In its advice or report, the OIM may consider, among other things, the potential **economic effects** 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.²²

¹⁷ 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; how goods can be presented for sale; necessary approvals, paperwork etc for sale) such that it could restrict the ability of a good from one part of the United Kingdom being transported to and sold in another part.

¹⁸ See section 30(4).

¹⁹ See sections 34(1) and (2) and section 34(11) for the meaning of ‘relevant part of the United Kingdom’. Note only the relevant national authority can make a request but they may do so on behalf of an appropriate regulatory making person or body.

²⁰ See section 34(6).

²¹ See section 34(3)(a) and (b). For the meaning of ‘relevant competence’ in section 34(a), which is referred to above as shorthand as ‘legislative competence’, see section 45(5) and section 45(7) to (11).

²² See section 34(4).

- 2.21 The OIM will only consider economic effects and only those effects of the regulation in so far as they impact the effectiveness of the internal market.
- 2.22 If the OIM declines to provide a report requested under section 34(1), it will give the requesting national authority (or authorities) reasons for doing so in a notice and publish the notice in a manner it considers appropriate²³ which will include at a minimum publication on its website.
- 2.23 The OIM must provide a copy of its advice or report to the requesting national authority (or authorities). The OIM must also provide a copy to any non-requesting national authorities within a further 15 days.²⁴ Reports will also be published.²⁵
- 2.24 Chapter 4 sets out the prioritisation approach to requests and Chapter 5 sets out how the OIM will process, record, and publish its reports and advice.

Provision of report on request after regulatory provision is passed or made (“Ex post”)

- 2.25 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 (at the time of writing this date has not been finalised);
 - falls within the scope of Part 4 (see paragraph 2.16 above);
 - applies to the relevant part of the UK,²⁶ for example, if the request is made by the Scottish Government, the regulatory provision applies to Scotland and (see paragraph 2.17 above); and
 - is within the requesting authority’s legislative competence.²⁷
- 2.26 A national authority must consider whether any other person is qualified to provide an independent report on the regulatory provision in question before requesting a report from the OIM under section 35.²⁸ The request must set out the reasons for making it.²⁹
- 2.27 If the OIM declines to provide a report requested under section 35(1), it will give the requesting national authority (or authorities) reasons for doing so in a notice and publish the notice in a manner it considers appropriate.³⁰

²³ See section 34(7).

²⁴ See section 34(8) and (9).

²⁵ See section 34(10).

²⁶ See section 35(7).

²⁷ S.35(1)(c) refers to ‘relevant competence’ which is defined in section 45(5) and section 45(7) to (11).

²⁸ Section 35(2).

²⁹ Section 35(4).

³⁰ Section 35(5).

2.28 The Act also requires that after the report is provided to those who requested it, the report must be published.³¹

Report on request on provision considered to have detrimental effects

2.29 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 national authority on the **economic impact** of a regulatory provision which the national authority considers is, or may come to be, **detrimental** to the effective operation of the internal market in the United Kingdom.³² This provision applies only to regulatory provisions which have been passed or made after section 36 comes into force.

2.30 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 national authority. Therefore, under section 36, for example, a national authority could make a request relating to a regulatory provision that applies to another part of the UK or is adopted by another national authority.

2.31 The request can be made regardless of whether a relevant national authority has previously made a request under section 34(1) (see paragraph 2.18 above).³³

2.32 A national authority must consider whether any other person is qualified to provide an independent report on the regulatory provision in question before requesting a report from the OIM under section 36.³⁴ A request for the report must set out the reasons for making it.³⁵

2.33 If the OIM declines to provide a report requested under section 36(1), it will give the requesting national authority (or authorities) reasons for doing so in a notice and publish the notice in a manner it considers appropriate³⁶ which will include at a minimum publication on its website.

2.34 The report must be shared simultaneously with all national authorities including those who did not make the request,³⁷ and must be published and be laid before all legislatures.³⁸ Chapter 5 sets out the procedural approaches to these matters.

Informal discussions

2.35 The OIM is willing to discuss with national authorities matters pertaining to its functions. Such discussions may cover general or procedural matters. In doing so 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 and having taken account of the duty in section 34(9).

2.36 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.

³¹ Section 35(6).

³² Section 36(1).

³³ Section 36(2).

³⁴ Section 36(3).

³⁵ Section 36(5).

³⁶ Section 36(6).

³⁷ Section 36(7).

³⁸ Section 36(8) i.e. each House of Parliament, the Scottish Parliament, Senedd Cymru and the Northern Ireland Assembly.

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

2.37 In order to fulfil its functions, the OIM may need to gather information from public authorities, businesses or individuals. The OIM has a range of options to do so. 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.

2.38 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 for these purposes.

2.39 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;³⁹ and
- any person who carries on a business to provide any information as specified or described in the notice.⁴⁰

2.40 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 public authorities, businesses or individuals.

2.41 As required under section 42 of the Act, the OIM will publish a statement of policy setting out how it will undertake the enforcement of its information gathering powers and will consult on that policy before commencing any action to enforce an information notice.

Use of Information Gathered

2.42 The CMA may use any information that it obtains through its internal market functions for the purposes of facilitating the exercise of its other statutory functions. Part 9 of the Enterprise Act 2002 (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.⁴¹ 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 \(CMA6\)](#).

³⁹ See section 41(2).

⁴⁰ See section 41(3).

⁴¹This is by virtue of section 41(10) of the Act which amends schedule 14 Enterprise Act 2002 to extend the scope of Part 9 EA02 to OIM functions.

Advice to the Secretary of State

2.43 Section 31(6) of the Act requires the OIM to give information or advice to the Secretary of State on matters relating to any of its functions. We may provide such 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. If we do so we will provide a copy of any advice under this power to all national authorities.

CHAPTER 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 we are 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'.⁴² We consider that 'effective operation' in this context includes the following, recognising the balance to be struck between frictionless trade and devolved policy autonomy:

- Minimised barriers to trade, investment and the movement of labour between all parts of the UK (subject to relevant exclusions).⁴³
- 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 frameworks).

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 OECD⁴⁴ identifies three types of direct costs facing businesses as a result of regulatory differences: specification costs;⁴⁵ information costs;⁴⁶ and conformity costs.⁴⁷

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 In our view variation in regulatory provisions (including sales restrictions) with the potential to affect trade in goods may include:⁴⁸

- packaging, labelling or design regulations;
- restrictions on live animals, or animal and plant products;
- testing, inspection and certification procedures; or

⁴² See for example sections 33(1)(a), 34(4) and 35(1).

⁴³ As noted in Chapter 2.

⁴⁴ OECD, [International Regulatory Co-operation and Trade: Understanding the Trade Costs of Regulatory Divergence and the Remedies](#) (2017).

⁴⁵ 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.

⁴⁶ Information (or familiarisation) costs include for example the costs of understanding different regulatory requirements in different territories.

⁴⁷ Conformity costs include for example the costs involved in meeting tests to prove that a product is fit for sale.

⁴⁸ This list is not exhaustive.

- environmental, safety or quality regulations.

3.6 Potential regulatory barriers to trade in services may include:⁴⁹

- 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 developments relating to the operation of the internal market to inform its work. This will include:

a. Internal Market monitoring

3.9 We will undertake market monitoring to inform an assessment of 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 frameworks on the development of the internal market. This will include using existing data sources and developing other bespoke sources as necessary.

b. Regulatory monitoring

3.10 We will develop toolkits and processes to capture the evolution of 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 human capital to develop an evidence base.

c. Online interface Intelligence

3.11 We will establish an online interface whose purpose it will be to gather intelligence from consumers, suppliers, and producers (amongst others) about relevant issues relating to effective operation of the internal market. We will promote use of the interface as we engage with stakeholders across the UK.

d. Intelligence

3.12 Information submitted via the online interface 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. Intelligence gathered by the OIM may also inform decisions about the acceptance or refusal of an external request and assessments of significance or impact of requested work (see Chapter 4).

⁴⁹ This list is not exhaustive.

Overall approach

3.13 Taken together, strategic market and regulatory monitoring, alongside information and evidence gathered via the online interface and intelligence from other sources, will allow comparative analyses to be undertaken. This will assist us to identify particular sectors, markets and other issues to review against our prioritisation principles, or to consider further in our compulsory 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 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.⁵⁰ 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.⁵¹ 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 relating to those areas set out above at paragraphs 3.9 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 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.

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, 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

⁵⁰ Section 33(5)

⁵¹ Internal Market Act Explanatory Notes – paragraph 283.

serving interested parties across the UK.⁵²

3.18 As with the annual reports, this report may present and provide commentary on data and other evidence relating to those areas set out above in paragraphs 3.9 to 3.13. The report is likely to incorporate findings from OIM-commissioned survey research.

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.⁵³

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.

Requests for advice or reports from relevant national authorities

3.21 As set out in Chapter 2 (paragraphs 2.14 to 2.34), there are three types of advice or reports which may be provided by the OIM at the request of relevant national authorities. The analytical framework used by the OIM is likely to be broadly similar in each case (albeit that a wider selection of data may be available to measure impacts in ex post reports).

Illustrative approach to assessing regulations impacting goods or services markets

3.22 In relation to requests from relevant authorities, the OIM will seek to establish the likely economic impacts of the regulatory provisions under consideration, 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

⁵² Internal Market Act Explanatory Notes, paragraph 284.

⁵³ Such as consequent agreed exclusions from the market access principles.

discriminates against suppliers based in other jurisdictions.

- 3.26 If there are additional costs, the OIM will consider what type of costs are involved,⁵⁴ 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.

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 substitution⁵⁵ or supply-side substitution.⁵⁶

- 3.28 This will cover the market outcomes that might be anticipated 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 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 include customers, trade associations, business and consumer organisations, government bodies, regulators, and other interested and

⁵⁴ See paragraph 3.3.

⁵⁵ Demand-side substitution is where customers switch some of their purchases from the affected product to other substitute products.

⁵⁶ Supply-side substitution is where suppliers who do not currently supply a product or a geographic area may begin to do so.

informed third parties.

3.34 The OIM may request the provision of relevant data, documents, forecasts, estimates, and responses to questions. It may gather this evidence through both formal and informal methods. The OIM's information gathering powers are set out in more detail at paragraphs 2.37 to 2.42.

Recognition of professional qualifications

3.35 In providing advice or reports on regulatory provisions which relate to the recognition of professional qualifications, the detail of analysis undertaken by the OIM may differ from that used for regulations affecting goods or services markets. 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; alternative processes for recognition; equal treatment), and how market participants might be impacted and expected to respond. The OIM's assessment may include consideration of processes proposed or in place to enable professionals to demonstrate compliance.

CHAPTER 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 requests for advice, as well as to assess both requests for advice from national authorities and requests for monitoring reviews from other bodies, and intelligence or information identified by the OIM through its own monitoring activity.
- 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 we 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 and resources available 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, including its:
 - **Relevance:** 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 our 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 public authorities on internal market matters. In particular whether there has been a request by more than one national authority to inform joint regulatory approaches.

- **Future proofing:** whether it could assist authorities prevent/mitigate the emergence of 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 ex ante work, or initiating discretionary work at an early stage to provide advice prior to a regulation becoming potentially detrimental.

Principle 3 – Even-handedness

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.

CHAPTER 5 – PROCEDURAL ARRANGEMENTS

5.1 This chapter sets out the procedures the OIM will adopt in carrying out its advice and monitoring functions. It explains how the OIM expects to receive and manage requests for advice from national authorities and how it will use an online interface and other methods to gather information.

Advice function

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 advice functions, before describing the general procedure and requirements for the OIM in dealing with such requests.

Request for ex ante advice / report

5.3 As set out in the legal framework above, the Act provides that national authorities may request either ‘advice’ or a ‘report’ on a proposed regulation. The OIM will not distinguish procedurally between these two concepts, except that only reports will be published, in application of the relevant statutory requirements.⁵⁷

5.4 Requests from 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, any other interested statutory bodies and the equivalent regulatory provisions in the other nations, if known.
- reasons for the request including why the authority believes the regulation may fall under the scope of the Act.
- appropriate evidence that the legislative competence test is met and that the matter relates to the relevant requesting jurisdiction.

Request for ex post report on a regulation made within own jurisdiction

5.5 Requests from 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.

⁵⁷ See section 34(10)

- reasons for the request including why the authority believes the regulation may fall under the scope of the Act.
- evidence that the legislative competence test is met and that the matter relates to the relevant requesting jurisdiction.
- evidence that they have considered that another body is not better placed than the OIM to consider the matter and reasons to this effect.
- any findings made by any Court or other legal authority in relation to the operation of the regulation.

Request ex post report on a regulation made within another jurisdiction with a potential detrimental impact

5.6 Requests from national authorities must at least include:

- a copy of the regulation, its date of commencement, including whether it was 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 authority believes the regulation may fall under the scope of the Act.
- evidence supporting the claim that the regulation is or may come to be detrimental.
- evidence that they have considered that another body is not better placed than the OIM to consider the matter and reasons to this effect.
- any findings made by any Court or other legal authority in relation to the operation of the regulation.

Reasons for refusal

5.7 If we chose not to act on a request from a national authority we will publish a notice setting out clearly our **reasons for refusal**. This may include, amongst other factors, the following:

- insufficient information has been provided to allow us to make an informed decision on the request;
- there is insufficient evidence to suggest, or evidence which directly contradicts, that the regulation falls within scope of the Act
- there is insufficient evidence to suggest, or evidence which directly contradicts, that the regulation falls within the legislative or jurisdictional competence of the requesting authority;
- another body is better placed to provide an independent report;
- the request has been assessed against the prioritisation principles in Chapter 4 and has not been prioritised for action.

Timescales

- 5.8 We will aim to provide an initial response to all requests for advice stipulating whether we accept them or not within **20 working days**.
- 5.9 If we agree to undertake a review of the matter we will aim to complete all reviews within **26 weeks**, or sooner, depending upon the complexity of the matter. We may however, in some circumstances, need to extend this timeframe and if so we will contact the requesting authority in good time explaining our reasons, and setting out a revised timeframe which may not exceed a further **26 weeks**.
- 5.10 We recognise that the nature of any legislative development process will require us to adopt a more flexible approach to requests for ex ante advice which we will agree with the requesting authority. If, after this, the proposed regulation has been subject to material change the national authority must resubmit its request which will start the clock anew.
- 5.11 Upon completion of an ex ante review, the Act requires that we copy any advice or reports we provide to other national authorities within 15 days. We will give the requesting authority an opportunity to comment on the factual accuracy of this document before we do so.

Monitoring function

- 5.12 Chapter 3 sets out the analytical approach to the monitoring function and what mandatory reports the OIM is required to produce. Public bodies and other key stakeholders may wish to request that we undertake a review of an internal market matter. All requests for a monitoring review will be assessed against the OIM Prioritisation Principles set out in Chapter 4.
- 5.13 A crucial component to this market analysis is the gathering of a wide range of intelligence. In addition to the other processes set out in Chapter 3, the OIM will establish an online interface which will facilitate businesses and individuals submitting information and evidence to us.

Information gathering procedure

- 5.14 Chapter 2 sets out the legal basis of the OIM information gathering powers. Further procedural detail is provided below.

Written information requests

- 5.15 The OIM will, where appropriate, send out formal information requests (section 41 notices) in writing to obtain information from public authorities, businesses or individuals.
- 5.16 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.

- 5.17 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.
- 5.18 The OIM will seek to set a reasonable deadline for all information requests. Recipients of any request should make known any difficulty and discuss any queries raised by any information request including any difficulty in submitting the information in the requested format or within the requested timeframe set out by contacting the case team as soon as possible after receiving a request.

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 that the CMA may give advice at the request of a national authority with respect to a qualifying proposal. It defines 'advice' distinctly from 'report', for example, by requiring that reports be published by the CMA whereas advice has no such requirement. However, advice provided by the CMA to one administration must be shared with the other national authorities. 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 UK common framework is an agreed common approach to policy areas that were governed by EU law (until the end of the transition period) and intersect with areas of devolved competence. Common frameworks are intended to ensure that coherent approaches to regulation are maintained across the UK, but will also enable the UK Government and the devolved administrations to make different choices on how to implement the rules in some of these policy areas. Common framework agreements can generate exclusions from application of the market access principles.

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).

Ex-ante function

6.7 Is the function of giving advice, or providing a report, at the request of a national authority with respect to a proposal to pass a regulatory provision applying to a part of the United Kingdom (section 34 of the Act).

Ex-post function

6.8 Is the function of providing a report, at the request of a national authority, on the impact on the effective operation of the internal market in the United Kingdom of a regulatory provision specified in the request, (section 35 of the Act)

Market access principles

6.9 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.

Monitoring function

6.10 Means the OIM's function of undertaking a review of the effective operation of the internal market in the United Kingdom and/or the provisions of Parts 1 to 3 of the Act, in accordance with section 33 of the Act.

Mutual Recognition

6.11 The mutual recognition principle means that if a good complies with relevant statutory requirements in the part of the UK where it was produced in 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

6.12 The non-discrimination principle means that a 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.

Online interface

6.13 Technological solution devised to permit businesses and other stakeholders to submit information and evidence to the OIM.

Other qualified person or body

6.14 Any person or body which could reasonably be demonstrated to be better placed to undertake a review such as a regulator, government department or judicial authority.

Promoting the effective operation of the internal market

6.15 The OIM will promote the internal market in terms of how we exercise our functions. This will include stakeholder engagement, general public facing advocacy for the OIM and the recommendations (if any) within advice and/or reports.

Reasons for refusal

6.16 The OIM is required by section 34(7) of the Act to give the requesting authority a notice of its reasons for declining to provide a report on a qualifying proposal. See further paragraph 5.7 above.

Relevant National authority

6.17 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).

Report

6.18 A piece of written work which sets out the findings, views, or recommendations of the OIM on issues of substantive consequence to the effective operation of the Internal Market, or of the operation of Parts 1-4 of the Act. See paragraphs 3.14- to 3.19 for a description of the reports which the OIM must prepare on the operation of the internal market in the United Kingdom and the effectiveness of the provisions of Parts 1 to 3 of the Act.