

# Periodic Report on the UK Internal Market regime

21 March 2023

OIM10

Office for the Internal Market

Part of the Competition and Markets Authority



**Competition and Markets Authority**

# **Periodic Report on the UK Internal Market regime**

Presented to Parliament, the Scottish Parliament, Senedd Cymru, and the Northern Ireland Assembly pursuant to section 33(6) of the United Kingdom Internal Market Act 2020



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## Chair's foreword

I was delighted to be appointed as OIM Chair in April 2022, and over the last year have had the pleasure of representing the OIM, speaking to a variety of organisations both to hear their views and to spread the word on our role.

Trading between the nations of the UK is a crucial part of our economy, and it is vital that the operation of our internal market remains effective. The OIM has the important role of helping to facilitate this. We do this by providing reports to the governments on the potential impact of specific regulations, as well as by providing independent reports on the operation of the internal market and on the regime as a whole, which is the focus of this document – our first periodic report.

We recognise the importance of gathering evidence from a wide range of stakeholders to inform our work, and I have been pleased to play a part in this. I have held meetings with ministers and officials from all four governments of the UK. I have engaged with business groups and attended several roundtables with businesses, trade associations, academics, researchers, think tanks and members of the legal profession, to hear first-hand their views about the UK internal market.

Alongside this periodic report, we have published our first annual report, looking at the operation of the UK internal market and regulatory developments. We have also published our 'Data Strategy Road Map' which sets out the projects being undertaken to fill the gaps we have identified in intra-UK trade data, leading to much improved analysis in the future.

I am also very pleased that, last month, we published our first [report on a proposed ban concerning peat](#) in response to a request to look at how proposed peat legislation might impact on that market within the UK.

As this is our first periodic report, our appreciation of the key factors underpinning the internal market regime is likely to evolve over time. We welcome feedback and input from interested stakeholders on this report.

Lastly, I would like to extend my warmest thanks both to the staff at the OIM and in the wider CMA for all their efforts and would also like to thank the four governments of the UK for their constructive and open engagement, at Ministerial and official level, as well as the businesses, trade associations, policy and legal professionals and academics who took part in our roundtables and qualitative research.



Murdoch MacLennan  
Chair of the Office for the Internal Market Panel

## Executive Summary

1. This report is the Office for the Internal Market's (OIM) first periodic report on the regime established under the UK Internal Market Act 2020 (the Act); it covers the period 31 December 2020 to March 2023. We are publishing this report alongside our first statutory annual report on the operation of the UK internal market.
2. Our role is to assist the four governments across the UK by applying economic and other technical expertise to support the effective operation of the UK internal market. We have an advisory, not a decision-making role. Given our focus on the economic impacts of different regulatory choices across the UK nations, we recognise that the findings and issues raised in our reports are likely to constitute one consideration, among others, when a government or legislature determines its preferred policy and regulatory approaches.
3. We have prepared this report to meet the requirement under section 33(6) of the Act that we prepare a report no later than 31 March 2023 (and at least once in every successive five-year period) on the effectiveness of the operation of Parts 1 to 3 of the Act (referred to as the 'Market Access Principles' or 'MAPs' in this report) and the impact of the MAPs on the operation and development of the UK internal market. Under the Act, we are also required to report on any interaction between the MAPs and common framework agreements and the impact of common framework agreements on the operation and development of the UK internal market.
4. Since the United Kingdom left the European Union (EU), significant powers have returned to the UK Government and to the Devolved Governments of Scotland, Wales, and Northern Ireland, increasing the autonomy for these governments to shape their own regulations and also therefore the possibility of regulatory differences emerging between the four nations of the UK post-Brexit.
5. The Act establishes the MAPs of 'mutual recognition' and 'non-discrimination' for goods and services, and the principle of 'automatic recognition' for certain professional qualifications. Another key part of the regime concerns Common Framework agreements. These agreements are a consensus between the UK Government and one or more of the Devolved Governments as to how devolved or transferred matters previously governed by EU law are to be regulated after 31 December 2020.
6. The focus of this report is on the mechanisms which underpin the effective operation of the UK internal market; namely, the MAPs and Common Frameworks. In preparing this report, we heard from a number of stakeholders who raised issues associated with the Northern Ireland Protocol (the Protocol).



Under the Act, our remit does not extend to the Protocol, and so we are unable to undertake a review of the Protocol or of legislation implementing it. For the purposes of our reporting functions, Northern Ireland is part of the UK internal market, and this report refers to the Protocol where appropriate.<sup>1</sup>

7. In preparing this report, we gathered evidence from a wide range of sources. We held roundtable discussions with a variety of stakeholders, such as businesses and trade associations, academics, members of the policy community, and legal professionals. We sought the views of the four governments on the operation and impact of the MAPs and in relation to Common Frameworks. We also commissioned qualitative research from an independent consultancy, Thinks Insights & Strategy (TIS), which obtained views of businesses based in all the nations and who trade across the UK. We also monitored UK regulatory developments and reviewed publicly available information relevant to the operation of the UK internal market, and used information provided by businesses and other stakeholders through the OIM's webform.
8. We focused our assessment of the MAPs in this first periodic report on goods. We found that awareness of the MAPs among businesses is generally very low. By contrast, our roundtable discussions with academics, members of the policy community, and legal professionals demonstrated a greater awareness of the MAPs. When the MAPs were explained to businesses as part of our commissioned qualitative research, some saw potential for the MAPs to alleviate their concerns, while others considered that the MAPs could create 'unfair' trading conditions.
9. Where stakeholders are aware of the MAPs, there is uncertainty about how they may apply in practice due to a lack of case law and the possibility of future changes following further exclusions from the MAPs. Our engagement with the four governments suggested they were unaware of any enforcement action in relation to the MAPs.
10. We found a range of views across governments on the effectiveness of the MAPs. The UK Government indicated it has no specific concerns with the operation of the MAPs. The Scottish Government considers that there is potential for the MAPs to constrain devolved policymaking in many areas. The Welsh Government stated that there has been insufficient time to assess the effectiveness of the MAPs. The Department of Agriculture, Environment and

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<sup>1</sup> This report was prepared shortly before the Windsor Framework was announced. We will work with the governments to understand any implications of the Windsor Framework for our reporting.

Rural Affairs (DAERA) for Northern Ireland considers that the non-application of the MAPs to certain types of goods could become more significant in the future.

11. Through our routine monitoring of regulatory developments across the UK, we identified a number of instances where governments are considering how policy proposals may interact with the MAPs, such as the Scottish Government's move to secure an exclusion from the MAPs for certain single use plastic products and commencement of the process to obtain an exclusion from the MAPs for its deposit return scheme regulations, the Scottish and Welsh Governments' consideration of the MAPs in relation to the Genetic Technology (Precision Breeding) Bill and the UK Government's request to the OIM for a report on its proposed ban of the sale of peat and peat-containing products in England.
12. Since the establishment of the regime by the Act, there has been little new regulatory difference between UK nations. Only a small number of businesses engaging in trade with other UK nations told us that they experienced challenges due to differences in rules or regulations. Low awareness of the MAPs among businesses and the absence of related case law suggests that businesses have not needed to rely on the MAPs to support intra-UK trade. This reflects the fact that most businesses continue to trade freely across the UK.
13. As the application of the MAPs remains untested, it is too soon to assess whether improvements are necessary, or what form such improvements might take. We expect to undertake a more complete assessment of the effectiveness of the MAPs in our next periodic report.
14. We identified that around half of the Common Frameworks are expected to interact with the Act. Only a small number of these have been used in practice to consider regulatory developments that are likely to interact with the MAPs or have a significant impact on the UK internal market. While there have been only a few interactions between Common Frameworks and the MAPs to date, they have nonetheless been significant, and we recognise that such interactions may become more important over time. However, beyond the identified interactions, there is limited evidence to date that Common Frameworks have been used to consider regulatory developments that are likely to interact with the MAPs or have a significant impact on the UK internal market.
15. We found that businesses and trade associations had a low awareness of Common Frameworks. Those who are aware of Common Frameworks indicated that they are unaware of the governments' ambitions for Common Frameworks and did not know what topics were being discussed or whether there are opportunities for them to contribute to those discussions. We would encourage transparency both between the governments and with external stakeholders such as businesses and third sector organisations about future regulatory

developments that may engage the MAPs and intersect with Common Frameworks.

16. The governments indicated to us that they are broadly supportive of the role that Common Frameworks can play in enabling the functioning of the UK internal market. We found that Common Framework structures are being established and being tested in practice. Our view is that stakeholder engagement can help to inform the potential effects of regulatory differences on the UK internal market and a proactive approach to engagement would provide useful insights.
17. We will continue to monitor developments relevant to the internal market and engage with governments and stakeholders to support our future assessment of the effectiveness of the regime in subsequent periodic reports.

# 1. The Report's purpose and context

## Introduction

- 1.1. The Office for the Internal Market (OIM) was launched in September 2021 to provide independent advice, monitoring and reporting to the four governments of the UK in support of the effective operation of the UK internal market.
- 1.2. This report is the OIM's first periodic report on the UK internal market regime in relation to the Market Access Principles (MAPs) and Common Frameworks. It has been prepared to meet the OIM's reporting requirements under section 33(6) of the UK Internal Market Act 2020 (the Act).<sup>2</sup>
- 1.3. Chapter 1 provides background to the OIM and the legislation behind it. It covers the general functions of the OIM and describes the statutory purpose of this report.
- 1.4. Chapter 2 provides an assessment of the effectiveness of the MAPs.
- 1.5. Chapter 3 reports on the interaction between the operation of the MAPs and Common Frameworks, and the impact of Common Frameworks on the operation and development of the UK internal market. It identifies current examples of where the MAPs have interacted with the Common Frameworks and the impact of Common Frameworks on the operation of the internal market in the UK.

## ***Background to the Act***

- 1.6. Since the United Kingdom left the European Union (EU), significant powers have returned to the UK Government and to the Devolved Governments of Scotland, Wales and Northern Ireland, increasing the autonomy for these governments to shape their own regulations and also therefore the possibility of regulatory differences emerging between the UK nations post-Brexit.<sup>3</sup>

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<sup>2</sup> In this report, the term 'MAPs' is used to refer to the provisions of Parts 1 to 3 of the Act and the term 'Common Frameworks' is used to refer to common framework agreements.

<sup>3</sup> EU law sets out a framework for governing the EU internal market. These measures include harmonisation of certain rules across the Member States of the EU, setting minimum standards for goods and services and, where necessary, a framework requiring recognition by a Member State of goods or services coming from other EU Member States as meeting national standards. Following the UK's departure from the EU, generally speaking, these EU law constraints no longer apply to the UK Government or the Devolved Governments, with the notable exception of the obligations arising from the Northern Ireland Protocol. During the UK's membership of the EU, EU law constrained the extent to which the four governments of the UK could pursue divergent policies.

- 1.7. Given the potential for increased regulatory differences between the UK nations, the Act was introduced with the aim of ensuring that the UK internal market continues to function as effectively as possible.<sup>4</sup>
- 1.8. In preparing this report, we heard from a number of stakeholders who raised issues associated with the Northern Ireland Protocol (the Protocol). Under the Act, our remit does not extend to the Protocol, and so we are unable to undertake a review of the Protocol or of legislation implementing it.<sup>5</sup> For the purposes of our reporting functions, Northern Ireland is part of the UK internal market<sup>6</sup> and this report refers to the Protocol where appropriate.

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

- 1.9. Part 1 of the Act establishes the MAPs of mutual recognition and non-discrimination in relation to goods. The mutual recognition principle means that if goods meet the regulatory requirements<sup>7</sup> for their sale in one part of the UK<sup>8</sup>, those goods can be sold in any other part of the UK without having to meet any different requirements which are applicable there.<sup>9</sup> The non-discrimination principle means that direct or indirect discrimination based on differential treatment of local and incoming goods is prohibited.<sup>10</sup>
- 1.10. Part 2 of the Act establishes the MAPs of mutual recognition and non-discrimination in relation to services. For service providers, the Act makes provisions for the mutual recognition of 'authorisation requirements.'<sup>11</sup> This allows for a service provider who is authorised by a regulator to provide a particular service in one part of the UK, to rely upon that authorisation to provide those services in other parts of the UK.<sup>12</sup> The non-discrimination

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<sup>4</sup> [UK Internal Market Act 2020 Explanatory Notes](#), page 5: 'The purpose of the United Kingdom Internal Market Act is to preserve the United Kingdom's (UK's) internal market as powers previously exercised at European Union (EU) level return to the UK, providing continued certainty for people and businesses that they can work and trade freely across the whole of the UK'.

<sup>5</sup> See section 30(8) and (9) of the Act. This report was prepared shortly before the [Windsor Framework](#) was announced. We will work with the governments to understand any implications of the Windsor Framework for our reporting.

<sup>6</sup> See sections 33(1) and 58 of the Act.

<sup>7</sup> Referred to as 'relevant requirements' in the Act, see section 3(2) of the Act which defines 'relevant requirements' for the purpose of the mutual recognition principle as it relates to goods.

<sup>8</sup> England, Scotland, Wales, or Northern Ireland.

<sup>9</sup> Note that while the mutual recognition principle can be relied upon by businesses to comply only with the relevant requirements in the UK nation where the goods are 'produced in' or 'imported into,' traders can comply with local law. In other words, the mutual recognition principle does not stop traders from complying with the 'local' relevant requirements where the goods are sold (see section 14 of the Act). Further, it should be noted that local producers will be bound by local relevant requirements.

<sup>10</sup> [UK Internal Market Act 2020 Explanatory Notes](#), paragraph 18.

<sup>11</sup> See section 17(3) of the Act for the definition of 'authorisation requirement'.

<sup>12</sup> See section 19(1) of the Act.

principle for service providers means that where some types of regulations imposed in one part of the UK discriminate against service providers from another part of the UK, these discriminatory parts of the regulation will be disregarded and have no effect.<sup>13</sup>

1.11. Part 3 of the Act introduces a system for the recognition of professional qualifications across the UK. The Act sets out the ‘automatic recognition principle’ which states that a UK resident qualified in one part of the UK is automatically treated as qualified in respect of that profession in another part of the UK.<sup>14</sup> It also makes it unlawful, in certain circumstances, for one nation to regulate in a way that gives less favourable treatment to qualified UK residents from other UK nations than that afforded to its own.<sup>15</sup>

### ***Common Frameworks***

1.12. Another key part of arrangements in relation to the operation of the UK internal market is the scope for Common Frameworks. The Act defines a Common Framework as a consensus between a Minister of the Crown and one or more of the Devolved Governments as to how devolved or transferred matters previously governed by EU law are to be regulated after 31 December 2020. Common Frameworks typically set out intergovernmental meeting and decision-making structures, agreed principles for ways of working, and a dispute resolution process.

1.13. Since 2017, the UK Government and the Devolved Governments have been working together to develop Common Frameworks in some areas that were previously governed by EU law. The majority of these Common Frameworks have been drafted and published and are operating in provisional form. One has been finalised following parliamentary scrutiny in the four legislatures.

### **General functions of the OIM**

1.14. Our statutory objective is to support, through the application of economic and technical expertise, the effective operation of the UK internal market, with particular reference to the purposes of the MAPs.<sup>16</sup>

1.15. Our main functions broadly fall into two categories:

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<sup>13</sup> See sections 20 and 21 and section 17(4) of the Act which define a ‘regulatory requirement’ for the purpose of the non-discrimination principle as it applies to services.

<sup>14</sup> See section 24 of the Act.

<sup>15</sup> See section 28 of the Act.

<sup>16</sup> See section 31(2) of the Act.

- Providing reports (or advice, as applicable) on specific regulatory provisions on the request of a Relevant National Authority (RNA).<sup>17</sup>
- Monitoring and reporting on the operation of the UK internal market – for example discretionary reviews and reports<sup>18</sup> and annual and periodic statutory reports.<sup>19</sup>

1.16. In fulfilling our functions, our approach is to ensure that we demonstrate transparency, independence and analytical rigour. We are required by the Act to act even-handedly in respect of the four RNAs.

1.17. Further information on our role and powers can be found in our Operational Guidance published in September 2021 (OIM1).<sup>20</sup>

## **The statutory purpose of this report**

1.18. This report forms part of our monitoring and reporting on the operation of the UK internal market. It has been prepared to discharge the requirement that a periodic report be prepared no later than 31 March 2023 and at least once in every successive five-year period on:

- The effectiveness of the operation of the MAPs (as set out in Parts 1 to 3 of the Act) and their impact on the operation and development of the UK internal market.
- The interaction between those MAPs and Common Frameworks and the impact of Common Frameworks on the operation and development of the UK internal market.

1.19. As this report is our first periodic report since the UK internal market regime came into effect, our assessment of the operation of the regime in relation to the MAPs and Common Frameworks relates to the period 31 December 2020 to March 2023.

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<sup>17</sup> Section 45(6) of the Act 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’. Under section 34 of the Act, an RNA can request the OIM to advise or provide a report on a proposed regulatory provision; under section 35 of the Act, an RNA can request the OIM to provide a report after a regulatory provision is passed or made; and under section 36 of the Act, an RNA can ask the OIM to provide a report on a regulatory provision it considered to have detrimental effects to the effective operation of the UK internal market.

<sup>18</sup> See section 33(1) of the Act.

<sup>19</sup> See sections 33(5) and 33(6) of the Act.

<sup>20</sup> [Guidance on the operation of the CMA's UK Internal Market functions](#)

1.20. We have published our annual report 2022-2023 alongside this periodic report, covering the operation of the UK internal market and developments impacting on its effectiveness.<sup>21</sup>

### ***The OIM's role and the focus of this report***

1.21. We aim to assist the four governments across the UK by applying economic and other technical expertise to support the effective operation of the UK internal market. We have an advisory, not a decision-making role. Given our focus on the economic impacts of different regulatory choices across the UK nations, we recognise that the findings and issues raised in our reports are likely to constitute one consideration, among others, when a government or legislature determines its preferred policy and regulatory approaches.

1.22. This report's focus is on the mechanisms which underpin the effective operation of the UK internal market; namely, Parts 1 to 3 of the Act, which establish the MAPs, and the Common Frameworks. Paragraphs 1.25 to 1.34 in chapter 1 of the annual report 2022-2023 sets out our view of factors relevant to the 'effective operation of the UK internal market'. The policy background to the Act indicates that our periodic reports should also consider whether improvements to the UK internal market regime may be necessary.<sup>22</sup> Given the UK internal market regime has only been in place for a little over two years and the small number of regulatory differences between nations that have emerged since 31 December 2020, this periodic report is intended primarily to establish a baseline rather than to make material findings.

1.23. Our role does not extend to considering other differences which may arise between the UK nations (for example, in relation to matters of public policy), nor to matters of broader economic policy. In considering our reports, it is also important to recognise the policy context in which governments act. Governments may make policy interventions for a number of reasons which may, in turn, lead to differences in regulation emerging between the UK nations. These actions may include interventions to address a specific issue in relation to the circumstances of that nation (such as to address particular health needs of the local population), or to take action to address broader strategic priorities (for example, to address environmental priorities).

1.24. Differences in regulation can also lead to valuable innovation in policy making – as noted in the Resources and Waste Provisional Common Framework, '[t]he ability for divergence is retained in line with the devolution settlements,

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<sup>21</sup> The OIM's annual report 2022-2023 has been prepared to meet the requirements of section 33(5) of the Act.

<sup>22</sup> [UK Internal Market Act 2020 Explanatory Notes](#), paragraph 284.



recognising that divergence can provide key benefits such as driving higher standards and generating innovation and improved standards, while taking account of its impact on the functioning of the UK internal market.<sup>23</sup> For example, the Scottish Government was the first to introduce a smoking ban in the UK, and the Welsh Government was the first to introduce a charge for single use plastic bags. These successful policies gave opportunities for the other UK nations to see the policies in action before making their own decisions to enact similar legislation.<sup>24</sup>

1.25. As with all our work, our focus on economic factors needs to be considered within the context of the public policy decisions of governments, including the manner in which governments consider the (often unquantifiable) costs and benefits of policy choices.

### ***Evidence gathering***

1.26. We have drawn on a wide range of evidence in producing this report. We gathered information from four roundtable discussions with a variety of stakeholders. The focus of the discussions with businesses and trade associations was on identifying sectors that are seeing, or are likely to see, regulatory divergence and the implications of this on businesses. In our roundtables with academics, members of the policy community, and legal professionals, there was a greater focus on the MAPs and Common Frameworks and their implications.

1.27. We have engaged with the governments on, amongst other topics, the operation of the MAPs, their interaction with the Common Frameworks, and the impact of Common Frameworks on the UK internal market.

1.28. We also commissioned qualitative research that was carried out by an independent consultancy, Thinks Insights & Strategy (TIS). This research gathered views from businesses based in all UK nations, in different sectors, and of varying sizes who trade across internal UK borders. The research covered the importance of intra-UK trade to their business, their experiences of adapting to regulatory difference and how they might react to hypothetical examples of it and covered their awareness of the MAPs. Findings from this research are published alongside this periodic report.<sup>25</sup>

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<sup>23</sup> [Resources and Waste Provisional Common Framework](#), paragraph 3.1.5.

<sup>24</sup> As observed in Institute for Government, [The United Kingdom Internal Market Act 2020](#), February 2021.

<sup>25</sup> At the time the report was commissioned, TIS was operating as BritainThinks.

1.29. We have reviewed publicly available information in relation to regulatory developments which may impact on the effective operation of the UK internal market. Where relevant, we have also used information provided by businesses and other stakeholders via the OIM's webform<sup>26</sup> on how the UK internal market is working. In addition, we undertook a desktop review of published documents and research.

1.30. We are grateful for the inputs of the governments and of all the stakeholders with whom we have engaged in preparing this report.

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<sup>26</sup> [Report a UK Internal Market issue.](#)

## 2. Effectiveness of the Market Access Principles

### Introduction

- 2.1 This chapter sets out our assessment of the effectiveness of the operation of the MAPs and their impact on the operation and development of the UK internal market. The MAPs are intended to ensure the UK internal market functions by establishing ‘a coherent approach to market access’<sup>27</sup> and providing ‘continued certainty for people and businesses that they can work and trade freely across the whole of the UK.’<sup>28</sup>
- 2.2 The principles of mutual recognition and non-discrimination for goods and services allow people and businesses to trade without additional barriers based on which nation they are in. The measures on the recognition of professional qualifications allow professionals qualified in one of the four parts of the UK to access the same profession in a different part without needing to requalify if new qualification or experience requirements are introduced, or existing ones are changed, in any part of the UK.
- 2.3 Federal states and states with powers devolved to territories within them must typically undertake the task of managing an internal market, which involves balancing frictionless trade against the right of the territorial jurisdictions to set their own rules.<sup>29</sup> While management of the UK internal market gives rise to similar challenges, there are marked differences between the approaches adopted by other countries and the approach adopted by the UK internal market regime. Although the Act adopts some similar aspects of the EU Single Market, such as the concepts of mutual recognition and non-discrimination, it differs in several ways.<sup>30</sup> For example, the range of exclusions and derogations that apply to the mutual recognition principle for goods is narrower than those applicable to the equivalent EU principle.<sup>31</sup> It has been argued this means UK courts will have less discretion than EU courts to take into account the

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<sup>27</sup> [UK Internal Market Act 2020 Explanatory Notes](#), paragraph 7.

<sup>28</sup> [UK Internal Market Act 2020 Explanatory Notes](#), paragraph 1.

<sup>29</sup> In chapter 1 and Appendix A of our report on the [Overview of the UK Internal Market](#), we consider the internal markets of a number of countries, including Spain, Canada, Australia and Switzerland.

<sup>30</sup> For a comparison of the UK internal market with the EU’s internal market, see Stephen Weatherill, [Comparative Internal Market Law: The UK and the EU](#), October 2021 (paywall).

<sup>31</sup> This point has been noted in several studies, for example Institute for Government, [The United Kingdom Internal Market Act 2020](#), February 2021.

regulatory purpose (such as environmental protection) when considering application of the mutual recognition principle of the Act.<sup>32</sup>

2.4 The MAPs have broad application and may engage a wide range of economic sectors. However, the Act establishes certain exclusions where the MAPs do not apply. These are different for each principle, and for goods and services. The main exclusions are:<sup>33</sup>

- Statutory requirements existing before commencement of the Act (31 December 2020) which have not been substantially changed.<sup>34</sup>
- Sales of goods that are made for the purpose of performing a public function.
- Specific exclusions set out in schedules to the Act.<sup>35</sup>

2.5 The Act modifies the MAPs for goods to enable the ‘unfettered access’ of qualifying goods from Northern Ireland to Great Britain. Generally, the MAPs will apply to goods that are ‘qualifying Northern Ireland goods’ and will not apply to non-qualifying Northern Ireland goods.<sup>36</sup> However, the MAPs do not apply to goods moving from Great Britain to Northern Ireland. As the Protocol requires that Northern Ireland follow EU rules only in relation to goods, it does not affect the application of the MAPs for services or professional qualifications to trade between Northern Ireland and Great Britain in either direction.

2.6 The MAPs are enforced by existing authorities (for example, trading standards officers) that have responsibility for the regulation of goods. Statutory guidance

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<sup>32</sup> Kenneth A. Armstrong, [Evidence submitted to the Constitution, Europe, External Affairs and Culture Committee of the Scottish Parliament](#), January 2022.

<sup>33</sup> The Act provides for other exclusions that are not included here (for example, in the context of services, requirements that apply to both service providers and non-service providers).

<sup>34</sup> For services, this exclusion does not apply if a corresponding authorisation requirement in another part of the UK is substantively changed on or after the day on which the Act came into force.

<sup>35</sup> Schedule 1 lists the exclusions to the MAPs for goods, which includes certain emergency food safety and animal and plant health regulations. An exclusion was added to Schedule 1 to exclude Scottish Government ban on single-use plastics from the scope of the MAPs for goods. Schedule 2 lists the exclusions to the MAPs for services, which includes health, public functions, transport services and legal services.

<sup>36</sup> The Act defines ‘qualifying Northern Ireland goods’ by reference to the definition of such goods in [The Definition of Qualifying Northern Ireland Goods \(EU Exit\) Regulations 2020](#). A qualifying Northern Ireland good is defined as any good that: (1) is lawfully present in Northern Ireland and not subject to customs control (other than customs procedures arising on export); or, (2) are Northern Ireland processed products.

on the enforcement of the MAPs in relation to goods has been issued to the relevant authorities across the UK.<sup>37</sup>

## Effectiveness of the MAPs

### *Stakeholder roundtables*

- 2.7 We held a series of roundtables to understand stakeholder views on the effective operation of the UK internal market and the functioning of the arrangements set out in the Act. We invited stakeholders with relevant expertise and experience, and separately invited stakeholders to express an interest in attending via our webpage.
- 2.8 We held four roundtables: two with trade associations and businesses, one with legal professionals, and one with academics and policy professionals. The roundtables gave us insight into the perspectives of a wide range of interested stakeholders. The roundtables were not intended to be representative of views in specific sectors; rather, they were intended to provide wider context on the operation of the internal market regime.
- 2.9 Given that the UK internal market regime is in its infancy, these discussions focused on sectors that are seeing, or are likely to see, regulatory difference and the potential impacts of such differences for businesses. The attendees at the roundtables, whilst engaged on issues concerning the UK internal market more broadly were, generally, much less familiar with the MAPs themselves. In the business and trade association roundtables in particular, there was a low level of awareness of the MAPs. By contrast, participants in the legal and academic / policy roundtables had a greater awareness of the implications of the MAPs.
- 2.10 Participants at the legal roundtable noted the lack of litigation to date in relation to the MAPs and speculated that any litigation might more likely be prompted by trade associations or larger businesses.<sup>38</sup> Participants told us that, in the absence of case law, there would be uncertainty as to how the MAPs would interact with specific policies and felt that smaller businesses may consider litigation on the basis of the MAPs to be costly and risky. They also noted that,

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<sup>37</sup> The Act does not create new enforcement bodies, powers or penalties and instead relies on enforcement provisions in existing regulations. The Secretary of State has issued statutory guidance about the practical operation and effect of the market access principles for goods: [Trade in goods: guidance for enforcement authorities on complying with the UK Internal Market Act 2020](#).

<sup>38</sup> Some legal commentators have concluded that litigation involving the MAPs and national regulatory requirement is likely to materialise, see Kenneth A. Armstrong, [The Governance of Economic Unionism after the United Kingdom Internal Market Act](#), November 2021.

to date, they had primarily considered the application of the MAPs in relation to physical goods through traditional distribution channels (i.e., not online).

- 2.11 Academic and policy experts argued for greater flexibility to create exclusions from the MAPs, noting the link to the policy autonomy of the Devolved Governments.<sup>39</sup> Participants also highlighted the detailed terms in which the MAPs are set out and cautioned against adding further detail in legislation, especially in the absence of litigation to indicate the practical effect of the MAPs.
- 2.12 Some stakeholders from think tanks and academia suggested that the MAPs could inhibit the Devolved Governments from pursuing policy aims that might lead to regulatory difference.<sup>40</sup>

### ***Qualitative research***

- 2.13 To gather further evidence from a range of businesses to support the development of our statutory reports, we commissioned qualitative research from TIS, an insight and strategy consultancy. This research involved 45 in-depth interviews and four workshop sessions with businesses who trade across UK borders.
- 2.14 The sample group was selected according to three parameters: by nation, by size, and by sector, with a focus on agriculture, food and drink manufacture and retail, manufacturing and construction. These were among the sectors identified in the OIM's Overview of the UK Internal Market report as having potential to see regulatory difference that could impact on the UK internal market. This approach ensured that, whilst not a statistically representative sample, the researchers could capture a range of business experiences, across the UK nations.
- 2.15 The research aimed to understand a number of issues, including:

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<sup>39</sup> Similar arguments have been made in several studies, such as Michael Dougan, Jo Hunt, Nicola McEwen, Aileen McHarg, [Sleeping with an elephant: devolution and the United Kingdom Internal Market Act 2020](#), January 2022; Stephen Weatherill, [Will the United Kingdom survive the United Kingdom Internal Market Act?](#), March 2021.

<sup>40</sup> Several studies have noted the possibility of the MAPs disincentivising policy divergence by the Devolved Governments, see Institute for Government, [The United Kingdom Internal Market Act 2020](#), February 2021; Wales Civil Society Forum on Brexit, [UK Internal Market Bill](#), September 2020; Centre on Constitutional Change, [UK Internal Market Bill, Devolution and the Union](#), January 2022.

- The importance of intra-UK trade for UK businesses, on both the supply side and demand side;
- How UK businesses would respond to potential regulatory difference and the impact this would have;
- Experiences of adapting to regulatory difference and preparedness for regulatory change in their sectors;
- Levels of awareness of the existence and application of the MAPs and impact on potential responses to changes in regulation.

2.16 Given the low levels of intra-UK regulatory change since the UK's exit from the EU, an important feature of our qualitative research was the use of 'hypothetical scenarios' (scenarios) to provide businesses with an illustrative, generic example of intra-UK regulatory difference.

2.17 The scenarios used were high-level but framed in a way that businesses could relate to their own circumstances. They were introduced after initial discussions of intra-UK trade and regulatory differences and before participants had been introduced to the MAPs. Each scenario introduced a hypothetical example of regulatory differences between UK nations and businesses:

- Scenario 1: In your business, the main good/product you manufacture contains a specific input. One UK nation bans the sale of goods/products containing this specific input.
- Scenario 2: One UK nation imposes new labelling requirements on the main good/product that you manufacture.
- Scenario 3: One UK nation bans the supply of your services in its nation unless service providers like you comply with a new and additional (regulatory) requirement.

2.18 During the in-depth interviews, businesses were first introduced to one of the three scenarios with the aim of understanding how they might respond to hypothetical instances of difference. Businesses were able to give a good indication of which hypothetical scenario would be most relevant for their business.

2.19 In the follow-up workshop sessions, businesses indicated which hypothetical scenario would most be relevant to them. Scenario 1 (input ban) was tested with the Agriculture and Construction groups and Scenario 2 (labelling) tested with the Manufacturing and Food and Drink groups. As engagement with Scenario 3 in the in-depth interviews was limited, it was excluded from the

workshops. The workshops focussed instead on the principle of mutual recognition, using Scenarios 1 and 2; businesses who had responded to Scenario 3 in the interviews responded to Scenario 1 in the workshops.

- 2.20 Few businesses suggested that they would cease trading with that nation entirely as a result of the introduction of different regulations. In these cases, the hypothetical instance of regulatory difference was seen as unlikely to be introduced due to the negative impact it would have on businesses (for example, banning a core input into a business' product). Where new regulatory requirements are introduced in one part of the UK, most businesses indicated that they would proactively adapt to this scenario by changing their product and/or seeking new suppliers (either to a supplier in a different UK nation or potentially from outside the UK).
- 2.21 Awareness of the MAPs was very low among the businesses in the sample. When the MAPs were explained there were mixed responses. Those who had been more concerned about the hypothetical scenarios used in the research said the MAPs could help to alleviate concerns about regulatory difference.
- 2.22 However, some businesses were more sceptical as they perceived the MAPs could create 'unfair' trading conditions, where businesses based in one UK nation would have to abide by a new restriction, whereas businesses in other UK nations could rely on the MAPs to continue to trade as before. Many businesses felt they would avoid taking legal action to rely on the MAPs because of cost and complexity and possible reputational consequences of being associated with such action.

### ***Engagement with the four governments on the MAPs***

- 2.23 We also sought views from the four governments on how the MAPs were operating and affecting policymaking, and whether the MAPs were effective in supporting the UK internal market. A questionnaire on the MAPs was shared with each of the four governments.
- 2.24 The Department for Business, Energy and Industrial Strategy (BEIS) responded to our questionnaire on behalf of the UK Government. Following our engagement with BEIS, the functions of BEIS related to UK internal market moved to the newly formed Department for Business and Trade. Our engagement with the Northern Ireland Executive on the MAPs was primarily through the Department of Agriculture, Environment and Rural Affairs (DAERA). We also engaged with relevant leads in the Scottish Government and in the Welsh Government.



- 2.25 The responses received tended to focus on the interaction of MAPs as they apply to goods. They also suggested that different views are held as to how the MAPs are operating in practice and affecting policymaking.
- 2.26 The UK Government indicated it has no specific concerns with the operation of the MAPs and noted the referral of the proposed ban on peat in horticultural products in England to the OIM<sup>41</sup> as an example of how the MAPs had informed policy consideration. The UK Government also noted the publication of the process for considering exclusions in Common Framework areas could inform decisions on future changes to exclusions from the application of the MAPs.
- 2.27 The Scottish Government referenced its ban on certain single-use plastic items as an example of how the MAPs would have constrained devolved policymaking and created uncertainty around the policy effect of legislation. It viewed the development of a process for the consideration of exclusions from the MAPs as necessary to mitigate the impact of the MAPs on the effectiveness of its legislation, though noted that the exclusions process leaves decision making on the operability of devolved legislation in the hands of UK Ministers.
- 2.28 The Welsh Government indicated that it did not recognise the effect of the MAPs on the legislative competence of the Senedd. However, as the MAPs have only been in operation since the Act came into force, there had been limited opportunity to assess their effect on the policymaking of the four nations. In relation to the exclusions process, the Welsh Government said that it had supported previous requests for exclusions but viewed the process as overly cumbersome and, in terms of making the final decision, weighted in favour of the UK Government.
- 2.29 DAERA reported that the non-application of the MAPs for goods moving from Great Britain to Northern Ireland remained an issue that could become more significant in the future. It cited the movement of plants and plant products and seed potatoes from Great Britain to Northern Ireland as examples where the MAPs do not apply because Northern Ireland is required to apply EU law for such goods. DAERA said that it is not aware of any MAPs-related issues in respect of plants and plant products moving from Northern Ireland to Great Britain.<sup>42</sup> While requirements necessary to give effect to the Protocol are

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<sup>41</sup> [Report on the impact of a proposed ban of the sale of horticultural peat in England on the effective operation of the UK Internal Market.](#)

<sup>42</sup> As explained in the introduction to this chapter, the Act modifies the MAPs so that they apply only to qualifying Northern Ireland goods moving from Northern Ireland to Great Britain.

outside the remit of the OIM, we consider it important to reflect these observations in our periodic report.<sup>43</sup>

- 2.30 The response from the Welsh Government identified the Professional Qualifications Act 2022 as relevant to the mutual recognition of professional qualifications or equal treatment of the practice of a profession. The responses from BEIS, Scottish Government and DAERA did not identify any known current issues in relation to Part 3 of the Act.
- 2.31 In their responses to our questionnaire, BEIS, DAERA and the other governments indicated they were not aware of any actions having taken place to enforce the MAPs or any issues relating to the MAPs being raised with other bodies, such as Trading Standards, or arising from the UK Government's guidance for traders.

### ***Monitoring of regulatory developments***

- 2.32 We routinely monitor published government consultations and the activity of each legislature to identify regulatory developments with the potential to affect the UK internal market. We also seek to understand the views of businesses, trade associations and other stakeholders on the potential implications of these developments. We review submissions to our webform, undertake engagement with both stakeholders and governments, as discussed above, and monitor commentary in the media.
- 2.33 To date, only one stakeholder, a trade association, has specifically mentioned the MAPs in a submission to our webform and there are very few examples of businesses or trade associations discussing the MAPs publicly in relation to specific developments.
- 2.34 In submissions to us and in responses to government consultations, businesses have tended to engage in detail with the implications of policy proposals for trade between nations (and specifically, the impact on their business), without mentioning the MAPs. For example, businesses responding to the Welsh Government's consultation on its proposals to restrict the promotion of HFSS food and drink mentioned the costs and administrative burden of directing different information to online customers in different parts of the UK, or of creating alternative apps for different nations.<sup>44</sup>

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<sup>43</sup> Section 30(9) of the Act excludes provisions containing anything that is necessary to give effect to the Protocol from the scope of the OIM's functions.

<sup>44</sup> Welsh Government, [Summary of responses to Healthy Food Environment consultation](#), January 2023.

2.35 Our monitoring of regulatory developments has identified a number of examples where governments are considering how policy proposals may interact with the MAPs. These include measures to ban certain single-use plastic items, for which the Scottish Government secured the first exclusion from the MAPs, and the Genetic Technology (Precision Breeding) Bill. The Scottish Government and the Welsh Government have raised concerns about the potential implications of this Bill, taken in conjunction with the Act, as it could become lawful to market precision-bred plants and animals, and the food and feed derived from them, in Scotland and Wales under the MAPs regardless of different standards set in Scotland or Wales. The Scottish Government has said that it is considering how best to prevent the impacts that the Bill would have on Scotland.<sup>45</sup>

2.36 Chapter 3 of our annual report 2022-2023 discusses the above examples in more detail.

## Conclusion

2.37 Awareness of the MAPs among businesses is generally very low. This finding is borne out from both our roundtable discussions with businesses and trade associations and our qualitative research. By contrast, our roundtable discussions with academics, members of the policy community, and legal professionals demonstrated a greater awareness of the MAPs.

2.38 When the MAPs were explained to business as part of our qualitative research, some businesses saw the potential for the MAPs to alleviate their concerns, when presented with hypothetical scenarios of regulatory difference. However, some businesses were more sceptical as they perceived the MAPs could create 'unfair' trading conditions, where businesses based in one UK nation would have to follow a new regulation, while businesses in other UK nations could rely on the MAPs to trade as normal.

2.39 Where stakeholders were aware of the MAPs, they were uncertain about their application in practice, with a lack of case law to clarify the effects of the MAPs and the possibility of change if exclusions from the MAPs were agreed. In our roundtable discussion with legal professionals, stakeholders told us that any decision to litigate was more likely to be made by a large business or trade association seeking to establish clarity, rather than a business seeking to use the MAPs 'defensively' against enforcement action. In our qualitative research,

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<sup>45</sup> Scottish Government, [Genetic Technology \(Precision Breeding\) Bill: letter to Convenor of the Rural Affairs, Islands and Natural Environment Committee](#), January 2023.

businesses stated that they were concerned about the potential cost, complexity and reputational consequences of any legal action to rely on the MAPs. None of the governments were aware of any enforcement action in relation to the MAPs.

2.40 In our engagement with businesses and trade associations – and in responses to public consultations (for example, consultations in Scotland and Wales which included proposals to ban the manufacture and sale of plastic wet wipes)<sup>46</sup> – the presumption is that businesses will comply with the regulations in force in each nation of the UK where possible.

2.41 Our engagement with the governments on the effectiveness of the MAPs demonstrated that a range of views were held. The UK Government indicated it has no specific concerns with the operation of the MAPs. The Scottish Government considered there to be potential for the MAPs to constrain devolved policymaking in many areas. The Welsh Government stated there had been insufficient time to assess their effectiveness. DAERA considered the fact that the MAPs do not apply to certain goods moving from Great Britain to Northern Ireland because of the Protocol could become more significant in the future.

2.42 We are aware that the governments are thinking carefully about how the MAPs might operate if tested. The Scottish Government's move to secure an exclusion from the MAPs for its regulations banning certain single use plastic products and commencement of the process to obtain an exclusion from the MAPs for its deposit return scheme regulations<sup>47</sup>, the Scottish and Welsh Governments' consideration of the MAPs in relation to the Genetic Technology (Precision Breeding) Bill, and the UK Government's request to the OIM for a report under section 34 of the Act on its proposed regulation banning sales of peat and peat-containing products in England all indicate that the potential effect of the MAPs is a consideration in policy development.

2.43 As noted in our annual report 2022-2023, there has been little new regulatory difference between UK nations since the internal market regime was established and the majority of businesses trading in the UK do not experience challenges when selling to other UK nations. Of those businesses engaged in trade with other UK nations, only a small number said they experienced challenges due to differences in rules or regulations. In that context, low

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<sup>46</sup> For example, the Cosmetic, Toiletry and Perfumery Association (CTPA) has publicly responded to Scottish and Welsh Government consultations: [CTPA Response to Scottish Government Single-use Plastic Items](#); [CTPA Response to Welsh Government Consultation on Reducing Single-use Plastic](#).

<sup>47</sup> Herald Scotland, [Concerns deposit return scheme will create unlawful UK trade barrier](#), February 2023.

awareness of the MAPs among businesses and the absence of related case law suggests that businesses have not needed to rely on the MAPs to support intra-UK trade. This reflects the fact that most businesses continue to trade freely across the UK.

2.44 Based on the evidence gathered, including our routine monitoring of regulatory developments, we have not identified evidence of regulatory changes that might interact with the MAPs as they apply to services or professional qualifications. Accordingly, this chapter has focused on the MAPs in relation to goods. Given that application of the MAPs remains untested, it is too soon to assess whether improvements are necessary, or what form such improvements might take. We expect to undertake a more complete assessment of the effectiveness of the MAPs in our next periodic report.

## 3. Common Frameworks

### Introduction

- 3.1 This chapter reports on any interaction between the operation of the MAPs and Common Frameworks, and the impact of Common Frameworks on the operation and development of the UK internal market.<sup>48</sup>
- 3.2 Common Frameworks are non-statutory agreements between the UK Government and the Devolved Governments to establish how devolved or transferred matters previously governed by EU law are to be regulated after the UK's withdrawal from the EU. They have been described as 'innovative mechanisms for developing UK-wide policy by collaboration and consensus' that acknowledge 'the interdependence of policy between administrations, while recognising the autonomy of each administration in its areas of competence.'<sup>49</sup>
- 3.3 In 2017, governments across the UK agreed principles for the development of Common Frameworks through the Joint Ministerial Committee ('the JMC Principles'). These principles set out how governments would identify areas in which Common Frameworks are required, and how Common Frameworks would fit into the constitutional landscape following the UK's withdrawal from the EU.<sup>50</sup> For example, the JMC Principles provide that Frameworks will respect the devolution settlements and the democratic accountability of the Devolved Governments, and that they will ensure recognition of the economic and social linkages between Northern Ireland and the Republic of Ireland. The JMC Principles include a statement that Common Frameworks will be established where they are necessary to, among other things, 'enable the functioning of the UK internal market, while acknowledging policy divergence'.
- 3.4 In 2021, the Cabinet Office identified 152 areas of EU law that intersected with devolved competence. The UK Government and the Devolved Governments reviewed these to agree 32 areas in which a Common Framework was deemed necessary.<sup>51</sup> The four governments agreed that no Common Framework was needed in 120 areas because the risk of regulatory differences emerging was assessed to be low, the impact of any differences that did emerge would be minimal, or existing intergovernmental arrangements were in place to manage

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<sup>48</sup> Section 33(6)(c) and (d) of the Act.

<sup>49</sup> The House of Lords Common Frameworks Scrutiny Committee, [Common frameworks: building a cooperative Union](#), March 2021.

<sup>50</sup> See [Communiqué from the Joint Ministerial Committee \(EU Negotiations\)](#), October 2017.

<sup>51</sup> Cabinet Office, [Frameworks analysis](#), November 2021.

any differences. All policy areas in the ‘no framework required’ category remain open for review.

- 3.5 Of the 32 areas in which a Common Framework was deemed necessary, about 16 were expected to interact with the Act.
- 3.6 As at the date of finalisation of this report, one Common Framework (Hazardous Substances: Planning)<sup>52</sup> has been finalised and published. 29 Common Frameworks have been provisionally approved by Ministers across the four governments and are operational.<sup>53</sup> Of these, 27 have been published which cover a range of subjects, including company law, radioactive substances, nutrition labelling, fisheries management, agricultural support, fertilisers and chemicals.<sup>54</sup> There are two areas in which work is still underway to develop a provisional framework.<sup>55</sup>
- 3.7 The Common Frameworks published to date set out intergovernmental working arrangements in a defined policy area. The scope of each Framework is laid out in detail via a list of in-scope legislation and responsibilities, and, where applicable, information on matters that are out of scope. The working arrangements described in Common Frameworks typically include meeting structures and associated processes for decision making, dispute resolution arrangements, and information sharing. They describe the domestic and international legislative context in which these structures operate. They may also include objectives that the parties wish to achieve through the framework and give a sense of their tolerance of regulatory differences in that policy area.<sup>56</sup>
- 3.8 As at the date of finalisation of this report, the UK Department for Levelling Up, Housing and Communities (DLUHC) is conducting an initial evaluation of Common Frameworks. This evaluation will look at how well framework

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<sup>52</sup> UK Government, [UK Common Frameworks](#).

<sup>53</sup> UK Department for Levelling Up, Housing and Communities (DLUHC) and the Cabinet Office, [Policy paper on the European Union \(Withdrawal\) Act and Common Frameworks: 26 September to 25 December 2021](#), March 2022.

<sup>54</sup> UK Government, [UK Common Frameworks](#).

<sup>55</sup> These are the Mutual Recognition of Professional Qualifications Common Framework and the Services Common Framework.

<sup>56</sup> For example, the Resources and Waste Common Framework states that ‘the opportunity for a common approach across the UK Government, Scottish Government, Welsh Government and DAERA will be considered and sought, where appropriate, while taking account of the interests of, and impacts on all the Parties. The ability for divergence is retained in line with the devolution settlements, recognising that divergence can provide key benefits such as driving higher standards and generating innovation and improved standards, while taking account of its impact on the functioning of the UK internal market.’ The Animal Health and Welfare Common Framework states that the parties agree ‘not to diverge from baseline standards in a manner harmful to biosecurity, welfare or the UK internal market across relevant policy areas.’ Parties must notify policy decisions so that Chief Veterinary Officers and relevant heads of policy can determine what is ‘harmful’.

processes are operating, as well as opportunities for improvement. DLUHC currently expects a report due at the end of 2023.

## **Findings on interactions between Common Frameworks and the MAPs**

3.9 In this section, we firstly set out our analytical approach. We then set out details of an exclusion from the MAPs (single use plastics) which interacted with a Common Framework (the Resources and Waste Common Framework). We then discuss a number of areas in which we have observed an interaction between Common Frameworks and the MAPs more broadly, namely in relation to the UK Government's Genetic Technology (Precision Breeding) Bill and approaches to banning the use and/or sale of glue traps in England, Scotland and Wales. We conclude by briefly considering likely interactions between Common Frameworks and the MAPs over the next few years, including the likelihood of further exclusions and the impact of the Retained EU Law (Revocation and Reform) Bill.

### ***Analytical approach***

3.10 The Act requires us to report on, among other things, any interaction between the operation of the MAPs and Common Frameworks.

3.11 In preparing this report, we first sought to identify Common Frameworks which might interact with the MAPs, noting that several Common Frameworks relate to areas, such as healthcare and transport services, that are excluded from the Act. We reviewed the most recent published analysis of policy areas requiring a Common Framework,<sup>57</sup> as well as the (provisional) Common Frameworks published since November 2020.<sup>58</sup>

3.12 In addition to the finalised Common Framework (Hazardous Substances: Planning), we identified a number of provisional Common Frameworks in areas that would, at least in part, not be covered by an exclusion from the MAPs and which would have the potential to interact with intra-UK trade in goods or services, or use of professional qualifications. In practice, many of these Common Frameworks related to agriculture, food and waste management. We shared our assessment of the relevant Common Frameworks with the four

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<sup>57</sup> Cabinet Office and DLUHC, [Frameworks analysis 2021](#), November 2021.

<sup>58</sup> UK Government, [UK Common Frameworks](#).



governments of the UK, who broadly agreed that this was a sensible set of Frameworks to focus on, at this time.<sup>59</sup>

- 3.13 We asked the four governments to complete a questionnaire in order to understand their perspective on the Common Frameworks programme. We asked what work has been taken forward under Common Frameworks to date, whether any exclusions from the MAPs have been requested or granted following an agreement reached under a Common Framework, and whether Common Frameworks have been used as a vehicle for discussing the implications of the MAPs in connection with particular regulatory developments.
- 3.14 Our primary engagement on Common Frameworks with the UK Government was through Defra, and our main engagement with the Northern Ireland Executive was through DAERA, due to the prevalence of Common Frameworks relating to the environment, food and rural affairs. We also engaged with relevant Common Framework leads in the Scottish Government and in the Welsh Government.
- 3.15 In addition, we received input from the UK Government Department for Health and Social Care, the Food Standards Agency and Food Standards Scotland, which have responsibilities relating to the Nutrition Labelling, Composition and Standards, Food Compositional Standards and Labelling, and Food and Feed Safety and Hygiene Common Frameworks, as well as the Department for Business, Energy and Industrial Strategy (now the Department for Business and Trade), which leads on the Mutual Recognition of Professional Qualifications and Specified Quantities and Packaged Goods Common Frameworks.
- 3.16 We note that the governments indicated that the majority of activity under Common Frameworks to date has been routine intergovernmental working<sup>60</sup> or outside the scope of the Act (for example, it relates to the effects of the Protocol), as opposed to discussion of regulatory differences that might engage the MAPs. However, there have been some significant interactions between Common Frameworks and the MAPs, which are discussed further below;

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<sup>59</sup> We identified the following Common Frameworks as relevant to our analysis: Animal Health and Welfare; Chemicals and Pesticides; Fertilisers; Food Compositional Standards and Labelling; Organic Production; Plant Health; Plant Varieties and Seeds; Nutrition Labelling Composition and Standards; Food and Feed Safety and Hygiene; Agricultural support; Resources and Waste; Agriculture – Zootech (unpublished); Specified Quantities and Packaged Goods (unpublished); Mutual Recognition of Professional Qualifications (unpublished).

<sup>60</sup> For example, assessing applications to use a new nutrition or health claim, which are considered under the Nutrition Labelling, Composition and Standards Common Framework.

namely, in relation to single use plastics, the Genetic Technology (Precision Breeding) Bill, and glue trap bans.<sup>61</sup>

### ***Exclusion from the MAPs: Single Use Plastics***

3.17 The Secretary of State may make regulations to create an exclusion from the MAPs in order to give effect to an agreement reached under a Common Framework.<sup>62</sup> The UK Government has published a process for considering such exclusions, developed in collaboration with the Devolved Governments.<sup>63</sup> The House of Lords Common Frameworks Scrutiny Committee considered that this process, if followed in line with the JMC Principles, ‘could work effectively towards enhancing cooperation within the Union and ensuring respect for the devolution settlements.’<sup>64</sup>

3.18 In the period covered by this report, there has been one new exclusion from the MAPs made in relation to single-use plastic items which was agreed under the Resources and Waste Common Framework.<sup>65</sup> We are also aware that discussions have been initiated by the Scottish Government on an exclusion from the MAPs for its Deposit Return Scheme.<sup>66</sup> As at the date of finalisation of this report, we are not aware of any further exclusions from the MAPs.

3.19 The Scottish Government’s single-use plastics ban came into force on 1 June 2022 and the exclusion from the MAPs came into force on 12 August 2022.<sup>67</sup> This meant that, from 12 August, businesses could not rely on the MAPs to supply items banned by the regulation in Scotland, if they had first been legally imported into or produced in another part of the UK.

3.20 The period when the Scottish Government’s ban was in force, but the statutory instrument creating the exclusion was not, lasted a little over two months. During this time, some catering suppliers who had chosen to comply with the ban raised concerns that they might lose sales to competitors who continued to

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<sup>61</sup> Further detail on the regulations and policy areas discussed in this chapter is provided in chapter 3 of the OIM’s annual report 2022-2023.

<sup>62</sup> See sections 10(3) and 18(3) of the Act, for goods and services respectively.

<sup>63</sup> Cabinet Office and DLUHC, [Process for considering UK Internal Market Act exclusions in Common Framework areas](#), December 2021.

<sup>64</sup> The House of Lords Common Frameworks Scrutiny Committee, [Common frameworks: an unfulfilled opportunity?](#), July 2022.

<sup>65</sup> This exclusion covered single-use plastic products banned by the Scottish Government in June 2022 as well as prior legislation banning the supply of plastic stemmed cotton buds in Scotland and plastic straws, cotton buds and stirrers in England.

<sup>66</sup> Scottish Government, [Letter to MSPs on Deposit Return Scheme](#), February 2023

<sup>67</sup> [The United Kingdom Internal Market Act 2020 \(Exclusions from Market Access Principles: Single-Use Plastics\) Regulations 2022](#).

supply cheaper plastic products.<sup>68</sup> Suppliers also reported feeling pressured into ceasing to sell products that were not yet illegal. They called for clear messaging about what they could and could not sell legally, and from what date.<sup>69</sup>

3.21 The Scottish Government has raised concerns about the length of time it took for an exclusion to be agreed, and that the scope was determined by UK ministers (the Scottish Government and the Welsh Government had supported a broader exclusion).<sup>70</sup>

3.22 While the first exclusion from the MAPs related to the sale of some single use plastic products, the Scottish Government noted in May 2022 that ‘it is highly likely further exclusions in this policy area will need to be sought through the Common Framework process in the near future.’<sup>71</sup> The Welsh Government’s Environmental Protection (Single-use Plastic Products) (Wales) Bill, passed by the Senedd on 6 December 2022, proposes a ban on the supply of single-use carrier bags and oxo-degradable plastic products which is not covered by the existing exclusion from the MAPs. The Scottish Government, the UK Government and the Welsh Government have run calls for evidence in relation to further single use products, suggesting that more measures – whether bans or other approaches to reducing consumption – are probable.<sup>72</sup>

### ***Common Framework-MAP interaction: Genetic Technology (Precision Breeding) Bill<sup>73</sup>***

3.23 The Genetic Technology (Precision Breeding) Bill was introduced to the House of Commons by the UK Government in May 2022. The Bill aims to make it faster and easier to obtain authorisation to develop and market precision-bred plants and animals, i.e. organisms that have been genetically edited to have

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<sup>68</sup> Press and Journal, [Loophole uncovered in Scotland's single use plastics ban](#), June 2022 (paywall).

<sup>69</sup> Press and Journal, [Loophole uncovered in Scotland's single use plastics ban](#), June 2022 (paywall).

<sup>70</sup> Scottish Government, [Letter from the Cabinet Secretary for Constitution, External Affairs and Culture to the Convenor on Common Frameworks](#), March 2022.

<sup>71</sup> Scottish Government, [Letter from the Cabinet Secretary for Constitution, External Affairs and Culture to the Convenor on UK Internal Market Act Exclusions Process](#), May 2022.

<sup>72</sup> In relation to Northern Ireland, under the Protocol, Northern Ireland is subject to the EU Directive on Single Use Plastics which came into force on 1 January 2022 and is required to implement its requirements. The Directive bans the supply of single-use plastic plates, cutlery, straws, balloon sticks, cotton buds, expanded polystyrene cups and food containers, and oxo-degradable plastic products.

<sup>73</sup> For more detail on the Genetic Technology (Precision Breeding) Bill and its potential impacts on the UK internal market, see chapter 3 of the OIM’s annual report 2022-2023.

characteristics which could have occurred naturally or through traditional breeding methods.<sup>74</sup>

- 3.24 The Bill, which would apply in England only, would take precision-bred crops and animals outside the scope of the UK's current EU-derived legislation on regulation of Genetically Modified Organisms ('GMOs').<sup>75</sup> However, precision-bred crops and animals, if authorised in England, could be sold in Scotland and Wales under the mutual recognition principle.
- 3.25 The fact that it would be permissible to sell precision-bred products in Scotland and Wales would have a number of implications. The Scottish Government<sup>76</sup> and the Welsh Government<sup>77</sup> have raised concerns that the draft primary legislation does not require precision-bred products to be labelled as such, arguing that this impacts on enforcement and on consumers' ability to make informed choices.<sup>78</sup>
- 3.26 The GMO authorisation regime in Northern Ireland will continue to follow EU rules as required by the Protocol, and it will not be permissible to sell precision-bred products in Northern Ireland unless they have been authorised as GMOs under the EU regime.
- 3.27 We understand that the Bill has the potential to intersect with (potentially, at least) four provisional Common Frameworks; namely, Animal Health and Welfare, Food Compositional Standards and Labelling, Food and Feed Safety and Hygiene, and Plant Varieties and Seeds Common Frameworks.

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<sup>74</sup> The UK Government has said that it will not introduce changes to regulations for animals until a proportionate regulatory system to safeguard animal welfare is in place. See [House of Commons Library briefing on the Genetic Technology \(Precision Breeding\) Bill](#), page 81.

<sup>75</sup> See [House of Commons Library briefing on the Genetic Technology \(Precision Breeding\) Bill](#), page 81.

<sup>76</sup> Scottish Government, [Genetic Technologies \(Precision Breeding\) Bill: letter to UK Government](#), June 2022.

<sup>77</sup> Senedd Cymru, [Legislative Consent: Genetic Technology \(Precision Breeding\) Bill](#), December 2022.

<sup>78</sup> The Food Standards Agency is considering how to provide consumers with information about products produced using precision breeding techniques. See Food Standards Agency, [Board update: The Genetic Technology \(Precision Breeding\) Bill](#), September 2022.

3.28 We note that both the Scottish Government<sup>79</sup> and the Welsh Government<sup>80</sup> have publicly expressed dissatisfaction with the level of intergovernmental engagement before the Bill was published.

### ***Common Framework-MAP interaction: Glue trap bans***

3.29 We understand that differences between glue trap<sup>81</sup> bans in England, Scotland and Wales could be subject to discussions under the Animal Health and Welfare Common Framework, but this has yet to be agreed. In the meantime, Defra policy officials have been meeting with the Devolved Governments as part of an ad-hoc group.

3.30 The UK Government and the Welsh Government have announced an intention to ban the use of glue traps in England and Wales (with pest control professionals permitted to apply for a licence to continue using glue traps in England). The Scottish Government is proposing to ban both the sale and use of glue traps in Scotland. The Northern Ireland Executive has not announced an intention to ban either the sale or the use of glue traps.

3.31 Under the MAPs, if a glue trap is lawfully produced in (or imported into) a part of the UK where it is also lawful to sell it, it could be sold in any UK nation without needing to comply with any requirements imposed there.

### ***Future interaction between Common Frameworks and the MAPs***

3.32 The Scottish Government stated in February 2023 that the ‘formal process for excluding the deposit return scheme regulations from the Internal Market Act is well underway.’<sup>82</sup> We are aware that discussions are ongoing regarding this process.

3.33 As at the date of finalisation of this report, we are not aware of any further exclusions from the MAPs. The UK Government has, however, publicly

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<sup>79</sup> The Scottish Government Minister for Environment and Land Reform raised concerns about relevant discussions having only been initiated under Common Frameworks after the Bill had been introduced, saying that Common Framework discussions before publication would have enabled consideration of potential policy divergence in advance. Scottish Government, [Genetic Technologies \(Precision Breeding\) Bill: letter to UK Government](#), June 2022.

<sup>80</sup> The Welsh Government Minister for Climate Change stated ‘I am extremely concerned that the UK Government has chosen not to work within the Common Frameworks that are in place in several of [the policy areas that interact with the Bill].’ Welsh Government, [Genetic Technologies \(Precision Breeding\) Bill: letter from Minister for Climate Change to Llywydd](#), June 2022.

<sup>81</sup> Glue traps are small boards covered with strong adhesive that are generally used to catch rodents in indoor settings.

<sup>82</sup> Herald Scotland, [Concerns deposit return scheme will create unlawful UK trade barrier](#), February 2023.

consulted on amendments set out in Schedule 2 of the Act in respect of services.

3.34 The UK Government and Devolved Governments have agreed that where Common Frameworks are operating, they are the right mechanism for discussing retained EU law reform in the areas they cover.<sup>83</sup> If the Retained EU Law (Revocation and Reform) Bill is enacted in its current form, this will require officials to consider and agree whether to preserve, restate, revoke and replace or update several laws. As such, there is significant potential for new regulatory differences to emerge in areas covered by Common Frameworks over the next few years, some of which may engage the MAPs. We will continue to monitor developments as they in this space as they emerge.

### **The impact of Common Frameworks on the operation and development of the UK internal market**

3.35 The Act requires us to report on, among other things, the impact of Common Frameworks on the operation and development of the internal market in the UK.

3.36 Beyond the examples discussed above, we have seen limited evidence of Common Frameworks playing a role in managing the potential impacts of regulatory differences that are likely to interact with the MAPs or have a significant impact on the UK internal market.<sup>84</sup> This is consistent with the relatively small amount of new regulatory difference seen since the UK's withdrawal from the EU.

3.37 As described in paragraphs 3.13 to 3.15, through a questionnaire we sought views from the four governments on how Common Frameworks are operating.

3.38 Defra noted that Common Framework discussions to date have primarily focused on 'business as usual' administrative and operational issues due to the relatively short time in which significant divergence has been possible. It referenced the potential for interactions between Common Frameworks, the Act and the Protocol to add 'complexity that will need to be considered as the scope for policy divergence increases'. Looking to the future, Defra suggested

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<sup>83</sup> [Letter from Felicity Buchan MP, DLUHC Minister, to Baroness Andrews, Chair of the Lords Common Frameworks Scrutiny Committee](#), November 2022.

<sup>84</sup> This aligns with earlier findings of the House of Lords Common Frameworks Scrutiny Committee, [Common frameworks: an unfulfilled opportunity?](#), July 2022: 'Common Frameworks are yet to be tested effectively as to whether they will still prove useful in coordinating new policy approaches between the four administrations of the UK.'

that the OIM may wish to consider the extent to which broader intergovernmental relations have affected Common Frameworks, review the operation of the exclusion process as it becomes more embedded in the policy-making cycle and assist the governments in understanding what 'detrimental' regulatory difference looks like in practice.

- 3.39 The Scottish Government outlined its view that Common Frameworks 'provide a consensual model for managing divergence' that is 'sufficient to manage practical regulatory and market impacts in devolved areas' which may result from the UK's withdrawal from the EU. It raised concerns that the Act poses a risk to the effective operation of Common Frameworks by casting them as 'potentially disruptive to the internal market', rather than as a means to enable the functioning of the internal market by managing divergence.
- 3.40 The Welsh Government suggested that Common Frameworks have only needed to manage a small amount of regulatory difference to date, and it is too early to draw substantive conclusions about their impact. Its response commented positively on the potential of Common Frameworks, stating that they 'aim to manage divergence effectively and have a profound impact on the functioning of the internal market'. The Welsh Government noted that, in areas where the UKIM Act applies, Common Frameworks offer 'space to discuss the impacts of [policy proposals]' and in areas that are excluded from the scope of the Act via regulations, that governments may use Common Frameworks 'to harmonise rules or set minimum/maximum standards'.
- 3.41 DAERA noted that all Common Frameworks in the environment, food and rural affairs space are operational in provisional form and governance structures are functioning as per the provisional agreements. It shared examples of stakeholder engagement fora that have been created, and of specific policy positions agreed under Common Frameworks.
- 3.42 Defra stated that it expects to receive further requests for an exclusion from the MAPs, and the Scottish Government said that it expects the four governments to need to consider exclusions regularly.
- 3.43 Governments provided examples of Common Frameworks being used, including the published lists of nutrition and health claims and regulations considered by the Nutrition Labelling Composition and Standards ('NLCS') Provisional Common Framework Policy Group;<sup>85</sup> collective positions agreed

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<sup>85</sup> Department for Health and Social Care, [Nutrition Labelling Composition and Standards Provisional Common Framework command paper](#), October 2020.

under the Plant Varieties and Seeds, Plant Health and Fertilisers Common Frameworks; different approaches to supporting pig farmers agreed under the Agricultural Support Common Framework; and a four-nations consultation on labelling and composition proposals in respect of bread and flour, run under the Food Compositional Standards and Labelling Common Framework.<sup>86, 87</sup>

3.44 The Scottish Government has told us that, while Common Frameworks can enable discussion of the potential impacts of regulatory differences at any stage in the policy cycle, intergovernmental engagement at an early stage of policy development (i.e., before details of the policy have been finalised) is important if Common Frameworks are to facilitate coordination and agreement on common approaches. This echoes comments made to the Common Frameworks Scrutiny Committee by the Second Permanent Secretary at the Cabinet Office, who said ‘I firmly believe that the earlier we have engagement, the better we will be in our legislation and the regulations.’<sup>88</sup>.

3.45 Evidence from our roundtables indicated that while some businesses and trade bodies were aware of Common Frameworks, most were not. Stakeholders who were aware of Common Frameworks told us that they do not understand what issues are discussed through particular Common Framework fora, nor whether there are opportunities for them to input to such discussions. They also told us that they do not understand how Common Frameworks fit into the broader UK internal market landscape and whether their role and significance has changed over time – for example, in light of the Protocol and the introduction of the Act.

3.46 Businesses have raised concerns about the lack of a role, formal or informal, for non-governmental stakeholders in many Common Frameworks.<sup>89</sup> This has been echoed in evidence to legislatures from trade associations and third sector organisations. The House of Lords Common Frameworks Scrutiny Committee found that, although Common Frameworks have evolved as a means of agreeing ways of working between the four governments, they also have an impact on stakeholders in relevant areas.<sup>90</sup> Evidence to the Committee

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<sup>86</sup> UK Government and the Devolved Governments, [Consultation on amending the Bread and Flour Regulations 1998 and the Bread and Flour Regulations \(Northern Ireland\) 1998](#), September 2022.

<sup>87</sup> This is in addition to the establishment of independent expert groups, such as the Expert Group for Organic Production under the Organic Production Common Framework, the continuation of the UK Plant Health Advisory Forum under the Plant Health Common Framework, and the establishment of expert committees on toxicity, mutagenicity and carcinogenicity under the Nutrition Labelling, Composition and Standards Common Framework.

<sup>88</sup> The House of Lords Common Frameworks Scrutiny Committee, [Corrected oral evidence: Post-Brexit common frameworks](#), March 2022.

<sup>89</sup> Scottish Parliament, [Published responses for Common Frameworks](#).

<sup>90</sup> The House of Lords Common Frameworks Scrutiny Committee, [Common frameworks: an unfulfilled opportunity?](#), July 2022.



suggested that stakeholder engagement had been inconsistent between Frameworks and had often been limited in nature.

3.47 The House of Lords Common Frameworks Scrutiny Committee recommended that ‘as Common Frameworks become more embedded, stakeholders should be routinely engaged’.<sup>91</sup> The UK Government accepted this recommendation, referencing regular updates to the Common Frameworks page on GOV.UK and the inclusion of updates on the Common Frameworks programme in quarterly intergovernmental relations transparency reports.<sup>92</sup>

## Conclusion

3.48 We recognise that ‘Common Frameworks are [a] very important mechanism that has been set up to reach agreement on managing potential regulatory divergence in devolved areas of competence across the nations.’<sup>93</sup> While many (provisional) Common Frameworks have been operational for over a year, the majority of Frameworks have not needed to consider substantively different regulatory proposals during that time.

3.49 While many Common Frameworks are operational, only around half have been identified as expected to interact with the Act, and only a small number of these have so far been called on in practice to consider regulatory developments that are likely to interact with the MAPs or have a significant impact on the UK internal market.

3.50 Although the number of interactions between Common Frameworks and the MAPs to date has been small, they have nonetheless been significant. These interactions may become more important over time. For example, under the Resources and Waste Common Framework, the Scottish Government obtained the first exclusion from the MAPs for goods in August 2022. However, beyond the identified interactions, there is limited evidence to date that Common Frameworks have been used to consider regulatory developments that are likely to interact with the MAPs or have a significant impact on the UK internal market.

3.51 The four governments indicated to us that they are broadly supportive of the role that Common Frameworks can play in enabling the functioning of the UK

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<sup>91</sup> The House of Lords Common Frameworks Scrutiny Committee, [Common frameworks: an unfulfilled opportunity?](#), July 2022.

<sup>92</sup> Cabinet Office, [Government Response to the House of Lords Common Frameworks Scrutiny Committee report: ‘Common Frameworks: an unfulfilled opportunity?’](#), November 2022.

<sup>93</sup> The House of Lords Common Frameworks Scrutiny Committee, [Evidence session with Rachel Merelie, Senior Director of the OIM](#), November 2021.

internal market. It is important that Common Framework structures work for the officials who use them day-to-day and evidence shared with us suggests that these structures are 'bedding in' and (as in the case of the exclusions process) being tested in practice.

- 3.52 Awareness of Common Frameworks among external stakeholders, such as businesses and trade associations, is low. Those who are aware of Common Frameworks indicated that they are unaware of governments' ambitions for Common Frameworks and did not know what topics were being discussed or whether there are opportunities for them to input into those discussions.
- 3.53 As governments gain experience of the interaction of relevant Common Frameworks with the MAPs, we would encourage transparency both between the governments and with external stakeholders, such as businesses and third sector organisations about future regulatory developments that may engage the MAPs and intersect with Common Frameworks.
- 3.54 In order for policy officials to identify and manage the potential effects of regulatory differences on the UK internal market, they require a good understanding of what these effects might be. Stakeholder engagement can help to inform this understanding. We note the UK Government's commitment to update the Common Frameworks page on GOV.UK and to include updates on Common Frameworks in quarterly intergovernmental transparency reports. A proactive approach to explaining the role of Common Frameworks, how they operate and what topics are currently under discussion would increase the likelihood of stakeholders engaging effectively and providing useful insights.
- 3.55 We are clear that governments are best placed to determine how to make Common Frameworks effective and we are ready to support Common Frameworks and any discussions around the exclusions process with expert advice on the economic effects as appropriate. We will continue to monitor developments under Common Frameworks as more regulatory differences emerge and we expect to make a fuller assessment of their impact on the UK internal market in our next periodic report.

## 4. Periodic report – conclusion

- 4.1 The management of an internal market involves balancing frictionless trade against the right of territorial jurisdictions to set their own rules. The UK internal market regime has only been in place for a little over two years and, given the small number of new regulatory differences between UK nations in that time, this periodic report is intended to establish a baseline rather than to draw definitive conclusions about the effectiveness of the regime. In particular, we have not identified evidence of regulatory changes that might interact with the MAPs as they apply to services or professional qualifications.
- 4.2 Awareness of the MAPs among businesses is generally very low and the MAPs have not been tested through enforcement action or litigation. It may be reasonable to assume that the low level of new regulatory difference between UK nations is reflected in low awareness of the MAPs, as businesses have not needed to rely on the MAPs to support their trading activities. As noted in our annual report 2022-2023, few businesses report facing challenges in intra-UK trade due to differing rules or regulations between the nations.
- 4.3 Governments are thinking carefully about how the MAPs might operate if tested. The Scottish Government's move to secure an exclusion from the MAPs for its regulations banning certain single use plastic products and commencement of the process to obtain an exclusion from the MAPs for its deposit return scheme regulations, the Scottish and Welsh Governments' consideration of the MAPs in relation to the Genetic Technology (Precision Breeding) Bill, and the UK Government's request to the OIM for a report under section 34 of the Act on its proposed regulation banning sales of peat and peat-containing products in England all indicate that the potential effect of the MAPs is a consideration in policy development.
- 4.4 Common Frameworks are an important part of the regime as a whole, though only a small number have been used in practice to consider regulatory developments that are likely to interact with the MAPs. Although the number of interactions between Common Frameworks and the MAPs to date has been small, they have nonetheless been significant and we recognise that such interactions may become more important over time.
- 4.5 Awareness and certainty about the Act's operation and the volume of regulatory activity which may engage the MAPs and Common Frameworks may increase over time. We will continue to monitor developments relevant to the internal market and engage with governments and other stakeholders, to support our future assessment of the effectiveness of the regime in subsequent periodic reports.

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