[redacted]

[redacted] is pleased to respond to the Department for Business and Trade's call for evidence on its review of the Internal Markets Act. [redacted] is a coalition of 14 leading UK animal welfare organisations[1]. The purpose of the group is to closely monitor discussions and agreements being developed on any matters relating to animal welfare, as well as seeking to push standards upwards by providing advice and clear pathways to protect and improve animal welfare in trade. [redacted] work so far has included:

- Reviews and briefings of the impacts of the UK-EU TCA through attendance on DAGs and civil society groups
- Responses to the Trade and Agricultural Commission (TAC) on the three post Brexit FTAs that the UK has ratified, looking at the impacts on animal welfare and the case for core standards
- A position paper looking at the options to fulfil the government manifesto commitment for a Common Veterinary Agreement

Question 1: What are your views on how the UK internal market for goods is best supported using the UK Internal Market Act?

1. [redacted] welcomes the review of the Internal Markets Act 2020 (IMA). This Act was pushed through Parliament in a very short time period (it was laid on 9 September and adopted on 18 December 2020) following a short four week consultation in order to set up a functioning UK internal market before negotiations on how and when the UK left the EU were completed. These negotiations, which became the Trade and Cooperation Agreement (TCA) were not completed until December 24th 2020 with an exit on 31 January 2021. Since then the relationship between the UK internal market and the EU's internal market as it operates in Northern Ireland, has been further defined through the Windsor Framework Agreement in 2023 and subsequent implementing legislation. In addition since the [redacted] was agreed, there has been an increasing number of laws being proposed and adopted by the Devolved Authorities (DAs) wishing to pursue standards higher than the UK on areas which are devolved competence. These have highlighted the tensions between raising standards on issues, such as animal welfare, that are devolved and the operation of a UK internal market. These issues include environmental and animal welfare concerns such as phasing out single use plastic[2], delayed

[redacted]

introduction of the bottle deposit scheme in Scotland[3], delay then agreement on introducing a sales ban on glue traps in Scotland[4] and permitting gene engineering in plants[5] in England, prohibited in Wales and Scotland but allowing the sale of products from this production method in all parts of the internal market.

2. There have been four main criticisms of the [redacted]. Firstly control of the process is centralised to the UK Government. There is no clear process as to how the exclusions process work or indeed if there is an economic threshold to clear. When the government permitted the Scottish glue traps sales ban this was on the grounds that it would have no material impact on the running of the UK's Single Market. However it was not clear what definition this used or the financial trade data that were used to come to this decision. [redacted] notes that Qs 18 and 19 covers this and welcomes clarification on this issue. Secondly, there is no transparent decision making process under the IMA other than through the Common Frameworks Agreement (CFA) but the links themselves between the IMA and CFA process are not clear. Thirdly, there is no real consultation process so no real parliamentary scrutiny in the DAs when the UK Government proposes legislation. Finally the decision making under the CFA is not transparent. All four of these areas need to be addressed to support the UK internal market for goods.
3. There does not appear, despite the clarification subsequent to the adoption of the IMA, a clear understanding of the relationship between the Common Frameworks Agreement (CFA) and the rules of the IMA. Animal health and welfare is a shared framework included under the CFA, so is recognised as an issue where there needs to be mutual recognition of animal welfare standards and discussion to prevent harmful divergence from these standards. Included in the CFA is a triaged dispute settlement system including up to Ministerial level[6]. Under the CFA on animal welfare, that process is handled by Defra and equivalent DA Ministries. However the running of the IMA is led by the Department of Business and Trade. It is not clear if this decision making structure in different Ministries has hindered the process of making decisions on exclusions under the IMA.

Question 3: What is the right balance between the potential for local regulatory innovations in sectors and UK-wide alignment?

4. It is vital that the devolved governments are able to develop laws and policies that are right for their nations, so developing regulatory innovations at a regional level as this is at the core principle of the devolution settlement. However, this should not create trade barriers for free movement of professions or goods. The EU's Single Market recognised this problem and case law has evolved through European Court of Justice judgements, such as Cassis de Dijon[7], giving clarification on general principles around mutual recognition. The UK had this clarification when it was a member of the EU on free movement of products within the UK Internal Market as a subset of free movement

[redacted]

of products in the EU's Internal Market.

5. When the UK was a member of the EU, the EU level provided a baseline and even where it was possible for any legislature to raise their standards this was rarely taken. Where they did (eg Northern Ireland has a maximum stocking density for meat chickens of 42 kg/m2 compared to 39 kg/m2 in the other jurisdictions), this difference was too small to disturb or interrupt the UK's internal market.
6. However, whilst the EU retains its authority on free movement of GOODS and professional qualifications in its Single Market, as the IMA does not have a similar recognised legal process or an equivalent of the ECJ, there is less clarity on what products can circulate within the UK's Single Market. Decisions on exemptions are piece meal and seemingly not under an agreed framework. Although the CFA does have a dispute settlement process, it is a political one not a legal one ie final decisions are made by Ministers not through a judicial process. Decisions from this dispute settlement process are also not published, unlike decisions from the ECJ process, so it is difficult to assess how the decisions are made or what impact they have on future decisions.
7. Under the Internal Market Act 2020, Governments in Scotland and Wales have very limited powers to stop the internal trade in a product from another GB country, or even to discriminate against the import of products by labelling these. Under the non discrimination principle (Article 5), any goods produced in one part of the UK must be able to 'travel' to another part of the UK and cannot be placed at a commercial disadvantage (Article 8). [redacted] is very concerned that provisions contained within the UK Internal Market Act are inconsistent with the Common Frameworks Agreement (CFA) so this leaves the devolved Governments with little power to restrict the sale and import of certain products that pose a threat to animal welfare into Scotland and Wales, or conversely to adopt their own standards in areas that are devolved such as animal welfare, that impact on the UK's Single Market. This is regardless as to whether there is the political will and public appetite. For instance the Scottish and Welsh Governments wish to restrict the future sale of fireworks in Scotland or Wales to reduce animal welfare suffering. There has been an acknowledged rise in complaints, and it has public support in both countries. However the sale of fireworks is a reserved power although controls on the use of fireworks is a devolved matter. So DAs can adopt measures that are within their devolved competence, such as establishing firework free zones. However they are not able to agree measures on sale of fireworks without going through the CFA or IMA process. Indeed, applying the Common Framework Agreement may be a more transparent method to solving these issues, as all four legislatures can raise issues under this Framework and there is an established triage system if agreement is not found. This triage system does not exist under the IMA.
8. [redacted] believes that the right balance should be to examine the impact of legislation made by DAs to make divergent policies in devolved matters such as animal welfare. For instance, was the decision made by the UK Government to permit gene editing in England but allow it to be sold in the UK via the principles in the IMA, agreed under the CFA process with the DAs? Both the Welsh and Scottish Governments complained that they had not been consulted before the Defra legislation was published in Westminster Parliament and discussions were only started under the CFA process when the Bill was introduced[8]. This implies that the process for the UK Government acting on behalf of

8 [redacted]

England, was different to the process that is applied to the DAs when they are propose changes to their legislation. The DAs have to apply for ratification under the CFA process for any legislation that they are intending to lay, before it is laid.

9. If the Senedd had for instance proposed permitting genetic engineering on plants rather than Defra, would this have had to be approved under the Common Frameworks Agreement (CFA) before proceeding. The UK Government's implementation of approving GE in plants did not appear to go via the CFA, despite it having a major implication on DA's position, which remains against permitting GE. Are the same rules available and being applied equally to all the DAs including the UK Government acting on behalf of England?
10. It is also unclear if the Framework could risk restricting the power of legislatures, or non-Governmental Parliamentarians. For example, the Scottish Parliament, the Senedd and in the tabling of backbench proposals from elected representatives which may be unable, or not wish to, align with the Framework; or if Parliaments amend legislative proposals away from principles agreed by governments under the Framework.
11. Whilst the process to adopt legislation in the DAs on issues that could impact the Single Market, such as a sales ban on fireworks or glue traps, are unclear under the IMA or CFA and so consequently seem to be difficult to resolve, other issues such as different approaches to sales on puppies have been agreed piecemeal but no impact assessment on the UK's Internal Market completed. One example is the sale and trade in puppies. Wales has had a ban on the sales of puppies other than from the breeder based in Wales since 2021. This is different to the English legislation, adopted in 2020, which permits sales of puppies from the breeder irrespective of their geographical jurisdiction[9] and Scotland which has had a licensing system since 2021. Northern Ireland is due to establish its own legislation this year. So any breeding (production) and bringing to market (sale) of puppies is covered by four separate and uncoordinated legislative standards in each of the four UK jurisdictions. It is unclear how, if at all, these different measures were discussed under the IMA or the CFA between the administrations. There has been, to date, no review of the impact of these measures on the operation of the UK Single Market. But it is clear that the lack of a harmonised approach has been exploited by illegal puppy dealers to access the UK markets. Imports of illegal puppies flow into the English market (the main market due to its high population) from Ireland and Northern Ireland via Scotland, and from Wales to England. Puppies from Ireland or Northern Ireland that would be illegal to sell in Wales or Scotland, are able to be transported through these countries to be sold legally in England.
12. An additional factor is the coordination between the Internal Market Act 2020 and the EU's Single Market. For instance the legislation on the non commercial movement of pet animals into Northern Ireland from Great Britain was laid in October 2024 and comes into effect in June 2025[10]. This brings in different standards moving a dog from GB to Northern Ireland than moving the same dog within GB. Northern Ireland applies the EU's common rules on non commercial movement in dogs and cats permitting free movement of dogs throughout the EU if the dog is microchipped, passported and

[redacted]

rabies vaccinated, whereas the UK has applied for but not been afforded Part 1 status under EU Regulation 577/2013 as it does not yet apply those common rules[11]. So there is a disruption in the free movement of owned dogs within the UK's Internal Market as there is an existing harmonised piece of legislation that covers the EU and which is also applicable in Great Britain.

13. So there there are additional rules and disruption to the free movement of non commercial dogs from Great Britain to Northern Ireland but no disruption to the free movement of commercial dogs from Northern Ireland to Great Britain which are traded under existing rules.

Question 4: What are your views on the operation of the market access principles for goods to date?

14. There is a need for a consistent approach between Common Frameworks and the IMA. There are two main problems to resolve. Firstly, how to ensure each of the four legislatures can decide their own standards on devolved issues without impacting on the UK single market, whilst one jurisdiction follows the EU legislature on those issues under EU competence, and the other three do not. Secondly, how to ensure that the UK Government when devising policy on reserved areas that have an impact on devolved issues (free trade agreements on agri food practices being a good example), is transparent with and takes into account concerns from the four devolved legislatures
15. [redacted] believes that the present market access principles for goods contained in the IMA should reflect transparency and agreement on reserved issues, such as the impact of Free Trade Agreement provisions, which would impact on devolved issues such as farm animal welfare and agri food measures. Devolved Governments were effectively kept in the dark with the FTA provisions negotiated by the UK Government in UK-Australia and UK-New Zealand FTAs. For instance, it appears that there was no referral to the pre-agreed principles of this Common Framework regarding the impact of beef and lamb tariffs in the New Zealand and Australia FTAs on Wales or Scotland. If the UK Government has to put such proposals into the Common Framework process under the IMA it would certainly improve transparency. Whilst the Senedd objected to the UK-Australia FTA, this objection had no power or influence on the outcome of the negotiations. This is despite the impact of the FTA on Wales due to the free movement of products under the IMA. This disproportionately impacted Welsh sheep farmers due to the high numbers and proportion of these farmers in Wales compared to England.
16. Negotiations are now starting on a Common Veterinary Area with the EU, led by the UK Government but impacting on DAs particularly for agrifood exports. In January the Welsh Government asked for transparency in the Inter-Ministerial Group on EFRA issues on how the DAs would be involved in those discussions, highlighting that the process is still unclear and weighted against the DAs[12].
17. The UK Government is due to set out this year a new Food strategy, which [redacted] welcomes but this will inevitably be seen as a UK strategy rather than an England only strategy, due to the provisions of the IMA and again the DAs are asking for input into developing this strategy as it will be impacting

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[11] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013R0577

[12] https://www.gov.wales/written-statement-27-january-2025-inter-ministerial-group-environment-food-and-rural-affairs

on their devolved agrifood powers[12].

Question 5: What are your views on the use that has been made of the Part 1 amendment powers – for example the exclusion for single-use plastics? In particular, we would welcome views on whether the changes have had or will have a positive or negative impact and whether they have been effective. (An explanation of what the Part 1 amendment powers are and what use has been made of them can be found in the Annex).

18. There needs to be better transparency on how decisions are made between the CFA and the IMA on issues such as animal welfare, whose competence is under a different Minister to the DBT. For instance England, Wales and Scotland have all adopted differing standards on the use of glue traps in their countries, England a licensing system, Wales a ban on use and Scotland a ban on use and sale. Despite the ban on sales of glue traps being passed by the Scottish Parliament in May 2024, and presumably being discussed under the CFA, clarification was only given by the DBT Ministry in December 2024 that this ban would be permitted to proceed under the IMA on the grounds that it would have a minimum impact on the operation of the UK's internal market[13]. It is possible that if glue traps had been discussed under the IMA a common approach would have been agreed rather than the patchwork approach with different rules that emerged in all four DAs.
19. There also needs to be more transparency on the CFA process. Whilst issues to tackle common interests such as the puppy trade are raised and resolved at the CFA, it is unclear if other issues such as gene editing of animals were raised and how it was resolved as both Scotland, Northern Ireland and Wales all have objected to the law on gene editing but the law was still passed by the UK Parliament. If the DAs do not have a veto under CFA on English proposed legislation that will have an impact on DA competence (as the products are permitted to be sold in the DAs under the IMA) but DA legislation can be vetoed by the UK Government, there appears to be an imbalance in the dynamics between the four countries' ability to adopt and pass legislation.
20. The Common Frameworks sets out the process to reach agreement on a devolved legislature taking a different route to the others on animal welfare rules which seems to imply that a country has to get permission to undertake a change in a devolved issue such as animal welfare to assess the impact of this move on other administrations. Should a consensus not be agreed it is sent up through different levels in the Framework to get agreement and, if no agreement is reached, the issue is defined as a dispute where ultimately it will come down to Ministerial agreement to agree on a course of action. It is not clear from the Frameworks how such an agreement will occur if there continues to be no consensus at Ministerial level. Following the 2016 Referendum it was envisaged that there would be an independent Dispute Settlement Body, similar in operation to the WTO's DSM with three independent experts who would give an opinion on if the issue was likely to impact on the common internal market. It is not clear if such an approach is still being considered as it was never implemented. So the IMA process does not have a clear judicial approach to resolving disputes.

[redacted]

Question 9: What are your views on the use that has been made of the Part 2 amendment powers – for example, removing exclusions for certain services? In particular, we would welcome views on whether the changes have had or will have a positive or negative impact and whether they have been effective. (An explanation of what the Part 2 amendment powers are and what use has been made of them can be found in the Annex).

21. [redacted] agrees that exclusions should be made for certain GOODS as the Government has done for plastic cutlery and glue traps where these do not impact on the operation of the Single Market.
22. There needs to be better transparency on how decisions are made between the CFA and the IMA on issues such as animal welfare, whose competence is under a different Minister to the DBT. Included in the CFA is a triaged dispute settlement system including up to Ministerial level[14]. Under the CFA process on animal welfare, that process is handled by Defra and equivalent DA Ministries. However the running of the IMA is led by the Department of Business and Trade. It is not clear if this decision making structure in different Ministries has hindered the process of making decisions on exclusions under the IMA.

Question 10: What are your views on how the UK internal market for professions is best supported using the UK Internal Market Act?

23. [redacted] agrees that the IMA should permit anyone who has a recognised professional qualification from one of the four areas to be used where relevant in any of the other four areas. However we also recognise that it is a devolved responsibility for each DA to decide what activities can require a professional qualification if that activity is a devolved matter, in this case animal welfare. For instance England permits licensing of eight different activities under the Licensing of Activities Involving Animals Regulations 2018. This may include in the future licensing of animal behaviourists with a suitable qualification. As this legislation is devolved this opportunity may not be available in the other three parts of the UK Single Market.

Question 13: How can the Office for the Internal Market best support the UK internal market through its role in providing independent monitoring and advice?

24. [redacted] believes that the Office for the Internal Market (OIM) has an important role to play in evaluating the impacts of changes in the exceptions on internal trade eg adding a ban on the sales of glue traps in Scotland on the operation of the internal market. This should be described in its Annual Report on the basis of trade patterns. The OIM should also be able to offer guidance to the Common Frameworks process using trade patterns on the likely impact of any changes to the exceptions granted under the IMA 2020.

[redacted]

Question 14: What are your views on whether the current arrangements in Part 4 relating to the use of the Office for the Internal Market task groups are appropriate for securing the most effective and efficient performance of the CMA's Part 4 functions? We would welcome views in particular on any advantages or disadvantages of continuing with the current arrangements as compared with other possible ways of carrying out the Part 4 functions. (A full list of functions is set out in the Annex).

25. [redacted] agrees with the establishment of task groups to evaluate the effective functioning of the internal market but believes there should be more transparency in the evaluation process of activities that are proposed as being excluded from the IMA. This should include, as Governments presently undertake, short consultations on any proposed measure which would enable stakeholders with relevant information to submit information, including trade data, on the possible impacts, positive or negative of the measure.

Question 15: What improvements could be introduced to facilitate more pragmatic management of the UK Internal Market Act's exclusions process?

26. [redacted] believes there should be more transparency in the evaluation process of activities that are proposed as being excluded from the IMA. This should include, as Governments presently undertake, short consultations on any proposed measure which would enable stakeholders with relevant information to submit information, including trade data, on the possible impacts, positive or negative of the measure.

Question 16: How should we ensure proportionate engagement with interested parties in relation to potential exclusions?

27. [redacted] believes there should be more transparency and engagement with interested parties in relation to potential exclusions. This should include, as Governments presently undertake, short consultations on any proposed measure which would enable stakeholders with relevant information to submit information, including trade data, on the possible impacts, positive or negative of the measure.

Question 17: What evidence should be provided in support of an exclusion proposal by the proposing government, so the proposal can be fully considered (for example, information on potential impacts on businesses' ability to trade within the UK and the policy implications of not having an exclusion)?

28. The evidence to defend a proposal should be based on public opinion (which could also inform how the public morals exemption is defended under Article XX of the GATT at the WTO DSB), internal trade impacts based on financial and other data on (which would answer the impact on the single market), and business costs of where the industry is located to ascertain if this measure is necessary and is not a disguised restriction on trade. Alternative methods that are "reasonably available" should be examined but it should be up to the defending country to demonstrate that these alternative methods are not reasonable.

Question 18: Should there be a different process to consider exclusions proposals which could lead to potentially significant economic impact, compared to those likely to lead to smaller economic impact?

29. No. The evidence to defend a proposal should be based on the same parameters as outlined in Q25 ie public opinion (which would answer the public morals question of the WTO DSB), internal trade impacts based on financial and other data on (which would answer the impact on the single market), and business costs of where the industry is located to ascertain if this measure is necessary and is not a disguised restriction on trade. Alternative methods that are "reasonably available" should be examined but it should be up to the defending country to demonstrate that these alternative methods are not reasonable.

Question 19: What do you think constitutes a potentially significant economic impact?

30. Anything that is a disguised restriction on trade that has a significant economic impact. A significant economic impact could be anything that significantly disrupts internal trade so that businesses relocate or are impacted or advantaged by the measure.

Question 20: Is there anything else you want to tell us about the operation of the UK Internal Market Act?

31. [redacted] believes that the IMA should reflect the procedures in the EU ie there is a legal judicial process to assess disputes, there is transparency in the process and judgements which should be consulted upon and be published on the .gov website and clear framework set out between the IMA and the CFA.

[redacted]

April 2025

[redacted]

Introduction

1. Last year saw the 25th anniversary of devolution. Decentralising and moving decision-making on key public-policy issues closer to the people in each constituent part of the UK was a core tenet of that process. For over 20 of those years, devolved decision-making operated within, and was strengthened by, the EU single market. The single market's legal framework struck an appropriate balance between allowing for a significant degree of subsidiarity on the one hand, and ensuring appropriate uniformity for commercial and other economic purposes on the other. This helped support a period of sustained growth for the UK and [redacted].

2. [redacted] have, from the beginning, had serious concerns about the adoption of the new and different constraints imposed by the UK Internal Market Act ('UKIMA'). UKIMA is far more restrictive - and its impact on devolution more wide-ranging and profound - than the EU single market rules it replaces. Our view is that UKIMA should never have been adopted by the previous UK Government, and should now be repealed and replaced with an alternative approach based on the Common Frameworks.

3. We welcome the UK Government's early review of UKIMA, although we are disappointed it ruled out the option of repealing the Act. The review is an important opportunity to address some of our concerns by reframing and amending UKIMA to allow Common Frameworks to take precedence.

4. We believe it is important to work together to maintain an internal market across all parts of the UK which supports growth and prosperity. But this should be achieved in a way that respects the responsibility of the devolved legislatures and governments. A consensual system of Common Frameworks could be underpinned by amending UKIMA so it applies as a legislative safety net, adopting principles similar to the legal framework that continues to apply within the EU. This could involve a greater role for an independent body to improve the impartial, objective management of the UK internal market, and provide greater stability and transparency for businesses.

5. We particularly welcome the recommitment of the UK Government to the Common Framework principles[1]. We share a desire for Common Frameworks to be the primary tool for managing the cooperation and divergence within the UK internal market, but with a reformed UKIMA in the background. The current formation of UKIMA is incompatible with meeting those principles. This would require UKIMA to include some discretion for devolved legislatures and governments to take decisions about their parts of the UK, providing at least the same flexibility as existed under EU rules.

[redacted]

6. Our contribution to this review is intended to provide a platform for further discussion, development and agreement. We want to work together on a programme of specific legislative and non-legislative changes to provide a more equitable and stable legal framework for the UK internal market. Our response is structured in three distinct parts:

   i. First, we cover the introduction of UKIMA and the arguments used by the last UK Government to seek to avoid engaging with our legitimate concerns. This is important in order to understand the urgent need for legislative reform to move from a unilaterally imposed system to one founded on collective agreement, reinforced by a legal framework that respects rather than overrides the powers of the devolved legislatures and governments.

   ii. Secondly, we address the specific issues with UKIMA and its real impact on the functioning of devolution, policy innovation and growth. This highlights the need for legislative change to properly respect devolution, support economic growth and to allow Common Frameworks to become the primary tool for regulatory cooperation.

   iii. Finally, in the spirit of collaboration, we propose four key areas in which we believe substantive changes can be developed and agreed across all four nations to provide assurances and safeguards for the UK internal market and our international obligations whilst restoring the effectiveness of devolution, increase predictability for businesses, and better support growth.

7. We expect this to be a process we enter into collaboratively and hope the review provides us with the basis to agree a meaningful programme of reform to UKIMA and how it operates. This should include a commitment to legislative changes over the course of this UK Parliamentary term. This is of fundamental importance so that we can put in place a sustainable legal framework which is less open to being misused by a future UK Government. There are also a range of non-statutory commitments relating to the way UKIMA will be used and operated which can be made and implemented quickly.

8. Since the formation of the new UK Government we have seen improvements in intergovernmental relations in a range of areas. Such improvements are welcome but need to be built upon. This review is an ideal opportunity to demonstrate a positive reset of relations between the UK Government and the devolved governments.

9. We wish to record also that separate and urgent attention is also needed to review UKIMA's financial assistance powers, an issue that has been put outside the scope of this review.

PART 1: UKIMA's lack of constitutional and democratic legitimacy

UKIMA does not have the consent of the devolved parliaments and governments, and its passing was one of the most egregious and controversial breaches of the Sewel convention since devolution

Unilateral imposition of UKIMA without consent

10. We support the concept of an internal market in the UK and recognise the importance of free-flowing trade across the UK. However, this was something that had already been achieved not only within the UK but across the EU – and achieved in a way that dovetailed appropriately with the principle of subsidiarity and, within the UK, the constitutional reality of devolution. Following the decision to leave the EU, we sought to work collaboratively and constructively with the UK Government, and other devolved governments, on the shared challenges leaving the EU single market created. We collectively agreed that a new approach was needed to support the effective functioning of the UK internal market outside of EU single market rules. On that basis, we entered in good faith into detailed discussions with the then UK Government to develop an approach which reflects the [redacted] responsibilities under devolution, and our shared role for the governance of domestic markets. Indeed, the work on the Common Frameworks programme led to the [redacted] recommending consent to the European Union (Withdrawal) Bill [2]. Regrettably, however, the then UK Government later undermined this joint work instead choosing to pursue the proposals that were eventually enacted by UKIMA.

11. The UK is a voluntary union built on consent. Within that union there are four legislatures and four governments, each with its own responsibilities and democratic mandate. However, UKIMA was introduced unilaterally by the last UK Government at great pace, with limited consultation and truncated scrutiny. It involved a serious breach of the Sewel Convention. The [redacted] opposed UKIMA and [redacted] did not give its consent to it. The legislative and executive competences of the [redacted] are supported by successive referendums in which the people of [redacted] chose for decisions on a range of policy issues to be taken by them. The lack of engagement during UKIMA's development, its lack of UK-wide mandate, and its incompatibility with devolved powers and responsibilities must be urgently addressed.

12. The rushed approach the last UK Government adopted has:

- ignored the positive effects of regulation on innovation[3] and supporting growth[4];

[redacted]

- overstated the perceived impacts of any form of divergence from policy in England by devolved governments;
- created an unrealistic imaginary spectre of excessive regulatory divergence disrupting markets (despite this being contrary to our shared international commitments, the history of limited divergence within EU rules, and the reality of doing so in a UK internal market); and
- undermined the consensual and collaborative approach developed as part of the Common Frameworks programme.

13. UKIMA in fundamentally inequitable. It has skewed the UK internal market yet further towards, and directs more power towards, the already economically and politically dominant part of the UK. It places new asymmetrical constraints[5] – constraints that for England are either of minimal impact or easily avoided by the UK Government using powers in UKIMA or exercising parliamentary sovereignty.

14. We strongly believe collaboration and joint working is the best way to create a strong, secure and equitable union, underpinned by sustainable economic growth and high-quality jobs. Our engagement with the Common Frameworks programme demonstrated that commitment towards a successful internal market. We have taken a collaborative approach whenever the UK Government has been open to work with us; for example, by participating in and supporting the appointment of the chair and panel to the Office for the Internal Market in a way which respected devolution. Even during the Parliamentary passage of UKIMA, we sought to reopen multi-lateral discussions[6] and find solutions via proposed amendments to address some of the most egregious aspects of the draft Bill[7]. Despite these suggestions being largely ignored at the time, they illustrate it is possible to amend UKIMA to provide more of the flexibilities for devolved governments, equivalent to the EU framework, without compromising the internal market.

15. The negative impact of UKIMA on devolution has been evident since then, even where our governments have sought, more recently, to work constructively in dealing with its implications. These impacts have knock-on effects on businesses and the investment environment and have:

- led to delays and uncertainty, for both [redacted] and businesses;
- constrained the localised decision-making devolution was designed to achieve;
- restricted the implementation and effectiveness of policy; and
- stifled the innovation devolution had previously successfully encouraged (and would have been possible under the rules of the EU single market).

[redacted]

16. UKIMA also leads to conflicts of interest given the UK Government's dual role acting for the whole of the UK in some aspects, but for England alone in others. Policy departments within the UK Government, responsible for policy within England, and without the knowledge of the devolved context, legislative framework or policies, have in some instances applied UKIMA in a way which asserts English policy across the UK as a whole. The previous UK Government was widely perceived to be the English Government in this regard, and there is now an opportunity to address this.

<u>It is not a binary choice between the *potential* for regulatory difference and growth</u>

17. The [redacted] is committed to supporting the UK internal market and to regulatory cooperation across the UK. Economic growth is a priority for all parts of the UK. The importance of a smoothly functioning UK economy and internal market is not in dispute and is a shared ambition. We well understand the importance of the UK economy and of trade within the UK, not least its importance for [redacted] businesses. This is reflected in the [redacted] commitment to the union and to supporting sustainable economic growth and jobs. Our opposition to UKIMA as it stands is not contrary to our shared ambition for growth and jobs but is in fact informed by it and enabling of it.

18. Nor is the need for regulatory cooperation across the UK in dispute – indeed, this is why the Common Frameworks programme garnered cross-UK support. Regulatory cooperation should not be framed to ensure every part of the UK adopts English standards and solutions. It should be a mechanism for us to agree common minimum standards, and areas of harmonisation; as well as allowing different and distinctive approaches to achieve democratically determined public-policy goals in devolved areas. Our international commitments to good regulatory practice, including via the EU Trade and Cooperation Agreement, and the importance of the UK internal market to jobs and growth in [redacted] contradicts the assumptions of automatic divergence inherent in the restrictive design of UKIMA with respect to devolved governments.

19. UKIMA appears to have been written to solve a wholly imagined risk of a great divergence in regulation across the UK – and to solve this supposed risk in the bluntest possible way. Allowing for the potential for devolved governments to decide on the merits of alignment or distinctiveness in devolved areas (in practical effect as well as on a purely technical basis) does not automatically equate to substantive divergence in those areas. Evidence shows that devolved governments will often choose to align across the UK as that is in our interests – but that is a choice made, not a requirement enforced, or a power blunted. UKIMA is overly restrictive and risk averse, developed seemingly either to solve a problem that does not exist in practice (and decades in the EU illustrates modest divergence across the UK in a more permissive system) or as a mechanism to constrain devolved powers and choices. There is, in reality, negligible risk and much to gain from making changes to create a new approach that is compatible with devolution, with clear principles and which facilitates different approaches tailored to devolved contexts where needed. The stultifying

effect of UKIMA on policy innovation and reform[8] must be removed to unlock the growth potential in all parts of the UK.

The protections for Northern Ireland are not being challenged

20. The protections for Northern Ireland included in UKIMA are not in dispute. The previous UK Government used such protections to justify the entirety of UKIMA and as a means to close down discussions on alternatives. Commitments and reassurances relevant to Northern Ireland can continue without needing to directly restrict devolved powers whenever the market access principles could be engaged.

[8] UKIMA also disincentives the reform or simplification of pre-existing legislation currently exempted from the market access principles, as to do so could remove that exemption and limit its effectiveness.

PART 2: UKIMA goes way too far

UKIMA is "much stronger and more restrictive than EU law"[9]*, leading to "a regulatory framework that is incomplete, coercive and…highly asymmetrical," imposing a centralising role for the UK government*[10]*.*

21. UKIMA borrows heavily, but selectively, from the legal framework that established the EU single market. However, in relation to particularly important aspects for the exercise of devolved functions it is much more restrictive than EU law. This restrictiveness is most evident in the very narrow exclusions to the market access principles, without which certain devolved legislation interacting with those principles is automatically and widely "disapplied", effectively undermining the devolved policy intent.

22. Currently, the public-policy exclusions within UKIMA mean movement of goods may be restricted only when necessary to control the spread of pests and diseases, the spread of unsafe food between territories, or for the authorisation of certain chemicals and the regulations on fertilisers and pesticides. This is "*strikingly more limited than is available under EU internal market law*"[11]. Unlike many other internal markets, including the EU single market, there are no broader exclusions for public-policy reasons, for example environmental protection, human health, consumer protection, animal welfare, culture and heritage, or others. Despite the EU single market rules allowing for the potential of a wide range of divergence in principle, the application of a proportionality test to these exclusions has helped minimise unnecessary costs or market impacts.

<u>The exclusions process is not fit for purpose</u>

23. UKIMA provides for some flexibility through exclusions process and powers to both adjust the market access principles and exclude specific areas from them. However, this is a flexibility available to the UK Government only to use at its discretion. All powers sit with the already dominant economic actor, further unbalancing an already skewed internal market. [redacted] is reliant on decisions of the relevant Secretary of State, rather than on any objective criteria, and as previously stated, this gives rise to a conflict of interest where the UK Government is responsible for the corresponding policy for England only. This "*in effect, gives the UK Government a veto power*"[12] over requests from devolved governments. Devolved governments do not have similar influence over decisions made in relation to England which impact significantly on the internal market.

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[9] C.B. Swan, T Horsely, N McEwen, and L. C. Whitten, *Westminster rules? The United Kingdom Internal Market Act and Devolution* (3 October 2024). Published by the Centre for Public Policy.
[10] T Horsley, Constitutional Reform by Legal Transplantation: The UK Internal Market Act 2020, *Oxford Journal of Legal Studies*, Vol 42, Issue 4, Winter 2022, pp 1143–1169, https://doi.org/10.1093/ojls/gqac018
[11] S Weatherill, Will the United Kingdom survive the United Kingdom Internal Market Act? (March 2021), UK in a Changing Europe working paper. Available at: Will-the-United-Kingdom-survive-the-United-Kingdom-Internal-Market-Act.pdf
[12] C.B. Swan, T Horsely, N McEwen, and L. C. Whitten, *Westminster rules? The United Kingdom Internal Market Act and Devolution* (3 October 2024). Published by the Centre for Public Policy at the University of Glasgow

24. Where the Secretary of State is making a decision on an exclusion in a devolved policy area, as the UK Government is only responsible for policy in England and it cannot be expected to understand the distinctive context elsewhere. The UK Government generally does not distinguish between of its responsibility for the whole of the UK and of its responsibility for England only. This is a constitutional tension that lies at the heart of UKIMA, and it remains unresolved (indeed often unacknowledged). Acting on behalf of England is not the same as acting on behalf of the UK, and policies designed for the context in England do not automatically work in other parts of the UK. This creates a mechanism for any future UK Government to be able to force devolved governments to align with whatever approach is adopted in England – even if it is a disbenefit for the other nations, conflicts with devolved policy, or results in a loss of economic opportunity.

<u>UKIMA has created uncertainty for businesses because of its restrictive nature</u>

25. We are sure that some will argue that the most important aspect of the rules governing the UK internal market is legal certainty. The [redacted] disagrees for the reasons set out above. In addition, the apparent legal certainty is not always clear cut in practice. The exclusions process can cause uncertainty and confusion.

26. A clear example of this has been with regards to the delivery of deposit return schemes (DRS). For the first few years of their development, agreement had been reached between all four governments on a common scope for the schemes. However, in March 2022, the UK Government decided to diverge from the collective UK-wide policy scope which had been consulted upon. This decision was taken without any discussion or consideration of the implications for the rest of the UK. It was also taken without application the of agreed intergovernmental process.

27. UKIMA, however, meant that despite it being the UK Government that had taken the decision to diverge from the agreed UK-wide approach, the [redacted] was left to seek an exclusion to legislate for what had previously been the UK-wide policy position. Maintaining the original scope of the DRS is particularly key to [redacted] delivery of a scheme that further advances our very successful recycling performance. The previous UK Government's lack of clarity regarding criteria needed to merit an exclusion, clear principles or any set process or timetable on the one hand, and the conflict of interest arising from the approach being taken in England on the other, underlined the inherent flaws in UKIMA. Th. Despite delaying the [redacted] to try and reach an agreement, this was not possible within the time available, and it meant [redacted] could not participate in the joint process to appoint a Deposit Management Organisation.

28. Crucially, we are confident that our DRS *proposals would have been allowable within the EU single market*, where different members states operate separate schemes with different scopes (and where there are highly porous borders) with

no detriment to common market.

29. This instance evidences the imbalance inherent in UKIMA. The UK Government are able to ignore the implications of divergence for the rest of the UK and can unilaterally grant themselves an exclusion. Such misuse could see UKIMA repeatedly imposing English policy on the devolved nations.

30. Currently, there is no protection for the [redacted] in a situation where it agrees, in good faith, to proceed with a joint approach in a devolved area. If the UK Government subsequently alter their policy approach for England this, in turn, coerces devolved governments to comply with what is essentially English policy or risk the uncertainty of an undefined exclusions process governed by the UK Government without objective criteria, transparency, or independent oversight.

31. The current issues arise as a product of the limited scope of general public-policy exclusions, exacerbated by a problematic exclusions process. Uncertainty for businesses can still arise in any situation in which the devolved governments wish to do something different.

32. Looking further ahead, the current narrowness of UKIMA with respect to exclusions and the very specific nature of new exclusions granted to date, risks creating a complex morass of exclusions should the UK Government use these powers to facilitate devolved policy (by granting exclusions) rather than frustrate it (by denying them). Whilst the current approach might provide technical legal clarity, the result over time could become increasingly confusing for businesses to understand and navigate.

<u>Unless amended UKIMA will always be foregrounded above Common Frameworks</u>

33. Common Frameworks were originally intended to identify policy areas in which regulatory cooperation would be essential in areas previously subject to EU law. We welcome and share the UK Government's stated ambition for UKIMA to sit in the background and for Common Frameworks to be the primarily mechanism for regulatory cooperation.

34. However, the reality of the narrowness of the public-policy exclusions to the UKIMA, automatically places UKIMA front and foremost in any discussion about regulatory cooperation and coordination. UKIMA is the default mechanism governing the UK internal market, with very limited scope for regulatory innovation or addressing public policy. Should UKIMA become more flexible in these respects, it could operate as fallback legislative mechanism, which would elevate the Common Frameworks process.

35. UKIMA is also designed in such a way as to encourage deregulation and reduce standards to the lowest common denominator. Common Frameworks on the other hand, were intended to not only consider divergence but also the ability to develop common minimum standards, allow for innovation, and actively manage those areas where harmonisation is considered important. Agreements in those areas should also feature as a key component of the UK internal market,

preventing a race to the bottom and focusing on areas of agreement as well as difference.

PART 3: A better way forward

Options to address the constitutional issues with UKIMA whilst maintaining the protections for the UK internal market and promoting growth

Repeal of UKIMA

36. During its short history UKIMA has become synonymous with the previous UK Government using its powers to compel the devolved governments into regulatory convergence and alignment with England. Following Royal Assent, we witnessed the then UK Government use UKIMA, as a matter of policy choice, to limit and frustrate the legislative powers and policies of the devolved governments - irrespective of whether there were significant implications for the UK internal market.

37. The [redacted] commitment to challenge UKIMA and its undermining of devolution, and to champion the rights of [redacted] to legislate as it could before EU withdrawal (at least) in areas devolved to [redacted]. Our first preference remains that UKIMA should be repealed and replaced with a system based on the Common Frameworks. We have always accepted this may require a legislative underpinning, which can also provide protections for Northern Ireland, but this could have been achieved without damaging devolution as UKIMA does.

38. We recognise the current position taken by the UK Government to rule out repeal during this review. In the spirit of cooperation and collaboration, and with the intention that substantive changes could be made swiftly, we set out proposals for reform below. There is already a legal framework within the EU that can provide the basis for reforming UKIMA and establishing a more flexible, equitable and sustainable legal framework.

Potential areas for legislative reform of UKIMA and wider changes to reframe UKIMA as enabling of, rather than a constraint to, devolution and Common Frameworks.

39. We focus on four broad areas initially. Our suggestions reflect on key aspects of the EU single market and the model amendments previously proposed by the [redacted] during passage of the Bill[13]. These are also consistent with recommendations from academics and think tanks with expertise in both devolution and legislating within internal markets[14]:

    1. **Broaden the pre-existing exclusions to include general public-policy reasons[15]**. This is the most important change required to restore the integrity of devolution settlements and demonstrate an understanding and respect of

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[redacted]

them in practice. Broader pre-existing exclusions for public-policy reasons, including environmental protection, public health, consumer protections and others can be qualified by the inclusion of a proportionality test (with the burden of proof on the legislating authority) and complemented by an agreed mechanism to establish common or minimum standards (see 2). Depending on the precise nature of any future amendments to UKIMA, all governments of the UK would have to accept the risk of challenge when relying on a general public-policy exclusion being proportionate; but this is for the legislating government to defend, not a decision for the UK Government.

2. **Develop and agree a process for codifying areas for minimum or common agreed standards, for example in relation to specific goods, items, or produce.** The Common Frameworks process is intended to also discuss and develop minimum or common / harmonised standards all nations agree are necessary for the internal market, and UKIMA should include a mechanism to reflect those agreements where reached. Further work would be needed to consider the most appropriate model, but including relevant powers in UKIMA, tempered by the need for consent and a demonstration of subsidiarity, would address a key weakness of UKIMA which currently incentivises only competitive deregulation and a race to the bottom.

3. **Reform and codification of the exclusions process**. The changes above would change the nature of the exclusions process, by making it more rarely used. But even then, the process for establishing what should be excluded must still be reformed to become objective and transparent. It might still be used for areas in which absolute legal clarity is sought, where broader public-policy exclusions do not apply, or where exclusions are agreed as necessary via a Common Framework. Crucially, deciding what is excluded should not be a decision for the UK Government alone.

4. **Develop and agree a more objective and independent governance and oversight of the internal market and application of UKIMA**. This will need to follow on from the changes identified above, but a more proportionate UKIMA could see a greater reliance on strengthening existing mechanisms for Good Regulatory Practice, regulatory cooperation, and independent advice from the OIM. A principles-based approach, underpinned by broader general public-policy exemptions would mean each government ensures any reliance on them is proportionate and can be legally defended. To support oversight and assurance, and to limit the potential impact on the courts, the statutory powers of the OIM could be enhanced to act as an independent body advising and making recommendations on the application of UKIMA across the UK, taking into account broader factors beyond economic impact, and setting a firmer, impartial context around the use of powers in UKIMA. There would also be merit in discussing whether the OIM could take on more of a decision-making role.

40. These reforms and others can support an effective UK internal market which supports sustainable growth and jobs and works with, not against, the grain of devolution, not seeing it as a ‘problem’. As the review states, devolved powers

"promote an environment in which new, innovative approaches can be taken in one part of the UK and, if they are successful, these might be then adopted and rolled out in the rest of the UK." The reforms above will empower those devolved powers rather than restricting or blunting them.

41. These ideas are not exhaustive, and we hope they can be the beginning of detailed collaborative work between our governments to agree a programme of legislative and non-legislative changes to UKIMA and its operation. Our strong preference now the consultation period is over is for the devolved governments and the UK Government to develop these ideas (and any others) collaboratively and jointly with a view to agreeing a substantive programme of reform.

42. As noted towards the opening of this response, none of these changes should affect the place of Northern Ireland in the UK internal market, though detailed work should consider and have special regard to any possible impacts.

<u>Principles of proportionality and subsidiarity</u>

43. Taking a more principles-based approach should include introducing the familiar trade-law principles of proportionality and subsidiarity, which work together to frame regulations affecting cross-border trade. The benefit of this is that it can help manage the limits and impacts of regulatory divergence while preserving democratic autonomy. The principles as understood in the EU could be a template for UKIMA definitions, with governments and legislatures across the UK familiar to working with them.

44. Introducing a proportionality test would strike an appropriate balance between devolved decision-making and avoiding unnecessary costs and barriers to trade between the four nations. This would place increased responsibility on each of the governments as it would require them to take a case-by-case evidence-based assessment of the interaction of policy with these principles, as was the case within the EU. This places the responsibility on the devolved governments as intended by devolution, rather than siting decisions with a Secretary of State who may have no direct (or democratic) responsibility for the public-policy matter under consideration.

45. Introducing a subsidiarity test and consent mechanisms alongside a new approach to establishing minimum or common standards could help temper the competitive deregulatory nature of UKIMA as currently constituted.

<u>The process for new exclusions to the Market Access Principles to apply in the interim</u>

46. We recognise legislative change will not be immediate, and in the interim agreement can be reached on a more objective approach to exclusions. A starting point would be a clear statement of a presumption in favour of granting an exclusion requested by devolved governments, relying on the good regulatory practice each nation is signed up to. Instead, the burden of proof in relation to the exclusion should shift to any part of the UK which wishes to challenge the

need for the exemption on the basis it is not a proportionate means to achieve the stated policy goal. The same could be true of any agreement reached via a common framework – the presumption should be in favour of granting any exclusion emerging from that process unless challenged with suitable evidence.

47. To provide certainty and clarity over the detail of the process and expected timings, all governments should urgently co-produce, agree and publish a standard and proportionate format for exclusion requests, and core evidence requirements alongside a commitment to adopt as far as possible an agreed timetable for decisions. A key part of the evidence requirements could be the adoption of a proportionality test and acceptance of general public-policy reasons for legislating where this is met, building on practice in the EU. Should an exclusion be considered proportionate it should be granted (including where there is limited net impact on the market). Where there is disagreement further evidence may be required. This could be an interim arrangement while the wider programme of reform is discussed and agreed, including legislative changes.

48. Dispute resolution should be a feature of this process to allow for challenge of decisions, building on the agreed Intergovernmental Relations approaches. A rationale for refusal should be provided against agreed objective criteria.

49. In the longer-term a more objective process designed and agreed collectively across all parts of the UK should consider the role of independent advice to directly inform use of UKIMA powers. For example, widening of the remit of the independent and impartial OIM to provide independent advice or recommendations (based on codified objective criteria) which must be taken into account by the UK Government when exercising UKIMA powers.

50. This note sets out some initial commentary on ways in which UKIMA could be reframed to better respect and work with devolution. We look forward to further discussion and development of our ideas including broader considerations such as the role of devolved legislatures in the oversight and governance of an internal market in the UK.

Case studies to illustrate the impact of UKIMA on [redacted] policy making

Example A - Horticultural Peat

At the end of 2022, [redacted] announced the retail sale of peat in horticulture would end in [redacted]. Following a joint [redacted] public consultation we proposed working with the UK Government on the next steps to implement the ban in [redacted]

Due to legislative priorities of the previous UK government, a joint legislative vehicle was not secured prior to the UK general election in July 2024 to bring this policy ambition into reality, and the issue of legislative priority remains a question for the current UK government.

Without a joint legislative vehicle, [redacted] considered effecting [redacted] policy ambition by implementing their own legislative ban independently of England. However, we recognised that, without an exclusion to UKIMA, peat producers based elsewhere in the UK could try to sell their products in [redacted] due to the mutual recognition principle within UKIMA.

Horticultural peat is an area of devolved competency; however, our democratic control and accountability is constrained by UKIMA as we are compelled to wait for the UK Government to introduce a joint legislative vehicle, or to grant an exclusion. Without either of these our legislation is at fundamental risk of being undermined. Whilst we would prefer to work with the UK Government on joint legislation for horticultural peat due to cross-border issues, we remain concerned how the Act hinders our devolved competence. In areas of devolved competence, [redacted] should have the democratic control for policy areas in [redacted].

Example B

Precision Bred Plants

The UK Genetic Technologies (Precision Breeding) Act 2023 has amended the Environmental Protection Act 1990 to recategorize certain genetically modified organisms in England so that they are no longer regulated as GMOs but instead as a new category of regulated product described in the 2023 Act as Precision Bred organisms. The 2023 Act does not apply to [redacted] In those territories of the UK Precision Bred organisms (PBO) the original 1990 legislation still applies and PB organisms remain GMOs.

However, the effect of UKIMA is that PBOs, or food or other products made from them, having complied with the regulatory standards in one part of the UK, can be transported to, placed on the market, sold and consumed in [redacted] regardless of [redacted]-specific regulatory controls. In considering the legislation, the UK Government has made little compensation for the effect that this will have on the devolved nations. Devolved governments' ability to mitigate UKIMA's effects and apply devolved decision making are constrained by needing to apply to UK Government for an exclusion (something the UK Government could quickly grant itself if the roles were reversed).

Additionally, UKIMA's lack of clarity about the definition of a significant, regulated production step means that, when creating guidance, we cannot provide certainty to [redacted], regulators and enforcers giving rise to potential legal uncertainty. If a [redacted] buys tomatoes with a view to making them into, say tomato sandwiches or tomato soup, if the tomatoes were PBOs the resultant product will be legally an unregulated GMO. The [redacted] who are responsible for enforcement must determine whether and how they should enforce GMO regulations for food products made in [redacted]. Their task will be made more difficult because they may not be able to identify which tomatoes are PBOs, and even if they can use the forthcoming England only PB plant variety list to identify the name of the PB tomato varieties – proving conclusively which variety of tomato went into the soup may be impossible.

Example C

Deposit Return Scheme (DRS)

The [redacted] ability to bring forward a Deposit Return Scheme which works in a [redacted] context has been constrained by UKIMA, despite DRS policy being fully devolved to [redacted] and that flexibility not being at all an issue prior to EU exit.

For several years, work was taken forward jointly on an agreed scope which all governments agreed would apply consistently across the UK. This was consulted upon by the [redacted] jointly with the UK Government for England and Northern Ireland Executive twice, in 2019 and in 2021. The 2021 consultation confirmed an agreed scope of materials to include PET plastic and glass bottles, steel, and aluminium cans. This would apply across all three nations and mirrored the scope in Scotland which was proceeding slightly in advance.

The previous UK Government however then made the decision in early 2022 to change the scope in England to exclude glass bottles. Despite the work having been undertaken jointly up until that point and despite the intergovernmental processes and commitments in place to ensure prior engagement on any such policy which impacted other nations, in particularly to identify and mitigate any unintended consequences, this decision was taken without engagement or undertaking that due process. [redacted] recognises that the move to a more limited scheme will still drive recycling benefit in England, but with [redacted] among the top recyclers in the world, this would profoundly impact upon the scheme's ability to deliver benefit and was therefore unworkable in [redacted]. This necessitated the need to maintain scope by keeping glass within the [redacted].

Following the UK Government's decision to exclude glass from their DRS for England, it was agreed [redacted] would continue to proceed with glass in scope and this position was included in the joint consultation response published by the three governments (the UK Government was delivering the scheme for NI at the time and therefore its scope changed to mirror that in England). However, the UK Government then sought to use the application of UKIMA to undermine the delivery of the DRS in Scotland, which ultimately led to the downfall of the scheme. Unfortunately, having done so, it then took the approach of using UKIMA to insist on the scheme in [redacted] being amended to follow the approach of the scheme in England.

Following the general election in summer 2024, [redacted] and UK Government held extensive discussions to find a way through the issues caused by UKIMA to allow the [redacted] to proceed with the scheme consulted upon. However, in November 2024, having delayed the scheme in [redacted] for as long as possible before notifying the WTO it became apparent that it was not going to be possible for the UK Government to complete their intended process to assess the exclusion request within the timescale needed. Although it would have been possible to satisfy the requirements of UKIMA within the time and despite there being no clear process, this meant that it was not possible for [redacted] to be a part of the joint appointment of the Deposit Management Organisation. This in turn has led to greater uncertainty for each of the schemes and for the businesses impacted by them

In progressing a DRS, the [redacted] has been clear that we recognise the internal market in the UK needs to be protected. However, with more than 50 examples of DRS being successfully delivered internationally in other single markets where variation and innovation has not been an issue, our dissatisfaction lies in the fact that UKIMA goes far beyond the structure needed to protect the single market. This has also unfortunately been a clear example of where the unequal and imbalanced nature of the legislation has left it open to exploitation where a UK Government with responsibility for England can seek to force its policy on the other nations as was the circumstance in the case of the previous UK Government. This also risks reform always being tied to the lowest common denominator and gives rise to the risk of devolved governments being forced to lower standards, which in turn can lead to worse environmental, social and economic outcomes.

3 April 2025

[redacted]

UK Internal Market Act 2020: review and consultation

[redacted]

UK Internal Market Act 2020: review and consultation

[redacted]

[redacted] is a global, professional membership organisation and business network for Chartered Accountants. It's also an educator, regulator, examiner and a professional awarding body.

[redacted]' diverse membership is made up of over 24,000 world class business professionals who work in the UK and in more than 80 countries around the globe. Members of [redacted] are also known by the letters [redacted] an exclusive professional designation in the UK.

[redacted] members operate at the forefront of ethical and sustainable business. Educated, regulated, and led by the highest standards of ethical leadership since 1854, they are at the top of their game. They are trusted professionals, who transform business and support one another for the greater good.

Acting in the public interest is the guiding principle of all that [redacted] does and we continually work to maintain trust in the accountancy profession. That ethos is enshrined in the [redacted] Code of Ethics – which applies to all members, students and member firms, and is underpinned by our Royal Charter commitment.

[redacted] is a member of the Chartered Accountants Worldwide Network, a global family that brings together the members of 15 leading institutes to create a community of over 1.8 million Chartered Accountants and students in more than 190 countries.

[redacted]

We welcome the opportunity to comment on certain elements of the "UK Internal Market Act 2020: review and consultation". We have set out our comments below.

General comments

We are supportive to the maximum extent possible of the retention of the position which existed during the UK's membership of the EU's single market and its predecessors, whereby large amounts of intra-UK trade took place under harmonised (at that time) EU-wide regulatory frameworks, which prevented any significant regulatory divergence within the UK internal market. Therefore, we support the Government's:

- aim for the 4 governments of the UK to collaborate and deliver a shared ambition to support businesses and drive economic growth.
- commitment to use Common Frameworks as the main fora for the 4 governments of the UK to discuss and collaborate on new ideas and policies in the areas they cover, and to consider the impact these may have on the internal market.
- desire to encourage greater sharing of policy programmes between the UK government and devolved governments, so that we are working together in a more collaborative and transparent way.

There are no licences which we issue which are jurisdictional from a UK context and we would therefore strongly favour an approach which maintains our ability to do so.

We see no need or benefit in having separate licences and would only see this as creating additional regulatory burdens at a time when such burdens are having an adverse impact on our profession.

Consultation questions

Question 1: What are your views on how the UK internal market for goods is best supported using the UK Internal Market Act?

No comments.

Question 2: What are your views on whether differing regulations that have effect later in the supply process are more straightforward for businesses to address?

No comments.

Question 3: What is the right balance between the potential for local regulatory innovations in sectors and UK-wide alignment?

Where possible, we favour UK wide alignment as the primary objective.

Question 4: What are your views on the operation of the market access principles for goods to date?

No comments.

Question 5: What are your views on the use that has been made of the Part 1 amendment powers – for example the exclusion for single-use plastics?

No comments.

Question 6: What are your views on how the UK internal market for services is best supported using the UK Internal Market Act?

Please see our responses to questions 8 and 10 below.

Question 7: What is the right balance between the potential for local regulatory innovations in services and UK-wide alignment?

We believe that it is essential that UK wide alignment is seen as the primary aim.

Question 8: What are your views on the operation of the market access principles for services to date?

We support the 'market access principles' introduced by the UK Internal Market Act i.e. in particular, c) below which has the most direct impact on professionally qualified accountants as our members operate across the UK.

"a) complying with regulations permitting the sale of goods or provision of services in one part of the UK will be considered as compliant with requirements across the UK. In other words, these principles mean that businesses only need to comply with a single set of regulations in order to trade freely across the whole of the UK.

b) regulations permitting the sale of goods or provision of services in one part of the UK cannot discriminate against goods and services from another part of the UK.

c) where individuals hold professional qualifications, the Act ensures that they may, by default, practice in other parts of the UK (exclusions and alternatives apply)".

Question 9: What are your views on the use that has been made of the Part 2 amendment powers – for example, removing exclusions for certain services? In particular, we would welcome views on whether the changes have had or will have a positive or negative impact and whether they have been effective. (An explanation of what the Part 2 amendment powers are and what use has been made of them can be found in the Annex).

We welcome that "Financial services" and "Services of a statutory auditor" were removed from the list of excluded services.

Question 10: What are your views on how the UK internal market for professions is best supported using the UK Internal Market Act?

We are supportive of the current approach and see no need for change in that regard.

Question 11: What is the right balance between the potential for local regulatory innovations in professions and UK-wide alignment?

We believe that it is essential that UK wide alignment is seen as the primary aim.

Question 12: What are your views on the operation of the system for recognising professional qualifications to date?

We have not experienced any issues with the operation of the system.

Question 13: How can the Office for the Internal Market best support the UK internal market through its role in providing independent monitoring and advice?

No comments.

Question 14: What are your views on whether the current arrangements in Part 4 relating to the use of the Office for the Internal Market task groups are appropriate for securing the most effective and efficient performance of the CMA's Part 4 functions? We would welcome views in particular on any advantages or disadvantages of continuing with the current arrangements as compared with other possible ways of carrying out the Part 4 functions. (A full list of functions is set out in the Annex).

No comments.

Question 15: What improvements could be introduced to facilitate more pragmatic management of the UK Internal Market Act's exclusions process?

No comments.

Question 16: How should we ensure proportionate engagement with interested parties in relation to potential exclusions?

No comments.

Question 17: What evidence should be provided in support of an exclusion proposal by the proposing government, so the proposal can be fully considered (for example, information on potential impacts on businesses' ability to trade within the UK and the policy implications of not having an exclusion)?

We believe that information on potential impacts on businesses’ ability to trade within the UK and the policy implications of not having an exclusion are essential evidence considerations.

Question 18: Should there be a different process to consider exclusions proposals which could lead to potentially significant economic impact, compared to those likely to lead to smaller economic impact?

No comments.

Question 19: What do you think constitutes a potentially significant economic impact?

No comments.

Question 20: Is there anything else you want to tell us about the operation of the UK Internal Market Act?

We have no further comments.

[redacted]

[redacted]

Consultation Response:

'UK Internal Market Act 2020: review and consultation relating to Parts 1, 2, 3 and 4'

[redacted]

Question 1: What are your views on how the UK internal market for goods is best supported using the UK Internal Market Act?

The Act provides comfort for manufacturers and distributors, to be sure of their market. It allows products and services to be sold across the United Kingdom without adaptation. It gives consumers the products they want and at competitive prices. If manufacturers or suppliers were concerned that their products might not be permitted in one part of the country, or would have to be adapted for sale, they would often simply cut that section of the population out of their supply: otherwise the additional cost and risk can be more than the potential profit from selling in that section of the market. This leaves a limited range of goods to the consumer in that part of the country, and potentially one monopoly supplier. A monopoly supplier is able to change higher prices and with no competition, they have little concern for quality.

The mechanism of the Act is to disapply discriminatory regulations which might be made in Whitehall or in the devolved jurisdictions: such regulations might be made, but they are not binding on a supplier of goods adversely affected by the discriminatory effect – by Section 5(3), a relevant requirement is of no effect if it is directly or indirectly discriminatory.

Under Section 9, the Act only applies to regulations made after it was passed. I would argue that Section 9 should be repealed, and that the automatic disapplication be applied to previous discriminatory rules, whether in statutory instruments or in Acts of Parliament.

In addition, one could add a power for the Secretary of State to repeal and amend such rules, so there is no ambiguity. Without that additional power, the Legislative and Regulatory Reform Act 2006 may be sufficient to enable the Secretary of State to repeal such provisions in any case.

Question 2: What are your views on whether differing regulations that have effect later in the supply process are more straightforward for businesses to address?

(No observations.)

Question 3: What is the right balance between the potential for local regulatory innovations in sectors and UK-wide alignment?

Is the term "local regulatory innovations" a euphemism for "banning more things"? If products are legal in Scotland, there is no reason for them not to be available in England: Scottish regulators are hardly likely to be pushing poison on the public, and vice versa.

Devolved jurisdictions exist in order that local conditions can be taken into account in administration and legislation. With product safety and similar matters, there are no local differences.

Question 4: What are your views on the operation of the market access principles for goods to date?

(No observations.)

Question 5: What are your views on the use that has been made of the Part 1 amendment powers – for example the exclusion for single-use plastics? In particular, we would welcome views on whether the changes have had or will have a positive or negative impact and whether they have been effective. (An explanation of what the Part 1 amendment powers are and what use has been made of them can be found in the Annex).

(See response to Question 7.)

Question 6: What are your views on how the UK internal market for services is best supported using the UK Internal Market Act?

As noted for goods, under the Act service providers are not bound by discriminatory regulations: by Sections 20(1) and 23(1) a relevant requirement is of no effect if it is directly or indirectly discriminatory.

The Act is timid though, and is left impotent by Section 17. Section 17(5)(c) excludes previous discriminatory rules. This restriction should be removed. In addition, one could add a power for the Secretary of State to repeal and amend such existing discriminatory rules, whether such rules are contained in statutory instruments or in Acts of Parliament, so there is no ambiguity.

As an example, under an English rule in a series of 1980s Acts and statutory instruments, residential managing agents in Northern Ireland or Scotland are unable to provide services in England in the same terms as those based in England and Wales without having an office in England and Wales. There is no reason for this (the rule appears to be inadvertent, arising from poor drafting practice at the time) and Sections 20 and 23 would disapply the rule, but for its predating the Internal Market Act.

Although later discriminatory rules can be disapplied according to the Act, the court may hold that a rule contain in or made under the authority of a later Act, supersedes the Internal Market Act. Thus the Act becomes useless.

Question 7: What is the right balance between the potential for local regulatory innovations in services and UK-wide alignment?

Any exclusion should be a rare exception, individually considered. The Secretary of State must consider whether the request for a local ban is to address a particular local need, or is just a politician's preference, or nor more than a wish to be different. The latter would not be sufficient to justify discriminatory rules.

Furthermore, restrictions must take account of the United Kingdom's obligations under the EU-UK Trade and Co-operation Agreement, and other trade treaties.

Question 8: What are your views on the operation of the market access principles for services to date?

Professional services have to an extent been restrictive since before the Act. As noted under 6 above, the Act was only given prospective effect, which is to say that it would invalidate new restrictive provisions, without removing those which predate the Act, as noted under Question 7 above.

Having learnt the lessons of the Act, it could be extended to remove pre-existing discriminatory restrictions.

Question 9: What are your views on the use that has been made of the Part 2 amendment powers – for example, removing exclusions for certain services? In particular, we would welcome views on whether the changes have had or will have a positive or negative impact and whether they have been effective.

(An explanation of what the Part 2 amendment powers are and what use has been made of them can be found in the Annex).

(I do not have sufficient information to comment.)

Question 10: What are your views on how the UK internal market for professions is best supported using the UK Internal Market Act?

Competition benefits both consumers and service providers themselves. Since the 1980s, thanks to the work of the Competition Commission and its predecessors, restrictive professional rules have been cut down. Still within living memory certain professions banned advertising and overseas professionals.

The legal profession is the one I know best. It is specific to each legal jurisdiction because an understanding of the law of the home jurisdiction is vital. That said, qualification is a personal thing: a firm may practise in any jurisdiction without harm. The entry of large Scottish legal firms into the English market since liberalisation has breathed new life into the profession. It has noticeably invigorated existing practices as they have had to up their game. This has all been to the benefit of consumers.

For professional practices outside the law, regional attachment will rarely be relevant. All should be permitted to practice across the United Kingdom, without double-registration. It would take strong evidence to support a restrictive practice.

Question 11: What is the right balance between the potential for local regulatory innovations in professions and UK-wide alignment?

As noted under 23 above, “local regulatory innovations” may be a euphemism for “banning more things”. It may be a cover for protectionism.

If Whitehall or the devolved authorities have power to regulate the way things are done locally in any sphere, it must be done in a non-discriminatory way, in accordance with the principles in the Act. Furthermore, while one could say, for example “for insuring property in Wales, all insurers must do X”, and insist it is non-discriminatory because the same rule applies to insurance companies based in any other part of the United Kingdom; the existence of a different local rule will cause insurance companies to withdraw from the local market to avoid having to increase their compliance budget, leaving Welsh consumers in the hands of a local cartel.

Question 12: What are your views on the operation of the system for recognising professional qualifications to date?

Historically, the professions openly operated restrictive practices. Since the 1980s this has been cut down – still within living memory certain professions banned advertising and outside professionals. The legal profession is (of necessity) a highly regulated field, but the professional rules are now applied (with a few careless exceptions) in a way that welcomes wider participation.

I have limited knowledge of recognition in professions other than my own, and cannot comment sensibly on the specific topic.

Question 13: How can the Office for the Internal Market best support the UK internal market through its role in providing independent monitoring and advice?

(No observations.)

Question 14: What are your views on whether the current arrangements in Part 4 relating to the use of the Office for the Internal Market task groups are appropriate for securing the most effective and efficient performance of the CMA's Part 4 functions? We would welcome views in particular on any advantages or disadvantages of continuing with the current arrangements as compared with other possible ways of carrying out the Part 4 functions. (A full list of functions is set out in the Annex).

(No observations.)

Question 15: What improvements could be introduced to facilitate more pragmatic management of the UK Internal Market Act's exclusions process?

Exclusion should be very rare, and exclusions should be reviewed frequently with a view to being removed unless there is an overwhelming reason to permit a discriminatory provision. "Pragmatism" must not be a euphemism for "bowing to passing political whims". Principle dictates that there should not be exceptions to the non-discrimination rule.

The obligations of the EU-UK Trade and Co-operation Agreement and other trade treaties must also be considered: bans or restrictions on certain goods will affect international trade as well as internal commerce.

Question 16: How should we ensure proportionate engagement with interested parties in relation to potential exclusions?

Those trading in the relevant field must be involved. Only they understand the practical realities of their business and the effect that regulations have.

However, like regulators, large businesses who eagerly engage in these discussions will have their own priorities. Large businesses have an interest in freezing smaller rivals out of the market, and can afford the regulatory compliance costs that an upstart start-up cannot.

Therefore, without the active involvement of small and medium-sized businesses, the exercise will tend to the restrictive, and to the hurt of consumers. Having said that, smaller businesses with a local market may themselves have reason for excluding rivals looking in from beyond the town.

A major company will have vital input on the practical application of regulatory rules in a geographically wider and more diverse market, and so they should be aboard. This should not though be to the exclusion of small and medium businesses.

Question 17: What evidence should be provided in support of an exclusion proposal by the proposing government, so the proposal can be fully considered (for example, information on potential impacts on businesses' ability to trade within the UK and the policy implications of not having an exclusion)?

I would apply the criminal burden of evidence: that the consumer benefit is beyond all reasonable doubt. There is plenty of scope for political emoting, but the principle of the Act is of non-discrimination and open competition. The consumer interest and the national economy demand free and non-discriminatory commerce, and consumer choice.

Question 18: Should there be a different process to consider exclusions proposals which could lead to potentially significant economic impact, compared to those likely to lead to smaller economic impact?

Anything has a significant adverse economic interest on the employees who are left redundant when a company is forced to withdraw sales from part of the country or to close shops.

It is not a question of whether a discriminatory provision is so small as to be winked at – there should not be discriminatory provisions.

Question 19: What do you think constitutes a potentially significant economic impact?

As above; but I would also say that regulators do not have the commercial knowledge to understand what their rules will do or how many people will be left jobless or how it will increase consumer prices.

Question 20: Is there anything else you want to tell us about the operation of the UK Internal Market Act?

1. Strengthening the Act:

Several accidental restrictions remain, predating the Act. These should be removed. I would like to see two forms of legislative action:

1.1 Amend the Internal Market Act to bar / amend restrictive regulations which predate the Act, and to extend the amendment power to such restrictions.

1.2 A review of pre-existing restrictive statutes and regulations with a review to removal of such restrictions where such amendment is beyond the competences conferred by the Internal Market Act. The Legislative and Regulatory Reform Act 2006 may be sufficient to enable the Secretary of State to repeal such provisions.

2. Public cartographical offerings:

Differential public cartography may affect distribution across the United Kingdom internal market. This must be examined.

2.1 If companies and distributors do not have seamless access to systems covering the whole of the British Isles, their ability to make deliveries as efficiently to addresses in Northern Ireland may be hindered. If so, consumers there are disadvantaged.

2.2 In recently years, the Ordnance Survey, the Ordnance Survey of Northern Ireland and Tailte Eireann have co-operated to some extent in data offerings so that, for example, the OSApp provides map coverage across the United Kingdom, Isle of Man and Irish Republic, where previous operations covered only Great Britain and the Isle of Man. Nevertheless, the Ordnance Survey of Northern Ireland is limited in what it can do. This in turn disadvantages residents of Northern Ireland and places a potential hindrance in the internal market.

This distinction was set out in a communication to me from the Ordnance Survey of Northern Ireland:

> "OSNI is a division of NI's Land and Property Services (a fully public body), operates under a cost-recovery business model (unlike either OSGB or Tailte), and produces data and mapping products with specifications that, while similar in some ways, differ in many ways to those provided by OSGB and Tailte. Our relatively small organisational size and market footprint, coupled by our business model and modest levels of funding, limits our ability to release equivalent Open Data offerings to those provided by OSGB and Tailte. However, we actively engage and collaborate with OSGB in a number of initiatives including the OS App and AddressBase Islands product."

2.3 The Office for the Internal Market should look at the position to ensure that seamless delivery systems are available on non-discriminatory terms, and that the Ordnance Survey of Northern Ireland is adequately resourced to join in.

3. Removing the immobility rule:

[redacted] about the accidental 'Immobility Rule' in the Companies Act. This should be corrected with a one-page Deregulation Order.

(Paper: "Liberating registered offices: The alternative to intra-UK re-domiciliation")

4. Civil enforcement:

A more ambitious proposal is on the second attached paper, concerning enforcement of legal proceedings.

(Paper: "Cross-jurisdictional enforcement: A short internal market proposal")

[redacted]

24 March 2025

[redacted]

Department for Business & Trade: UK Internal Market Act 2020: review and consultation relating to Parts 1, 2, 3 and 4

- Sent by e-mail to: ukimreview@businessandtrade.gov.uk
- Link to website: https://www.gov.uk/government/consultations/uk-internal-market-act-2020-review-and-consultation/uk-internal-market-act-2020-review-and-consultation-relating-to-parts-1-2-3-and-4
- Link to legislation: https://www.legislation.gov.uk/ukpga/2020/27/contents/enacted

March 2025

To whom it may concern,

[redacted] response to the review and consultation of the UK Internal Market Act 2020

[redacted].

[redacted]

[redacted]

[redacted]

[redacted]

Question 1: What are your views on how the UK internal market for goods is best supported using the UK Internal Market Act?

[redacted] agrees with the principle of promoting and supporting the UK's internal trade and ensuring that businesses are not placed at a competitive disadvantage to elsewhere in the UK. Limiting barriers to trade and wherever possible eliminating additional costs associated with administration and uniformity of produce. Likewise, ensuring the impact of unnecessary conflicting regulation is kept to a minimum.

[redacted]

[redacted]

Furthermore, [redacted] believes that it greatly benefits Scottish retailers, producers, exporters and importers, to maintain a high level of quality of food/product standards. For that reason, we welcome assurances from the UK Government and regulators that this will continue. [redacted] believes strongly in ensuring compliance within the sector and regularly engages with [redacted] in order to ensure that retailers are fully aware of their obligations. For example, we have produced a number of retailers guides in conjunction with officials on issues such as Regulations for Nicotine Vaping Products and Tobacco Compliance, Minimum Unit Pricing, Scotland's Deposit Return Scheme, and Allergen Labelling Requirements.

Nonetheless, while we recognise that the assessment of the IMA carried out by Department for Business & Trade shows that producers often 'gold plate' products in order to ensure their goods are compliant with the regulation in each part of the UK, [redacted] is concerned that this effect also adds to the cost of the items available to retailers and customers. Therefore, where possible, full alignment would be preferable.

In addition, [redacted] also recognises the importance of engaging with new and rapidly growing global markets and thriving supranational trade agreements. Particularly where this allows a strengthening of ties to historically connected countries, both within the UK and across Europe. Having alignment within the UK internal market may allow for more flexibility to explore the requirements of entering other markets.

Likewise, with regard to issues such as food security. Where complex internal trade could potentially put additional pressure on convenience retailers, customers and communities who are already experiencing high food inflation and a cost-of-living crisis. Therefore, [redacted] believe that the Ministers must ensure safeguards are in place to protect and support small businesses and producers.

Question 2: What are your views on whether differing regulations that have effect later in the supply process are more straightforward for businesses to address?

[redacted]

[redacted]

[redacted] agrees that generally this will be the case. For example, in most cases, restrictions and regulations placed on retailers are rightly devolved, while product standards are more likely to remain reserved. However, we would like to raise two potential issues with this factor.

Firstly, where devolved administrations are seeking to act on a particular area of public policy, the impact of devolved powers means that Scottish Government Ministers will often target businesses within their authority, rather than UK national or international producers. Potentially resulting in an unfair competitive disadvantage for Scottish retailers. Regardless of efficacy.

For example, complexities such as this arise with Scotland's Minimum Unit Pricing (MUP) policy. [redacted] has received evidence that Scottish shoppers are increasingly turning to online retailers to purchase alcohol from other parts of the UK, and therefore bypassing MUP, as it does not apply to drinks distributed from outside Scotland. This has financial impacts on the Scottish convenience sector as well as the efficacy of the policy to reduce the consumption of cheap high strength alcohol.

Similarly, restrictions proposed by the Scottish Government in 2023, would look to reduce the exposure of under 18s to alcohol marketing in Scotland. While the initial intention of the policy was to reduce exposure thought he media, due to the division of powers in relation to the UK media, it may be more likely that Scottish Ministers will explore possibility of restricting instore placement and promotion instead. Despite strict licensing laws and age restrictions already being in place and fully adhered to across the off sales sector.

Secondly, [redacted] is concerned that stability and uncertainty are key issues impacting business and the economy. Where it is unclear whether or not the IMA will have an influence over policy, or at what stage the IMA will come into effect, can make business decisions, such as when to invest to comply to a policy, extremely challenging.

For instance, [redacted] is fully committed to a functional and fit for purpose Deposit Return Scheme (DRS) for both the UK and Scotland. The aim of [redacted] throughout the development of the Scottish DRS was to ensure that our members are fully aware of all the information they will need to know in order to comply to the scheme's objectives.

As representative of the largest group of Return Point Operators (RPOs) in Scotland, [redacted] had held regular meetings with the [redacted] and we have now begun the process of engagement with DEFRA and UK

[redacted]

[redacted]

Ministers, ahead of an October 2027 launch. During the previous iteration of the Scottish scheme, [redacted] was a founding member of Circularity Scotland and had regular engagement with [redacted] and Zero Waste Scotland.

In order to comply to the Scottish scheme, retailers and producers made substantial investments and were required to navigate through a complex set of challenges and new regulations. However, it became very clear that the Scottish DRS was untenable without significant operational issues being addressed, and undeliverable by the intended deadline. Therefore, we understood the intervention of the UK Government, albeit a disappointing step backward for the project, and broadly agree with the move to an aligned UK-wide DRS. Delivered through the mechanisms of the IMA.

However, it is essential that, wherever possible, steps are taken to ease the burden on business, and it was unclear through the development of the Scottish DRS at what point Ministers would have to refer to the IMA and what impact that would have. As a result, many organisations have been left out of pocket, and this has further damaged the certainty and potential around current scheme being delivered via a three nations approach.

Question 3: What is the right balance between the potential for local regulatory innovations in sectors and UK-wide alignment?

[redacted] agrees that the Scottish Government should have to powers to regulate on areas impacting Scottish communities and businesses. Nonetheless, it is our view that wherever possible there should be a full alignment and interoperability approach across the UK.

In plain terms, where possible it is our views that devolved governments should not seek to make policy different unless the unique characteristics of Scotland, Scottish businesses or Scottish communities make it beneficial to do so.

Therefore, whenever a policy is at the proposal stage, the priority should be to first and foremost consider how it relates to policy being developed elsewhere in the UK, even at an interdepartmental level, and then only diverge where it is necessary to deliver the intended outcomes.

[redacted]

[redacted]

As an aside, [redacted] has strongly argued that regulation from government is having a significant impact on business viability, and that governments would benefit significantly from developing a synchronised joined-up approach to rolling out various disparate regulations which all impact the same sector at the same time.

Question 4: What are your views on the operation of the market access principles for goods to date?

[redacted] is content with the principles as set out, with regard to the definitions of 'mutual recognition' and 'non-discrimination'. However, as discussed above, while we appreciate the complexity of the UK internal market, we would welcome additional clarity of the criteria required and timing of the use of the Act. In addition to a first principle of alignment wherever possible.

Question 5: What are your views on the use that has been made of the Part 1 amendment powers – for example the exclusion for single-use plastics? *In particular, we would welcome views on whether the changes have had or will have a positive or negative impact and whether they have been effective. (An explanation of what the Part 1 amendment powers are and what use has been made of them can be found in the Annex).*

[redacted] recognises the requirement for exclusions, as set out in the Act. However, for the reasons set out in answer to Question 2, we are concerned that various devolved policies are distorting the market and significantly adding to the competitive disadvantage facing businesses and convenience retail in Scotland.

While it may not be within the scope of the IMA to take these polices into consideration, it is [redacted] view that the regulatory divergence in Scotland is having an impact on both the Scottish and UK economy, on Scottish producers and retailers and on Scottish consumers.

To provide an example, in addition to those raised above, the UK Government recently announced a 40% Non-Domestic Rates relief for all retailers up to a ratable value of £110,000. In order to support high streets and small local business. This follows 75% reliefs provided by the previous UK Government over several years. While in Scotland we welcome the continuation of the Small Business Bonus Scheme, poundage has been consistently higher in Scotland, and the

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[redacted]

equivalent reliefs provided via consequentials to the Scottish Government have never been passed onto Scottish retail businesses. The result is that businesses North of the border have face a prolonged period of competitive disadvantage, substantially impacting on the cost of living for Scottish consumers.

In relation to single use plastics, while we support the Scottish Government's aim to improve the sustainability of Scotland's food retail sector the restrictions have had an impact on Scottish businesses, relative to counterparts elsewhere in the UK. Such as the additional cost of sourcing and switching to more expensive materials.

Scottish businesses are now faced with further restrictions in this regard. The Scottish Government is seeking to bring in a compulsory charge of 25p for single use cups and containers. As stated above, we agree that the Scottish Government ought to be entitled to develop its own policy agenda and desired outcomes, but the evidence shows that the impact will usually fall hardest on small businesses, retail and small producers.

Question 6: What are your views on how the UK internal market for services is best supported using the UK Internal Market Act?

Except where we would repeat our views stated in the responses provided above, [redacted] does not take a view on the impacts of the IMA on services.

Question 7: What is the right balance between the potential for local regulatory innovations in services and UK-wide alignment?

Question 8: What are your views on the operation of the market access principles for services to date?

Question 9: What are your views on the use that has been made of the Part 2 amendment powers – for example, removing exclusions for certain services? *In particular, we would welcome views on whether the changes have had or will have a positive or negative impact and whether they have been effective. (An explanation of what the Part 2 amendment powers are and what use has been made of them can be found in the Annex).*

[redacted]

[redacted]

Question 10: What are your views on how the UK internal market for professions is best supported using the UK Internal Market Act?

Except where we would repeat our views stated in the responses provided above, [redacted] does not take a view on the impacts of the IMA on professions.

Question 11: What is the right balance between the potential for local regulatory innovations in professions and UK-wide alignment?

Question 12: What are your views on the operation of the system for recognising professional qualifications to date?

Question 13: How can the Office for the Internal Market best support the UK internal market through its role in providing independent monitoring and advice?

[redacted] welcomed the opportunity to meet members of the OIM, discuss the issues raised above, and gain an understanding of its role. In particular, we appreciate that the onus is on ministers and governments to seek advice from the OIM and that the breadth of policy introduced by the devolved administrations is beyond the capacity of the OIM team to review. However, as discussed above, an improvement to clarity for business, regarding the criteria and timings of when the IMA will come into scope would be beneficial.

Question 14: What are your views on whether the current arrangements in Part 4 relating to the use of the Office for the Internal Market task groups are appropriate for securing the most effective and efficient performance of the CMA's Part 4 functions? *We would welcome views in particular on any advantages or disadvantages of continuing with the current arrangements as compared with other possible ways of carrying out the Part 4 functions. (A full list of functions is set out in the Annex).*

[redacted]

[redacted]

[redacted] is content with the provisions set out in the Annex (sections 31-41) and does not have a view on whether or not they could be improved. However, as noted above, it is [redacted] view that as a first principle, devolved administrations should seek to align wherever possible and therefore seek and engage with the advice the OIM early and meaningfully.

Question 15: What improvements could be introduced to facilitate more pragmatic management of the UK Internal Market Act's exclusions process?

[redacted] do not have a strong view on the principles of exclusions. However, there should be enough flexibility within the scope of the criteria to allow for a case-by-case approach. It is our view that when considering potential exemptions there should be thorough engagement with stakeholders and industry, with consideration of the impacts on both specific businesses, sectors and the wider UK market.

Question 16: How should we ensure proportionate engagement with interested parties in relation to potential exclusions?

As a minimum, decision makers should engage with representatives and trade bodies from each part of the supply chain impacted. In the case of the convenience sector, that would include representatives of the specific product manufacturers, wholesalers and retailers. This should be carried out at both a UK and a nation specific level.

Ideally, there would be a period of engagement direct with business or a sub sample of the affected sector. This could be facilitated through the trade associations above, via drop-ins or roundtable meetings.

Likewise, there should be an appropriate period of several months to allow for thorough and meaningful feedback.

Where possible, opportunities for interested parties to provide written evidence would also be helpful.

[redacted]

[redacted]

Question 17: What evidence should be provided in support of an exclusion proposal by the proposing government, so the proposal can be fully considered (for example, information on potential impacts on businesses' ability to trade within the UK and the policy implications of not having an exclusion)?

As implied throughout our response, [redacted] view is that significant engagement with business, alongside a thorough business impact assessment will not only help decision makers understand the implications of an exemption, but it will also aid with business and public 'buy-in' to the policy.

As a minimum, [redacted] would expect a business impact assessment detailing the implications for each part of the supply chain and for businesses operating in both the UK and at a nation specific level. We would also expect a similar assessment to be made of the impact on consumers and communities, alongside details of the proposed benefits and disadvantages of an exemption.

Question 18: Should there be a different process to consider exclusions proposals which could lead to potentially significant economic impact, compared to those likely to lead to smaller economic impact?

As discussed above, [redacted] preference would be to consider policy implications on a case-by-case basis. With that in mind, we would agree, on balance, that additional protections and checks should be in place where these impacts are potentially more significant for a wider range of stakeholders or for the wider economy.

Question 19: What do you think constitutes a potentially significant economic impact?

While we understand that it will be important for the OIM to provide some criteria of 'significant economic impact' [redacted] would not recommend being over prescriptive in this regard. Therefore, we are cautious to provide our own definition. However, as a minimum, [redacted] would see significant as having an impact on the viability of any particular business; affecting the cost of business for

[redacted]

[redacted]

substantial proportion of any given sector; distorting the market to the degree that a proportion of customers will move from purchasing from a Scottish business to one elsewhere in the UK, or measurably impacting the economic potential of any given community or area.

Question 20: Is there anything else you want to tell us about the operation of the UK Internal Market Act?

[redacted] has nothing further to add and hopes you find the information provided in our response useful.

Yours sincerely,

[redacted]

[redacted]

[redacted]

1 May 2025

Dear Minister,

UKIMA Consultation

[redacted] welcomes the opportunity to respond to the *UK Internal Market Act 2020: review and consultation relating to Parts 1,2,3, and 4*. We thank the Minister for extending the deadline for our formal response to 1 May.

[redacted] notes that the Minister was not available to appear before us as part of our work in responding to the inquiry. We would welcome the opportunity to hear from the Minister once the findings of the review and consultation have been published.

Our response is attached.

[redacted]

[redacted]

[redacted]

[redacted]

Introduction

1. [redacted] welcomes the opportunity to respond to the *UK Internal Market Act 2020: review and consultation relating to Parts 1,2,3, and 4*.[1] We carried out a short inquiry specifically focused on the consultation document and this work alongside our previous constitutional work, including our reports on the *UK internal market*[2], *The Impact of Brexit on Devolution*[3] and *How Devolution is changing Post-EU*[4], helped to inform this response. We thank all of those individuals and stakeholders who provided evidence to us.

2. The consultation document identifies three mechanisms for managing the UK internal market–

   - The UK Internal Market Act 2020;

   - The process for considering UK Internal Market Act exclusions in common framework areas ("the exclusions process");

   - Common Frameworks.

3. We discuss each of these, in turn, below.

Background

4. The UK Internal Market Act 2020 (UKIMA) received Royal Assent on 17 December 2020 despite the withholding of consent by both the Scottish Parliament and the Welsh Senedd. During the current session of the Parliament there have been two further motions agreed calling for UKIMA to be repealed. On 3rd October 2023, the Scottish Parliament agreed the following motion by division -

   > "That the Parliament notes that both the Scottish Parliament and the Welsh Parliament refused to give consent to the Internal Market Act because of concerns over its potential to undermine democratic decisions of the devolved legislatures; agrees that those fears have been realised to the detriment of the people of Scotland, and that the devolution settlement has been fundamentally rolled back by the Act; calls for the repeal of the Internal Market Act and for the UK Government to stop taking back control to the UK Parliament of policy decisions that should be made in Scotland; agrees that the people of Scotland are best served by both the UK and Scottish governments working together cooperatively, and calls on the UK Government to develop a more consensual means of preserving common

[redacted]

standards and safeguards across the UK that does not undermine devolution in any part of the UK."[5]

5. More recently, on 19th February 2025, Parliament agreed the following motion by division –

   "That the Parliament notes the publication of the UK Government's consultation and review of the United Kingdom Internal Market Act 2020, which sets out that it will "not consider whether to repeal the UK Internal Market Act or any part of it"; recalls that both the Scottish Parliament and Welsh Senedd refused to give the Act legislative consent; notes the position of the Welsh Government, which opposes the Act, believing it to be "an unwarranted attack on devolution"; reaffirms its decision regarding the Act on 3 October 2023, and calls for it to be repealed."[6]

6. [redacted] position is that "in line with two votes in the [redacted] in October 2023 and February 2025: we must see the full restoration of the powers of the [redacted] The IMA should be repealed and replaced with an equitable, co-designed system built around the Common Frameworks approach."[7]

7. [redacted] also states that, within the context of the UK Government's commitment to reset relations with the devolved governments, the "failure to even consider repeal within the terms of the statutory review suggests this ambition may be more difficult to achieve than it would otherwise be."[8]

8. [redacted] notes that, despite both the [redacted] supporting repeal of UKIMA, the review will "not consider whether to repeal the UK Internal Market Act or any part of it."[9] However, we also recognise that the review does go beyond what is required in the Act including "such as the process for considering exclusions from the market access principles, to help determine how the processes can be improved."[10] We also recognise that while there is a statutory requirement to complete the review by December 2025, the UK Government has committed to do so "early by Summer 2025."[11]

9. **A majority of Members on the Committee remain of the view that UKIMA should be repealed.**

UK Internal Market

[redacted]

10. [redacted] recognises that there are significant economic benefits arising from the UK internal market. The consultation document states that intra-UK trade "is worth around £129 billion, and is particularly important to the economies of Scotland, Wales and Northern Ireland."[12] The document also notes that trade "between the UK's nations is particularly important for small businesses, which are less likely to trade internationally."

11. The Office for the Internal Market's (OIM) annual report for 2023-24 stated that-

- the most recent figures value intra-UK trade at £190 billion, or around 10% of total UK GDP;

- intra-UK trade represented between 43% to 65% of the external sales and purchases of Scotland, Wales and Northern Ireland, with this accounting for between 25% and 54% of the GDP of Scotland, Wales and Northern Ireland;

- of businesses that trade intra-UK, less than 10% report difficulties doing so due to rules and regulations, with more than half reporting no difficulties[13]

12. In our previous inquiry on the UK internal market, a number of our witnesses emphasised the economic benefits of the internal market for Scottish businesses and consumers[14]. We heard similar evidence as part of our current short inquiry.

13. For example, the [redacted] told us that "from a Scottish agricultural/agrifood perspective, the internal market is, in fact, England. The fact that so much of what we produce heads south is fundamentally important to the prosperity of Scotland's agrifood sector."[15]

14. [redacted] view is that "Scottish Consumers benefit enormously from open and frictionless trade within the United Kingdom. That sizeable open market allows retailers to operate at scale across the four nations."[16]

15. As we stated in our previous report on the UK internal market, the [redacted] recognises the significant economic benefits of the UK internal market and open trade.

The UK Internal Market Act 2020

16. The purpose of UKIMA, as set out by the previous UK Government in the *UK Internal Market White Paper*, ("the White Paper") is to address "the gap that the removal of the EU Single Market rules creates on the UK market, in a way that reconciles the need for ongoing economic cohesion with scope for regulatory difference."[17] The White Paper stated that –

[redacted]

"The Government considers that the best way to address the gap resulting from the removal of the EU market ecosystem is to enshrine in law the principles of mutual recognition and non-discrimination. These will ensure goods and the services covered are recognised in all parts of the UK without the need to comply with additional requirements, and without business facing discrimination based on its origin."[18]

17. The current UK Government states that the "management of the internal market is best achieved through discussions between all 4 nations" and that "when that collaboration is working well", UKIMA "sits in the background as a tool for all governments within the UK to manage instances of divergence…".[19] However, it also "recognises the strongly held views of some around the way that the UK Internal Market Act was previously managed and that businesses have been left with little time to adapt to new policies and changes."[20]

18. We discuss the impact of UKIMA below.

Impact of UKIMA on Devolution

19. The White Paper stated that the market access principles constitute "a legislative framework that will preserve the fundamental market access rights of businesses and citizens across the UK Internal Market. This system will replace the effect of the rules and mechanisms of the EU Single Market had within the UK."[21]

20. The [redacted] welcomes that the Review "will amongst other things consider how to provide the right balance between devolved decision-making on regulation and protecting the integrity of the internal market, ensuring a continual drive for economic growth, jobs and higher living standards."[22]

21. The [redacted] has previously recognised that the market access principles do not introduce any new statutory limitations on the competence of the [redacted]. However, they do mean that Scottish regulatory requirements are automatically disapplied in relation to goods and services coming from another part of the UK unless there is an exclusion. As such, while UKIMA may not affect the [redacted] ability to pass a law, it may have an impact on whether that law is effective in relation to goods and services which come from another part of the UK.

22. In particular, given the size of the English population and economy relative to the three other nations within the UK, the [redacted] will need to take account of market forces when considering regulatory divergence. It is unlikely that the devolved governments will want to put their own economies at a competitive disadvantage with the much larger English economy by introducing

[redacted]

higher regulatory standards which imports from other parts of the UK do not need to comply with.

23. The view of one of our Advisers, [redacted], is that UKIMA "strikes at the law-making and scrutiny functions of the Scottish Parliament in important ways." He suggests that the market access principles "constrain devolved regulatory autonomy in fact, if not in law, and in ways that exceed the constraints applicable within the EU Single Market."

24. In our previous report on the UK internal market we recognised that there are significant challenges in managing the tension which exists in any internal market between open trade and regulatory divergence and sought to examine the complexities which exist in resolving that tension.[23]

25. We reported that the evidence received suggested that UKIMA, in seeking to resolve this tension, has shifted the balance within devolution away from regulatory autonomy through privileging market access. Within the context of the UK internal market the [redacted] concluded that in resolving this tension it is essential that the fundamental principles which underpin devolution are not undermined.

26. [redacted] told us they "still have concerns about the market access principles in relation to non-discrimination and mutual recognition because, in a sense, they have the capacity to ignore regulatory frameworks in different parts of the UK. That is because, essentially, something that is produced to a different standard in one part of the UK can legitimately be bought, sold and used in another part of the UK."[24]

27. [redacted] view is that the market access principles "are highly deregulatory: by default, they prioritise intra-UK trade over the protection of non-market policy objectives (e.g., environmental protection; animal welfare etc.)."[25] [redacted] suggests that UKIMA is "out of step with…how other decentralised or multi-level states manage"[26] internal markets.

28. The [redacted] recognises that there are significant challenges in managing the tension which exists in internal markets between open trade and regulatory divergence. The further evidence received as part of this short inquiry suggests that this tension remains in relation to the UK internal market. The [redacted] recommends that the review should seek to resolve this tension in a way which promotes open trade without undermining devolution.

Policy Innovation

29. The [redacted] welcomes the acknowledgement in the consultation document that devolved "powers promote an environment in which new, innovative

[redacted]

approaches can be taken in one part of the UK and, if they are successful, these might be then adopted and rolled out in the rest of the UK."[27]

30. However, the evidence we received as part of our current short inquiry indicates that there continues to be a risk of a "chilling effect" on devolved policy innovation arising from the operation of the market access principles. [redacted] told us that the mutual recognition principle in UKIMA has "become an absolute rule that affords very little scope for autonomy or local decision making to exist unaffected"[28] and "because it is in such absolute terms, the shadow that it casts has potential for a chilling effect on what can be done and what remains." [29] This means that "policy innovation is being frustrated through the concerns about the legislation's impact."[30]

31. In the same vein [redacted] explained that knowing that you have to go through the exclusions process (discussed below) and that "your policy choices are subject to that veto power has a diluting or chilling effect." [31] [redacted] view is that "the threat of regulatory chill is really profound."[32]

32. Examples of this chilling effect include, as highlighted by [redacted] decision to pause its introduction of a deposit return scheme in Scotland and the [redacted] approach to implementing its ban on single-use plastics…".[33]

33. [redacted] also notes that on 20 January 2022, in response to a parliamentary question asking whether the [redacted] would introduce a ban on the sale of glue traps, the [redacted] stated: "Our intention is to ban both the sale and the use of glue traps. However, implications arise from the United Kingdom Internal Market Act 2020, which can undermine decisions that this Parliament makes, including in wholly devolved climate and environmental policy areas. We intend to work through those issues to achieve a ban."[34]

34. On introduction, the Wildlife Management and Muirburn (Scotland) Bill [21 March 2023] proposed a ban (in most circumstances) on the purchase and use of glue [redacted] wished to ban the sale of glue traps, as well as their use or purchase, and the they were exploring the possibility an exclusion from UKIMA. No exclusion was granted prior to Stage 3 consideration, but a [redacted] amendment to ban sale was agreed to[35]. On 26 March 2024, the then UK Government wrote to the [redacted] indicating that it did not agree the case for an exclusion in relation to glue traps[36]. The current UK

[redacted]

Government subsequently indicated in a Ministerial Statement on 12 December 2024 that it intends to grant the exclusion.

35. [redacted] told us that “in some cases we see a chilling effect, with devolved Administrations becoming reluctant to bring forward an environmental proposal because of the potential challenges that will arise through the internal market act process.”[37]

36. [redacted] also raised concerns about UKIMA “chilling…innovation in policy and almost holding devolved Administrations back from pursuing what would probably be a very sensible policy, supported by a swathe of interests that say that it is the right thing to do in Scotland.”[38] They added that, as “for driving innovation in, say, animal health and welfare and the environment, one of the drivers in that respect….would be our having the devolved capacity to do those things.”[39]

37. [redacted] view is that UKIMA “is fundamentally incompatible with the principles and practice of devolution in the UK’s constitutional arrangements since 1997. The Market Access Principles of mutual recognition and non-discrimination cut across the clear reserved powers model to introduce wide ranging constraints on devolved competence.”[40]

38. The [redacted] recognises the economic benefits for businesses and consumers in ensuring open trade across the UK. But equally we recognise that the fundamental basis of devolution is to decentralise power so as to allow policy and legislation to be tailored to meet local needs and circumstances. We reiterate our view that it “would be regrettable if one of the consequences of the UK leaving the EU is any dilution in the regulatory autonomy and opportunities for policy innovation which has been one of the successes of devolution.”[41]

39. We, therefore, welcome that the current UK Government has recommitted to the principles for Common Frameworks agreed at the Joint Ministerial [redacted] (EU Negotiations) in October 2017. We note that this set of principles includes a commitment to “maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as is afforded by current EU rules.”[42]

40. The [redacted] believes, therefore, that the review should address the chilling effect on devolved policy innovation arising from the operation of UKIMA.[43]

[redacted]

Impact of UKIMA on Business

41. [redacted] submission states that they "are strong supporters of the principle of the Internal Market Act. A clear and stable regulatory environment across the whole of the UK is critical to ensure that food and drink businesses can strategically and financially plan for the long term."[44]

42. [redacted] view, highlighted in the report 'The Internal Market Act: A Challenge to Devolution' by [redacted], is that "Efficiency of scale is how most retail businesses operate. Things being similar on the greatest spread of market that's possible is what we're interested in, so we have always been supportive of whatever the right mechanism for that is. We were fine when that was Common Frameworks, and we think the Act is a probably useful tool in that sense. It provides a kind of baseline for standards, and means that we can sell the same products in similar ways across the UK."[45]

43. [redacted] view is that while UKIMA "is not perfect" they "believe there is significant value in ensuring the underlying principles of the Internal Market Act, of non-discrimination and mutual recognition" and that "the underlying framework is valuable and continue to be advantageous in delivering relatively frictionless trade within the United Kingdom."[46]

44. [redacted] told us that "UKIMA is important. It matters because the UK internal market underpins economic growth and investment stability." They added that if "we have divergent regulations, all that that will do is increase costs and reduce competitiveness. Most businesses operate across the four nations—very few operate exclusively in one. The UKIMA protects supply chains and makes sure that businesses can operate efficiently across the UK."[47]

Certainty

45. In the White Paper the previous UK Government stated that a Market Access Commitment will guarantee UK companies can trade unhindered in every part of the UK and that this "will give business certainty"[48]. It also stated that open "markets enable frictionless trade that supports efficiency and productivity, increases business certainty and facilitates better investment decisions."[49]

46. The [redacted] discussed the extent to which UKIMA provides certainty with our witnesses. [redacted] told us that they would "support anything that provides certainty and stability for business. That is the key thing that business is always looking for. Anything that causes confusion or uncertainty creates barriers to doing business in Scotland. It is that simple."[50]

[redacted]

47. [redacted] told us that “We need a UKIMA. The cost of not having it would be uncertainty.”[51] However, they added that “we still need to think about the long-term approach and what UKIMA means for all the devolved nations. Right now, that is probably the one area on which there is still a bit of uncertainty.”[52]

48. [redacted] told us that “our members definitely crave certainty for businesses. We are supportive of the principle of the internal market act.”[53] But they also added that businesses ask us all the time, “‘Is this an internal market act issue? Is it something where the devolved Government will have to do something other than what it wants to do because there will be an intervention by the UK Government?’ So, it still breeds a lot of uncertainty. If we can get away from that uncertainty, everyone will benefit.”[54]

49. [redacted] told us that businesses “have expressed the need for greater clarity and predictability, particularly in regulated sectors such as food standards…”[55]

50. [redacted] have raised concerns about the uncertainty the exclusion process (discussed below) causes for industry: “Is it happening, is it not, when is it happening, what does that look like? that’s really problematic for us for planning. A lot of the measures we’re talking about involve making changes to how businesses operate, and those things have lead times.”[56] Similarly, the [redacted] suggested there “has been a little bit of uncertainty around the exclusions process…”[57].

51. [redacted] asked some of our witnesses whether, in order to provide businesses with more certainty, they would support a specific and defined set of criteria for exclusions from the market access principles; as well as a threshold for the burden of proof the UK Government should demonstrate if denying an exclusion.

52. [redacted] responded that –

> “Absolutely—those proposals would certainly be welcomed at our end. I do not want to bang on too much about the exclusions process, but I will say that, right now, it is shrouded in a bit of mystery. The proposals that you mention would make a big difference and would strike the balance that I mentioned earlier in a proportionate and legitimate manner. I agree with both proposals.”[58]

53. [redacted] responded that “In principle, my answer to what you said is yes, but let us keep it simple” while [redacted] said that, having “criteria that are as

[redacted]

understandable and clear as possible would be an opportunity to provide businesses with a bit more certainty in the longer term."[59]

54. [redacted] told us that "the way in which the processes surrounding the enforcement of UKIMA intersect with devolved competence….are problematic in their uncertainty." [60] There "are different types of uncertainty that operate but, unfortunately, they are mutually reinforcing."[61]

55. [redacted] view is that we "are in a situation in which there is lots of uncertainty and very few means of addressing it…but a stronger, clearer legal framework that encourages people into court occasionally—that is not a bad thing—and gives guidance on how the balance between different objectives might be struck, would be desirable."[62]

56. [redacted] told us that "uncertainty is built into an internal market. There will be a degree of uncertainty unless and until certain rules are challenged or litigated. That is just a fact. Experience of the EU and the World Trade Organization shows that we have adjudication panels and courts so that things can be tested."[63]

57. [redacted] view is that uncertainty "is inherent in political systems, and there is uncertainty even in much more functional or mature internal markets. The Danish and South Australian deposit return schemes were both delayed because they were challenged by industry, so court processes had to take place: they responded and adapted their policies in the light of the challenges."[64]

58. [redacted] submission states that "the way the Act has been used to date has created uncertainty for businesses on devolved lawmaking."[65] The SRC agree that UKIMA has created some uncertainty in policymaking.

59. [redacted] view is that UKIMA has "introduced radical new uncertainty as to the effect of devolved laws, effectively introducing a far-reaching and unpredictable new constraint on the powers of the [redacted] and "acts as a source of regulatory uncertainty for businesses and consumers."[66]

60. The [redacted] recognises that the business groups we heard from are generally supportive of UKIMA especially in relation to the extent which it can provide a clear and stable regulatory environment across the whole of the UK. But they also remain concerned about uncertainty arising from the operation of UKIMA including how it potentially impacts on devolved

[redacted]

lawmaking. [redacted] believes that the review of UKIMA should address the root causes of this uncertainty.

61. We discuss this in more detail below including in relation to the exclusions process

UKIMA compared to the EU Single Market

62. The White Paper stated that the market access principles constitute "a legislative framework that will preserve the fundamental market access rights of businesses and citizens across the UK Internal Market. This system will replace the effect of the rules and mechanisms of the EU Single Market had within the UK."[67]

63. [redacted] previously explained to the [redacted] that the "most useful available comparison from which to make sense of the UK internal market is the EU internal market."[68] He explained that despite "borrowing some of the language of EU free movement law, it is clear that the discipline exerted on local regulatory jurisdictions under the UKIM Act is different from that under EU law. In particular, a strong version of the mutual recognition principle in UKIMA affords little scope for devolved authorities to protect local regulatory policymaking from disapplication if challenged by producers and providers located in other parts of the UK."[69]

64. In our previous inquiry on the UK internal market there was a clear consensus in the evidence we received that UKIMA places more emphasis on open trade than regulatory autonomy compared to the EU single market. The further evidence we have received as part of this short inquiry is consistent with that view.

65. A fundamental difference is that unlike the EU single market, which is based on a consensus between Member States, UKIMA is a source of dispute between the UK Government and the devolved institutions. [redacted] and [redacted] explain that the "EU internal market rests on consensus between the member states on the co-existence of instruments of positive and negative harmonisation as tools to realise the economic, social and political benefits of market integration."[70] As noted above, UKIMA in contrast was enacted without the consent of the [redacted].

66. [redacted] view is that UKIMA, while envisaged as a replacement for the European Single Market, is "markedly different in scope and operation to its EU predecessor (notably more centralised and more restrictive for the devolved administrations)."[71]

67. The effect of the market access principles, according to [redacted] "represents a partial replication, in a new domesticated form, of the limits that EU law previously placed on the power of the devolved

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[redacted]

governments to exercise full control over the regulation of economic activity within their respective territories, including in relation to the management of intra-UK trade. They do this in a more absolute, unconditional way than operated under EU law."[72] "In particular, the UKIMA defines exceptions to the principles of non-discrimination and mutual recognition considerably more narrowly than under the EU Treaties."[73]

Exclusions

68. Member States within the EU, including at the sub-state level, may legally impose measures which restrict the free movement of goods within EU internal market in pursuit of one of the objectives specified in the Treaty on the Functioning of the European Union (TFEU).

69. Article 36 of TFEU provides that prohibitions or restrictions on imports or exports may be permitted if justified on a number of grounds including "public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property."[74] The European Court of Justice has also held that the protection of the environment is a mandatory requirement which may be invoked to justify restrictions on free trade.

70. According to the *Centre for Public Policy* the exclusions under UKIMA "remain much more limited than the broad public interest grounds under EU internal market law."[75] Likewise, [redacted] submission explains that UKIMA recognises only a very limited set of grounds justifying regulations that fall within the scope of the market access principles. This contrasts, for example, with EU internal market law, which recognises space to defend an open-ended list of proportionate non-market policy objectives.

Principles of Subsidiarity and Proportionality

71. The principles of subsidiarity and proportionality govern the exercise of the European Union's competences and are enacted in Article 5 of the *Treaty of the European Union*[76] -

- Subsidiarity is a principle which governs the choice of who should act, in situations where potentially more than one actor is able to act. In the EU

[redacted]

context, it refers to the choice of whether to act at EU, national or sub-national levels, with a preference for the level closest to citizens;

- Proportionality requires that action be no more than is needed to achieve the intended objective. This means that the need for action, and the costs and benefits that can be expected must be examined.

72. In the EU, proportionality and subsidiarity arguments are often invoked in conjunction.[77]

Subsidiarity Test

73. In areas in which the EU does not have exclusive competence, the principle of subsidiarity seeks to safeguard the ability of the Member States to take decisions and action and authorises intervention by the Union when the objectives of an action cannot be sufficiently achieved by the Member States, but can be better achieved at Union level, 'by reason of the scale and effects of the proposed action'. The purpose of including a reference to the principle in the EU Treaties is also to ensure that powers are exercised as close to the citizen as possible.[78]

74. The general aim of the principle of subsidiarity is defined by the EU as being "to guarantee a degree of independence for a lower authority in relation to a higher body or for a local authority in relation to central government. It therefore involves the sharing of powers between several levels of authority, a principle which forms the institutional basis for federal states."[79]

75. [redacted] told us that within the operation of the EU single market "there is a whole load of case law from the courts about how subsidiarity and the public interest in different regulatory systems can be balanced against the perfectly reasonable approach of free movement of goods and services in a unitary market."[80]

76. [redacted] submission states that the subsidiarity principle "can help to rebalance the commitments to market access alongside the principles of devolution." This is because the presumption "would be in favour of maintaining the authority of the devolved legislatures to pass laws as they see fit, removing the veto power that the UKIMA gives to the UK Government over the exercise of those law-making powers that intersect with the market access principles" and "the burden of proof to demonstrate the necessity of these would fall to the UK Government, should they face resistance from one or more devolved governments."[81]

Proportionality Test

[redacted]

77. The [redacted] recognises that a proportionality test is a common feature in other internal markets including the EU and in international trade agreements. In the EU, the principle of proportionality seeks to set actions taken by EU institutions within specified bounds. Under this principle, EU measures:

- must be suitable to achieve the desired end;
- must be necessary to achieve the desired end; and
- must not impose a burden on the individual that is excessive in relation to the objective sought to be achieved (proportionality in the narrow sense).[82]

78. [redacted] submission states that a proportionality test "would mean that benefits of any particular regulation would have to outweigh any adverse impacts on internal trade, while a subsidiarity principle would place the burden of proof on those seeking to challenge the application of divergent devolved regulations."[83]

79. Some of our witnesses suggested that UKIMA could be amended to include such tests, with the market access principles thus being subject to both subsidiarity and proportionality tests, similar to those which apply within the EU Single Market.

80. [redacted] told us that the "environment is one of the public policy objectives on which there should be greater flexibility in the form of the way in which subsidiarity was applied in the European Union or, indeed, as one of the previous witnesses said, Australia."[84] They added that "within the operation of the EU single market "there is a whole load of case law from the courts about how subsidiarity and the public interest in different regulatory systems can be balanced against the perfectly reasonable approach of free movement of goods and services in a unitary market."[85]

81. [redacted] suggests that subjecting the application of the market access principles, in any particular case, to principles of proportionality and subsidiarity would be similar to the operation of the EU internal market "where the preservation of free trade is balanced against competing regulatory objectives on a case-by-case basis." [redacted] submission suggests that introducing a proportionality test would require decisionmakers to balance the effects of regulatory variations on trade across the UK's borders with the protection of recognised public interests.

82. [redacted] explained that "the proportionality principle could be introduced to support the balancing of devolved autonomy with the protection of intra-UK trade under the MAPs. Like subsidiarity, proportionality is familiar in other systems of multi-level governance. In that context, the principle functions to scrutinise the intensity of regulatory interventions, ensuring that policymaking

[redacted]

at both the centre and lower tiers of government furthers a recognised public interest, is suitable to achieve its aims and, crucially, cannot be achieved using measures that are less restrictive of (here) intra-UK trade."[86]

83. [redacted] suggests that UKIMA "pays insufficient notice to the commitments to devolution, and carries over only a partial account of the EU system. It does not bring with it the commitment to subsidiarity or recognition of the wider grounds for justification apparent in that system. The review of the legislation should permit a considered review of the balance between the commitment to devolution and subsidiarity, and the commitment to an internal, unified market."[87]

84. Our Adviser, [redacted], notes that, "although UKIMA's market access principles are in effect transplants from the EU Single Market, the application of those principles bites on the law-making function of the Scottish Parliament in ways that the EU Single Market did not. The decision not to transplant well developed EU principles of proportionality and subsidiarity into the UKIMA scheme, combined with the narrower range of exceptions that apply to UKIMA's market access principles as compared to the Single Market, has had identifiable impacts on devolved regulatory autonomy." In his view, for example, "the [redacted] proposal to ban the sale of glue traps would almost certainly have been permitted under a principle of subsidiarity."

85. [redacted] view is that UKIMA "imposes a rigid statutory model based solely on the market access provisions, with very limited exceptions, and without the key features of effective internal markets, such as proportionality and subsidiarity."[88]

86. In 2014 the UK Government carried out a review of the balance of competences between the United Kingdom and the European Union focusing on the principles of subsidiarity and proportionality. The review notes that the UK Government, at that time, "set out areas where it believes improvement is necessary to increase respect for both subsidiarity and proportionality – in order to support greater European competitiveness, and to maintain the consent of citizens in an expanded and increasingly diverse EU."[89]

87. [redacted] view is that while "the previous UK Government's position was that the Act replaced EU rules with similar rules for the UK upon exit from the EU Single Market…this claim fails to take account of the fact that the process through which EU rules are developed is fundamentally different from those now in place through the Act. EU processes seek to find agreement between member states, whereas the Act unilaterally imposes regulation on the devolved institutions. The EU rules aim for a balance between economic interests and other policy goals (the principle of proportionality), as well as valuing and protecting the principle that decisions should be made as locally to

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[redacted]

[redacted]

people as possible (the principle of subsidiarity). The Act has no such balance or protection."[90]

88. The [redacted] reiterates our view "that devolution looks very different outside of the EU compared to when the UK was a Member State. The key difference is how the regulatory environment within the UK is managed compared to how it was managed within the EU."[91]

89. Since leaving the EU there has been disagreement between the devolved institutions and the UK Government regarding how the regulatory environment should be managed within the UK. This has created uncertainty including for businesses and other stakeholders.

90. The [redacted] recommends that the review should resolve this disagreement and uncertainty without undermining the legitimate legislative and scrutiny functions of the Scottish Parliament.

91. The [redacted] view is that this is unlikely to be achieved primarily through non-legislative agreements. This is because much of the uncertainty which has arisen from UKIMA is at a political level. For example, in relation to the approach to glue traps (discussed above) by different UK Governments. While political uncertainty may be resolved in the short term through improved intergovernmental relations, uncertainty remains about future relationships following any changes in governments.

92. Greater certainty is more likely to be delivered through a more robust legal framework which addresses uncertainty at a political level in a way which future proofs t[redacted] believes, therefore, that the review should consider legislative changes, including consideration of subsidiarity and proportionality tests, as a means of simultaneously creating more certainty for businesses and other stakeholders, while protecting the fundamental principles which underpin devolution.

93. Some of our witnesses also highlighted differences between UKIMA and other international comparators. [redacted] told us that in "comparative cases, there has never been an internal market that has been imposed as UKIMA has been imposed—overnight, all at once, without consent."[92] [redacted] agreed, stating that "parties in other internal markets might disagree on particular outcomes and policy areas, but" unlike in relation to UKIMA, "they fundamentally agree on their market's basic structures and principles. States voluntarily join such systems and can leave them."[93] For example, all states and territories were involved in the drafting and agreement of the Mutual Recognition Act 1992 in Australia.

94. [redacted] also told us that when "we look at other internal markets, such as in Australia or the European Union, which have their tensions, we do not see

[redacted]

that concentration or centralisation of power."[94] Our Adviser, [redacted], notes that, comparatively, there is no internal market, other than the UK internal market under UKIMA, in which the central government performs *both* a "powerful gatekeeping role over how devolved institutions exercise their policy and law-making powers"[95] and a regulatory role as the government for one of those constituent parts.

95. [redacted] view is that the UK internal market provided for by UKIMA "is an outlier when compared with market regimes in other multi-level devolved or federal states, which manage to protect local regulatory autonomy and ensure market efficiencies without the rigid centralisation, legal uncertainty and arbitrariness of the IMA."[96] [redacted] cite a number of academics who view UKIMA as a "global outlier" including [redacted] who suggests that, in significant ways, UKIMA "departs from existing blueprints – not just that provided by the EU, but other countries across the world."[97]

96. The [redacted] recommends that the review should include a comparative analysis of other internal markets with a view to developing an optimum approach to resolving the tension between open trade and regulatory autonomy.

The process for exclusions from the market access principles

97. The Consultation document recognises that the market access principles "could, of course, make it more difficult for a new local rule to have its intended effect" and, therefore, UKIMA includes "provisions allowing the principles to be switched off for particular regulations or policy areas – these are known as 'exclusions'."[98]

98. The [redacted] notes that one of the key areas of disagreement between the UK Government and the devolved governments is the operation of the exclusions process[99]. The [redacted] heard that the nature of UKIMA is highly asymmetrical with the UK Government being both regulator for England and 'gatekeeper' on exclusions to the market access principles.

99. Some of our academic witnesses provided recommendations aimed at helping to resolve this disagreement including the following –

- reverse the burden of proof for exclusions[100]

[redacted]

- the exclusions contained in UKIMA should be revised and at "the very least, the same set of grounds applying to indirectly discriminatory measures should be confirmed as applying to the mutual recognition principle."[101]

- there "should be more robust requirements to share proposed legislation within the scope of the legislation, operated through an independent third party, building in the exclusions process ex ante"[102]

- "a role for stakeholder consultation and scrutiny by the UK and devolved legislatures before exclusions are agreed."[103]

- "the introduction of an exclusion request form, submitted to an impartial body, alongside requirements for timing and format in which the relevant parties are required to respond."[104]

- "an agreed evidence base required to evaluate exclusion decisions to grant or withhold an exclusion."[105]

- A role for the OIM in independently assessing exclusion requests.

- A role for the IGR independent secretariat in commissioning evidence to support the exclusion process, in a way similar to its role in resolving intergovernmental disputes.

100. We explore some of these recommendations in more detail below.

Burden of Proof

101. [redacted] proposes reversing the burden of proof for exclusions. He states –

> "Under the current UKIMA framework, it falls to the [redacted] to initiate the exclusions process to shield devolved legislation from the MAPs. The [redacted] should consider pressing for the reversal of this burden of proof. [redacted] has primary responsibility for legislative policymaking in devolved areas, and the UKIMA exclusions process ought to reflect (and protect) this core manifestation of devolved autonomy."[106]

102. [redacted] also suggests that reversing the burden of proof would align the UKIMA exclusions process with the subsidiarity principle (discussed above). He told us –

> "If you want to legislate within the UKIMA space you effectively have to ask the UK Government for permission to do so. That is strange. That veto-

[redacted]

playing role is the reverse of the burden that we saw in the EU context; it is a direct point of difference to the EU legal system, in which the [redacted] could legislate and the burden of proof to raise a case was on the centre, that is, on European institutions such as the European Commission."[107]

103. [redacted] agrees that "it would be important to shift the burden of proof. At the moment, devolved legislation and, potentially, England-only legislation is automatically disapplied if the market access principles apply. I would rather see the removal of that automatic disapplication and for there to be some sort of process of having to prove that divergent regulation creates problems for the internal market."[108]

104. [redacted] view is that under UKIMA "it seems that the burden of proof is very much on the devolved Governments that are attempting to exercise their legitimate devolved powers" and this "is where the regulatory chill comes in."[109] In contrast the burden of proof could fall on the UK Government to provide evidence that devolved legislation is "an impediment to the internal market and it has a real effect on the economy of the UK as a whole."[110]

Timing

105. Some of our witnesses highlighted issues around the timing of the exclusions process. [redacted] view is that "One of the most contentious aspects of the exclusion process has been around the timing of decisions. In previous instances, the UK Government has awaited the completion of devolved legislative processes prior to making decisions, on the basis that only then can an assessment of their impact on the internal market be made. This is clearly unsatisfactory and has increased uncertainty among businesses and other stakeholders."[111]

106. [redacted] submission states that businesses "need as transparent and clearly timetabled regulation across the four UK nations as possible to allow them to plan effectively. Early decisions and realistic implementation times are critical to this, ideally agreed in conjunction with affected industries and their representative groups."[112]

107. [redacted] "would like to see an expectation that clear business engagement has been evidenced before exclusions are considered" and that that "business impact would be transparently considered" including "consideration of the impact on all sizes of business (so different impact on small, medium and large businesses)."[113]

[redacted]

Uncertainty

108. [redacted] suggests that the exclusions process creates uncertainty, "particularly as it intersects with agreements on policy divergence reached via the Common Frameworks process."[114]

109. [redacted] view is that the power of UK Ministers to veto exclusions "exposes devolved law makers to political control by UK ministers in areas of devolved policy competence" and may create unpredictability regarding the use of the veto with "very little opportunity for legal challenge. This has been, and is likely to continue to be, a source of considerable political tension between the UK and devolved governments."[115]

110. [redacted] told us that the lack of clarity in how the exclusions process works "creates uncertainty and confusion within both the legislative space and for businesses."[116] For example, with "the single-use plastics ban, there was a regulatory gap because the exclusion came through quite late. That creates uncertainty."[117]

111. [redacted] submission states that there "is little transparency on whether an exclusion is required, how it is applied for, and the timetable for it being granted. This tends to lead to uncertainty which is challenging for businesses who simply wish to implement policy. Greater transparency, including market access principles in consultation, and certainty on whether an exclusion will be granted before setting implementation dates would all be steps which would improve this situation for businesses."[118]

112. [redacted] January 2025 report recommended that the UK and Devolved Governments should "consider negotiating possible improvements" to the process by which new areas can be excluded from the application of the MAPs by mutual agreement between the four governments via the common frameworks process. It suggests "greater clarity is needed" on issues including timescales, and what information should be required to support an exclusion request.

113. [redacted] view is that there is a lack of consensus between the governments of the UK about when, why, how and to what effect the exclusions process operates and about how disputes are resolved between the parties; and, that there is an insufficient flow of information from the UK and Scottish Governments to the Scottish Parliament about exclusions requests, discussions and decisions.

114. [redacted] believes there "is merit in the proposal that the burden of proof is reversed in an updated exclusions process. Primacy should be returned to legitimate lawmaking in areas of devolved responsibility. Only by

[redacted]

exception, and with robust evidence as to disproportionate market impact, should an exclusion not be agreed."[119]

115. [redacted] **believes that the review needs to reconsider whether the operation of the exclusions process is consistent with the UK Government's commitment to maintaining, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as was afforded while the UK was a Member State within the EU. This should include addressing concerns around the potential chilling effect of UKIMA.**

116. [redacted] **also believes that the operation of the exclusions process, including the level of political discretion involved, has created significant uncertainty including for businesses and other stakeholders. The process is largely opaque with little opportunity for parliamentary scrutiny or stakeholder engagement. There is also a lack of clarity regarding how it is intended to operate in relation to the devolved legislative process, as illustrated by the example above in relation to glue traps.**

117. [redacted] **therefore, reiterates our view that there is a need for greater clarity around the role of business and other stakeholders in the process for considering exclusions and the role of parliament(s) in holding Ministers to account.**[120] [redacted] **believes that it is essential that the exclusions process does not undermine the** [redacted] **legitimate legislative and scrutiny functions.** [redacted] **also believes that if an exclusion is not granted by UK Ministers that this is communicated to the** [redacted] **at the same time as it is communicated to the** [redacted]**, and with a commitment that a UK Minister would be available to appear before the relevant subject committee.**

Common Frameworks

118. The consultation document states that Common Frameworks are "the most important tool for the UK government and devolved governments to find shared approaches or agree on how to manage where one or more parties wish to take a different approach in the areas they cover." The UK Government also states that both it and the devolved governments "are fully committed to Common Frameworks, and working closely together to fulfil their potential to help manage the UK internal market." [121]

119. [redacted] previously recognised that Common Frameworks "have the potential to resolve the tensions within the devolved settlement through

[redacted]

managing regulatory divergence on a consensual basis while facilitating open trade within the UK internal market."[122]

The Impact of UKIMA

120. In our previous inquiry on *How devolution is changing post-EU* a number of our witnesses raised concerns about the impact of UKIMA on the operation of Common Frameworks. We recommended that "there needs to be much greater clarity around how regulatory divergence will be managed through the Common Frameworks programme. In particular, there needs to be clarity around how the market access principles are intended to work in those circumstances."[123]

121. We explored these issues further with some of our witnesses as part of our current short inquiry.

122. [redacted] supports the principle of Common Frameworks "as an important component of safeguarding the integrity of the UK Internal Market."[124] However, their "experience, certainly since 2022, is that they have not worked at all. There has been little or no action in and around them with regard to various elements of devolved responsibility, and it feels that, ultimately, it is the UKIMA backstop that will rule instead of our ability to develop devolved policy."[125] In their view the market access principles "pose a significant threat to the development of Common Frameworks and to devolved policy."[126]

123. This is because they "potentially undermine the Common Frameworks process both in principle, as they move from agreement to imposition, and in practice by removing the incentive for the UK Government and devolved administrations to agree ways to align and manage differences when mutual recognition and non-discrimination rules require acceptance of standards from other parts of the UK."[127]

124. [redacted] is concerned that UKIMA "could potentially override all Common Frameworks relating to agricultural support, environmental and animal welfare standards, and food" and does not include any provisions regarding "how UK Internal Market disputes may be resolved or how Common Frameworks might operate and be governed. This is a major omission."[128]

125. [redacted] view is that the "collaborative, shared governance approach offered by Common Frameworks was not given opportunity to effectively develop and bed-in before it was overtaken by the imposition of the top-down discipline of the UKIMA."[129]

[redacted]

126. [redacted] view is that "Consent and co-design are essential prerequisites to deliver certainty and stability in any system of market governance, and the Common Frameworks deliver on both counts" although they "require further refinement."[130] However, "critically, without legislative change, the Common Frameworks remain formally subordinate to the UKIMA. The UKG's announcement that it wishes to prioritise the Common Frameworks over the UKIMA ultimately rests on little more than a political commitment."[131] [redacted] notes that there "is no obligation to turn a common framework agreement into a UKIMA exclusion, which needs to be looked at."[132]

Policy Substance

127. The [redacted] has previously heard evidence that the focus of Common Frameworks is on process and ways of working rather than policy substance[133]. For example, in March 2023 the Office for the Internal Market stated that "the majority of activity under Common Frameworks to date has been routine intergovernmental working."[134]

128. We heard similar views as part of our current short inquiry.

129. [redacted] told us that "our experience of common frameworks to date is that there has not been much substance to them. They have established procedures and processes by which policies and substance are discussed, but the policy and substance are not in the framework….As external stakeholders, we do not see what the discussion of substance is."[135]

130. [redacted] notes that the common frameworks are not necessarily operating as intended: tending towards the procedural – to ways of intergovernmental working – rather than to substantive decision making on harmonisation or managed divergence. [redacted] agrees that common frameworks "are principally concerned with procedural matters".

Transparency and Stakeholder Engagement

131. In our previous inquiry on the UK internal market a recurring theme was the lack of transparency and stakeholder engagement in relation to Common Frameworks. The further evidence received during this short inquiry suggests that there has been little change.

132. [redacted] told us that because Common Frameworks "are intergovernmental processes that are not transparent" this "can pose problems for legislative scrutiny, stakeholder involvement and so on. An improved common frameworks process would also address stakeholder participation and democratic scrutiny."[136] Similarly, [redacted] notes that concerns remain

[redacted]

around the transparency of common frameworks, notably regarding stakeholder input.[137]

133. [redacted] raised concerns regarding the "lack of transparency and stakeholder engagement in those processes. It is a case of four Governments having an interesting chat behind closed doors. If they agree, they publish the agreement but, if they do not agree, nobody knows what happened or did not happen."[138]

134. In a similar vein, [redacted] told us that they "do not really know what is going on with common frameworks. We do not know what is being discussed and are not asked to input the industry's point of view, so we do not really know what is being discarded, what has been agreed, and what will be taken forward. As we have said elsewhere, we need clarity about the progress of negotiations."[139]

135. [redacted] raised concerns that discussions "over Common Frameworks tend to exclude businesses whilst decisions over whether an exclusion is required are conducted at a Government level. To build greater confidence in the operating of the Internal Market there needs to be greater opportunities for stakeholder consultation and engagement."[140]

136. [redacted] told us that they "ultimately have a strong interest in the common frameworks but would be pretty much excluded from that approach. If one of the outcomes of the review is that we reignite common frameworks and improve how they work, that involvement—how not only Governments and Parliaments but stakeholders engage—will be critical."[141]

137. [redacted] have raised concerns that "the enhanced importance of the Common Frameworks has a concerning consequence: the empowerment of devolved executives at the expense of their legislatures."[142] [redacted] notes that with no formal mechanism of reporting to legislatures, the [redacted] relies heavily on the discretionary publication or sharing of information by the relevant governments. In a similar vein, [redacted] states that it is "imperative that robust processes exist to ensure the [redacted] remains fully accountable to the [redacted] when acting within the Frameworks."

138. [redacted] previously recognised "the need for confidentiality in inter-governmental discussions under the auspices of Common Frameworks but believes that stakeholders and the Parliament must be involved at appropriate points in order to facilitate proper policy making and robust scrutiny."[143] We remain "strongly of the view that it would be highly unfortunate if, having left the

[redacted]

EU, there was a decrease in public access for businesses and citizens to influence regulatory policy."[144]

139. [redacted] recommended that in "order to provide clarity and certainty there needs to be a formal agreement with the four legislatures across the UK that each government will provide detailed information on the outcome of common framework discussions which impact on significant policy areas, such as single-use plastics."[145]

140. [redacted] position is that UKIMA "should be repealed and replaced with an equitable, co-designed system built around the Common Frameworks approach." This is because UKIMA, "in nearly all relevant cases, conditions and undermines the operation of Common Frameworks."[146]

141. The [redacted] welcomes the UK Government's recognition that that Common Frameworks are "the most important tool for the UK government and devolved governments to find shared approaches or agree on how to manage where one or more parties wish to take a different approach in the areas they cover."[147] We recognise that Common Frameworks provide an opportunity to manage the tension between regulatory divergence and open trade on a consensual basis.

142. However, similar to our views on the exclusions process, the [redacted] believes that the operation of Common Frameworks to date has created significant uncertainty including for businesses and other stakeholders. The operation of Common Frameworks, similar to the exclusions process, is largely opaque with little opportunity for parliamentary scrutiny or stakeholder engagement and there is a lack of clarity regarding how Common Frameworks are intended to operate in relation to UKIMA.

143. [redacted] recommends that the review should address the lack of clarity around -

- **the purpose of UKIMA in relation to the operation of Common Frameworks especially given concerns that UKIMA potentially undermines the management of regulatory divergence within the frameworks process;**

- **the purpose of Common Frameworks given there is little evidence that they are delivering common goals, maximum or minimum standards or harmonisation as initially intended;**

- **stakeholder engagement in the frameworks process and the role of parliament(s) in holding Ministers to account.**

[redacted]

144. [redacted] view is that it is essential that in seeking to resolve the tension between open trade and regulatory autonomy, the four governments within the UK do not inadvertently create a democratic deficit within the policy-making process, which limits both stakeholder engagement and Ministerial accountability in areas covered by Common Frameworks.

145. We reiterate our view that "any proposal for a UK or GB wide policy approach within a common framework that constrains, albeit on a voluntary basis, the exercise of devolved competence, should require the approval of the [redacted]."[148]

Conclusion

146. The [redacted] welcomes the UK Government's commitment to reset relations with the devolved governments. Our view is that the starting point for this reset should be a recognition that devolution looks very different outside of the EU compared to when the UK was a Member State. The key difference is how the regulatory environment within the UK is managed compared to how it was managed within the EU. Critically this is a shared space which requires much more intergovernmental working than previously when the UK was in the EU.

147. While a number of mechanisms and ways of working, including UKIMA, have been developed to manage the shared space, there remains a lack of consensus about how the regulatory environment should be managed. There is also a lack of clarity and certainty around mechanisms, such as the exclusions process, which are key to how the regulatory environment is now managed. Our view is that the review of UKIMA should address this lack of clarity, consensus and certainty. The recommendations in this submission are intended to support that process.

[redacted]

Appendix A – Record of divisions disagreed

At paragraph 40, [redacted] proposed alternative wording as follows: [redacted] believes, therefore, that the review should address the concerns of stakeholders that there continues to be a risk of a chilling effect on devolved policy innovation arising from the operation of UKIMA." [redacted]

At paragraph 60, [redacted] replacing the word "can" with "does". The proposal was disagreed by division [redacted]

[redacted]

[redacted] response to the UK Government's review of the Internal Market Act 2020 consultation – 03 April 2025

[redacted]

[redacted]

[redacted] views regarding the impact of the Internal Market Act on the development and implementation of devolved public health policy

[redacted] welcomes the UK Government's review of the Internal Market Act 2020 as part of its commitment to reset relations with the devolved administrations across the UK.

The Internal Market Act has, so far, offered limited opportunities in which the devolved Scottish Parliament can over-ride UK governments' presumption of protecting the UK internal market to protect the health and wellbeing of citizens in Scotland.

Although the four-nations approach to the UK Government's current Tobacco and Vapes Bill and its wider scope of measures relevant to a broad range of nicotine and herbal smoking products is welcomed, the Scottish Government's implementation of regulations enabled by the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 to restrict the advertising and promotions of vaping products, which were open to public consultation back in 2022, has stalled as a result.

The current Tobacco and Vapes Bill has the potential to be a landmark step towards helping Scotland towards a tobacco-free generation by 2034 and [redacted] welcomes the governments' intentions to future-proof the legislation and regulations by ensuring it captures novel products which may emerge on to the UK market in the years ahead.

We should, however, be alive to the possibility that future UK Government administrations may seek to weaken measures that would be applicable across all four nations, and there may not always be an appetite or opportunity for further legislation at UK level that could be required to completely eradicate the damage caused in our communities by the tobacco industry. This potential constraining scenario would be cause for significant frustration amongst public health advocates in Scotland in that event that there is political will across a future Scottish Parliament to introduce ramped up progressive public health measures.

The nature and extent of public health problems and contexts can vary across the UK. For example, smoking rates in Scotland tend to be historically higher than they are in England. According to the 2023 ONS Annual Population Survey, the smoking rate in Scotland is

13.5% compared to 11.6% in England (12.% in Wales and 13.3% in Northern Ireland). According to ONS data, Scotland has higher levels of smoking compared to England across several indicators of socioeconomic deprivation: unemployed people, those with lower levels of education and those in routine and manual jobs. In recognition of this ongoing public health crisis, successive Scottish devolved administrations have consistently taken strong actions and introduced targeted NHS Scotland health services to address smoking-related public health inequalities.

Devolved nations should be free to continue to make our own assessments of how best to tackle the problems we each face within existing powers and distinctive health, social, legal and civic structures. Before the Internal Market Act, there were clear opportunities for devolved government administrations to pioneer innovations in public health policy that could be of mutual benefit across the UK, as the evidence obtained from implementing policies in one country could help inform decision-makers in the others.

The UK is recognised as a world leader in tobacco control policy and Scotland has played a notable part in achieving that reputation following the introduction of progressive policies in the context of health being a devolved power. It runs counter to our status as world leaders in tobacco control policy to have Scotland's devolved provisions that protect public health weakened by Internal Market Act challenges and restrictions.

Scotland was the first country in the UK (and the second in Europe) to pass legislation to introduce a ban on smoking in enclosed public places – a policy that was subsequently adopted by all the other UK nations.

Scotland also introduced point of sale display regulations for tobacco products that are distinct and different from regulation in England, with only much smaller display spaces permitted.

In 2013, Scotland became the first country in the UK and only the fifth in the world to set an end game target, when the Scottish Government announced 2034 would be the target year for the country to attain a tobacco-free generation, with the goal of reducing smoking rates to be 5% or lower.

The Scottish Government's current Tobacco and Vaping Framework, published in November 2023, details Scotland-specific plans, actions and measures to drive the country towards achieving the 2034 target. Making tobacco products less affordable is proven to be one of the most effective tobacco control measures and the Scottish Government has committed to considering the option of introducing minimum and maximum prices for tobacco and vaping products and making price changes to roll your own tobacco. Devolved administrations being prevented from taking such actions to improve public health, due to worries about infringing the Internal Market Act, would be concerning.

[redacted] contends that the Scottish Parliament should exercise its long-held right to legislate using devolved powers to protect and promote public health, even where this may result in direct or indirect discrimination to the provision of goods and services in comparison to other parts of the UK. Tobacco and related goods are not a category of trade that merits protection.

The tobacco industry has a well-documented history of opposing regulation of their products, so it is essential that any system minimises the potential for their pushing legal challenges that deter, disrupt or delay legitimate action by governments to protect public health. A core issue is that the IMA permits legal challenges to devolved health measures and, given that the multinational tobacco corporates work by both misinforming and incentivising retail interests to carry their influence, industry funded or influenced associates elsewhere in the

UK can challenge Scotland's regulations and frustrate the progress of public health policy development and implementation mandated by Scotland's democratically elected Parliament. The tobacco industry will push to weaken and dilute measures and then push other three nations to adopt the lowest common denominator. Industry's push against health measures is more diffused where there are four legislatures and debates.

Upon introduction, the UK Internal Market Act included a schedule detailing circumstances in which goods are excluded from the market access principles. The exclusions covered threats to human, animal or plant health. Tobacco is a commercial product that harms and kills, and where it is completely inappropriate to prioritise profit over health. ASH Scotland advocates for tobacco and related products (including vapes and other recreational nicotine products) to be set aside from the scope of the IMA due to their threats to human health.

In closing, [redacted] encourages the UK Government to explore legislative change options suggested by the Centre for Public Policy at the University of Glasgow (*Westminster Rules? The United Kingdom Internal Market Act and Devolution*, 2 October 2024). These include the potential to introduce a proportionality test into the Internal Market Act framework that could recognise public health considerations as legitimate public interest requirements justifying restrictions on intra-UK trade, and the introduction of a subsidiarity test which could have a presumption in favour of maintaining the authority of devolved legislatures to pass laws reflecting each country's public health policy choices.

[redacted]

[redacted]

[redacted]

Review of the UK Internal Market Act 2020

1. Introduction

[redacted] welcomes the opportunity to contribute to the review of the **UK Internal Market Act 2020**.

1.2. Company Background

[redacted]

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2. The Issue

2.1. Product Diversification

For a new independent whisky company to grow and prosper, it must offer a diverse portfolio of products. [redacted] was designed to produce various styles of [redacted] while remaining within the legal definition of [redacted].

2.2. [redacted]

[redacted]

2.3. Labelling Restrictions

Under current legislation, Scottish rye whisky cannot be labelled or marketed as "rye whisky" and must instead be classified as a generic "grain whisky." This restriction limits the company's ability to sell its product both in the **UK and international markets**. In contrast, English rye whisky and all other global rye whiskies are permitted to be labelled and marketed as "rye whisky" without restriction.

2.4. Regulatory Barriers

[redacted] has refused to sponsor a change to the legislation, and the **Office for the Internal Market (OIM)** cannot take action as the relevant legislation predates the **UK Internal Market Act 2020**.

2.5. Competitive Disadvantage

These restrictions hinder our ability to compete both within the **UK internal market and globally**. They place [redacted] at a significant competitive disadvantage compared to English distillers. We believe this situation contravenes the spirit of the **UK Internal Market Act** and creates an **uneven playing field**.

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3. [redacted]

Since **May 2022**, [redacted] has engaged in discussions with the [redacted] in an effort to secure their support for a regulatory change. However, the [redacted] **has refused to progress this issue** with the **UK government**.

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4. Interaction with the Office for the Internal Market (OIM)

When approached, the **OIM confirmed that it cannot act**, as the relevant legislation has been in place since **2009**, prior to the enactment of the **UK Internal Market Act 2020**.

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5. English Whisky GI Application

A recent application by a group of **English whisky distillers** for **Geographic Indication (GI) status** does not include a definition for **rye whisky**. Additionally, a **loophole** in this GI application allows English distillers to **continue labelling English rye whisky without restriction**, maintaining a significant **competitive advantage over Scottish distillers**.

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6. Effective Legislation

The legislation creating this issue is **The Scotch Whisky Regulations 2009**.

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7. Our Request

We request that the **UK Internal Market Act 2020** be **amended** to allow for the **removal of historical barriers to trade**, rather than applying only to barriers introduced after the Act came into force.

UK Internal Market Act 2020:
Review and Consultation Relating to Parts 1, 2, 3 and 4

Written Evidence to the Department for Business & Trade

[redacted]

This submission discusses the design and operation to date of the United Kingdom Internal Market Act 2020 (the UKIMA). It also scopes potential reforms to enhance its functioning. It takes as its starting point the UK Government's (UKG's) commitment to reform rather than repeal the Act. For ease of reference, this submission groups together the individual consultation questions to which it responds.

What are your views on how the UK internal market for goods, services and the professions is best supported using the UK Internal Market Act? (Questions 1, 6 and 10)

The UKIMA regulates intra-UK trade in goods and services and the recognition of professional qualifications in devolved areas. It provides a <u>legal response to a functional problem</u>: how to manage devolved and (for England) UK policymaking to prevent the emergence of new barriers to trade between the four nations and territories of the UK. Pre-Brexit, EU internal market law largely discharged this coordinating role, minimising, though not entirely eliminating, the scope for difference between UK and devolved regulations in relation to goods, services and the recognition of professional qualifications.

Conceptually, there is <u>nothing inherently problematic with recourse to law – and, in particular, the market access principles (MAPs) – to manage intra-UK trade</u>. Most internal markets (domestic and international) are underpinned by legal frameworks that engage variations of the MAPs as substantive trade law principles. What distinguishes the UKIMA (in its present form) from comparable legal frameworks governing cross-border trade is its lack of underlying political consent, its approach to regulatory balancing and its institutional design.

> *Consent*. The UKIMA was introduced by the previous UKG without the consent of the devolved governments and their respective parliaments. Consent and co-design are essential prerequisites to deliver certainty and stability in any system of market governance. <u>The continued lack of agreement between UK and devolved institutions over the basic structures and principles underpinning the UK internal market remains a fundamental obstacle to regulatory stability, creating uncertainty for business, consumers and other stakeholders</u>. It also poses challenges for the effective scrutiny of regulatory proposals. This is particularly so in Wales, where the Welsh Government has proclaimed (at least publicly) that the MAPs have no impact on Senedd competences.[1]
>
> *Regulatory balance*. The UKIMA market access principles (MAPs) – mutual recognition and non-discrimination – are highly deregulatory. By default, they <u>prioritise intra-UK trade over the protection of non-market policy objectives (eg environmental protection; animal</u>

[redacted]

welfare etc.). The UKIMA recognises only a very limited set of grounds justifying regulations that fall within the scope of the MAPs. This contrasts, for example, with EU internal market law, which recognises space to defend an open-ended list of proportionate non-market policy objectives. The recognition of only a very narrow set of potential justification grounds under the UKIMA poses a particular problem in litigation. Where the MAPs are activated before courts as directly effective principles to challenge in-scope regulations (this is yet to occur), the current narrow list of statutory justifications provides very limited flexibility to moderate the effects of the MAPs.

Institutional design. The UKIMA is asymmetric. The MAPs apply differently to the UK and devolved governments and their parliaments (see, further, Questions 4, 8 and 12, below). The Act also introduces a hierarchy between the UK and devolved governments with respect to market-management. Under the UKIMA, the UKG occupies a dual role as 1) regulator for England (i.e. parallel to the devolved governments' positions in relation to their respective jurisdictions) and 2) UK-wide regulator (i.e. exercising ultimate responsibility to determine the application of the MAPs across the four nations and territories of the UK). This fusion of responsibilities contrasts with the position in the EU internal market, where there is a clear division between 1) the institutional role of member states acting *unilaterally* as national regulators and 2) EU institutions acting *collectively* to regulate intra-EU trade across the 27 national markets through e.g. the adoption of common standards.

The above three macro-level design features undermine the integrity of the UKIMA as a framework to secure a functioning UK internal market for goods, services and the professions. The UKG's consultation presents a welcome opportunity to address each of these concerns directly to reduce uncertainty, strengthen relations between the UK and devolved governments and establish a more stable framework to deliver balanced economic growth.

What is the right balance between the potential for local regulatory innovations and UK-wide alignment in goods, services and the professions? (Questions 3, 7 and 11)

Different internal markets adopt different approaches to regulatory divergence. In any particular system, decisions over where to set the boundary between local innovation and central regulation reflect political choices taken by legislatures and courts. These choices also evolve over time.

In well-functioning internal markets, decisions on how to balance local and central regulation in specific policy areas are reached by applying substantive principles that reflect broad agreement between different levels of governments regarding the desired degree of market liberalisation. In its current form, the UKIMA falls short by comparison. Introduced by the previous UKG, the Act establishes a framework for balancing that promotes a particular substantive vision for the UK internal market that continues to lack necessary political buy-in from the devolved institutions.

How could the UKG lead on recalibrating the UKIMA to balance local and UK-wide regulation more effectively?

One option for the UKG would be give effect to existing calls to expand the available grounds justifying devolved regulations that fall within the scope of the MAPs.[2] Expanding the list of

[redacted]

legitimate policy objectives would address concerns that the UKIMA currently provides insufficient scope to balance intra-UK trade with other non-market policy objectives. Crucially, this would also bolster the protection of devolved regulations where the MAPs are engaged outside intergovernmental processes (i.e. as directly effective provisions to challenge devolved legislation before the courts). Separately, the UKG could also consider using its existing UKIMA powers (eg s.10 and s.18) to exclude devolved policy areas in whole or in part from the scope of the MAPs. These powers are not limited to giving effect to exclusions agreed through the existing exclusions process and could therefore be used to neutralise the effects of the MAPs by removing wide areas of devolved policymaking *ex ante*.

However, to enhance the functioning of the UK internal market and, importantly, foster much needed trust in the UKIMA, the UKG should consider much more radical reform. The UKIMA review presents an opportunity to introduce bolder reforms that would align the current UKIMA framework with normative principles that operate to balance local and centralised regulation in other systems of multilevel government. Two principles should be specifically considered: subsidiarity and proportionality.

> *Subsidiarity*. The subsidiarity principle guides the allocation of power in systems of multilevel governance where regulatory powers are held concurrently (incl. eg the EU)[3]. It proceeds from a presumption in favour of local regulation (eg by devolved governments or the UKG regulating for England). In normative terms, local regulation is considered preferable on the basis that it better reflects citizen and stakeholder preferences whilst also maximising space for policy innovation. Intervention by the centre (eg by the UKG as UK-wide regulator) is considered necessary only where local regulations have (or are liable to have) an *appreciable* impact on trade between the different regions or territories comprising the relevant internal market. Where this is evidenced (by central institutions), it then falls to local regulators to defend their policy preferences as proportionate restrictions on cross-border trade with reference to recognised justification grounds (e.g. environmental or consumer protection etc.)
>
> The UKIMA framework is out of alignment with the normative logic of subsidiarity – a logic that is embedded explicitly and implicitly in other internal markets incl. in the EU, Germany and the US. Most strikingly, the MAPs operate to require the *devolved governments* to request *permission from the UKG* where they consider their regulatory preferences fall within the scope of the MAPs. This burden of proof should be reversed. Accordingly, it should fall to the UKG (acting as UK-wide regulator) to adduce evidence that devolved legislation interferes (or is liable to interfere) with intra-UK trade. Only where this is established should the relevant devolved government be required to commence bilateral discussions with the UKG with a view to securing an exclusion from the MAPs. Requiring the UKG to discharge the burden of demonstrating that a particular devolved regulation has an actual or potential impact on intra-UK trade would remove the effective veto that the UKG presently exercises by default over policymaking in devolved areas. The continued existence of this veto power – which is out of step with subsidiarity and other internal market frameworks – represents the UKIMA's single greatest intrusion into devolved autonomy.
>
> *Proportionality*. Alongside subsidiarity, proportionality could be introduced into the UKIMA to maximise devolved autonomy whilst protecting the collective interest in

facilitating intra-UK trade through the MAPs. Like subsidiarity, proportionality features prominently in other systems of multilevel governance (again, incl. the EU).[4] As a normative principle, proportionality functions to scrutinise the *intensity* of regulatory interventions. In short, it seeks to ensure that policymaking furthers a recognised public interest, is suitable to achieve its aims and, crucially, cannot be achieved using measures that are less restrictive of (here) intra-UK trade. Transposed to the UKIMA, proportionality could be integrated into the assessment of the legitimate aims that the Act recognises as potentially justifying regulations falling within the scope of the MAPs.

What are your views on the operation of the market access principles for goods, services and the professions to date? (Questions 4, 8 and 12)

Thus far, the MAPs have impacted principally on the regulation of goods (there is, as yet, only limited activity on services and professions).[5] In any case, the discussion of goods applies by extension to developments in relation to services and the professions.

How do the MAPs operate across the UK Internal Market?

The MAPs operate asymmetrically; in other words, they apply differently to the UKG (regulating for England) and the devolved governments. This asymmetry is, in part, constitutionally determined (under the doctrine of parliamentary sovereignty), but also reflects political choices, notably those of the UKG regulating for England.

England. The MAPs have no discernible impact on the UKG or UK legislation regulating the English market. Technically, under the UKIMA, the UKG (regulating for England) is subject to the same requirement as its devolved counterparts to seek (and obtain from itself) an exclusion where its regulatory proposals intersect with the MAPs. In reality, however, this requirement is meaningless. The UK Parliament remains free to legislate expressly contrary to the MAPs under the doctrine of parliamentary sovereignty should it wish to do so. Initial experience further suggests that the UKG also appears largely unconcerned *politically* with the impact of its regulatory decisions for England on devolved autonomy. Both the previous and current UKGs have introduced key bills regulating for England without much regard for their potential effects on devolved policymaking through the application of the MAPs (see eg Genetic Technology (Precision Breeding) Bill 2023 and Product Regulation and Metrology Bill 2024). It is incumbent on the UKG to maintain close dialogue with the devolved governments in relation to regulatory proposals for England (see, further, Question 13, below).

The devolved nations and territories.[6] The MAPs have a transformative impact on devolved policymaking. To the extent that it intersects with the MAPs, devolved policymaking now takes place in a shared regulatory space – the UK internal market – with the UKG positioned as ultimate gatekeeper. The MAPs do not affect the existence of devolved competences under the devolution acts, and the validity of devolved legislation is not conditional on compliance with the MAPs. What the MAPs do is restrict the ability of the devolved governments to apply their regulatory preferences to goods and services entering their respective territories from other parts of the UK (including those entering

[redacted]

from outside the UK through another part of the UK). This is a *practical* limitation on devolved competence. It has two distinct effects on devolved policymaking.

First, and most obviously, the MAPs reduce the effectiveness of *unilateral* policymaking in devolved areas. Devolved legislation cannot be applied to incoming (in-scope) goods and services that comply with regulations applicable in another part of the UK (e.g. incoming glass containers under the Scottish Government's now suspended DRS).

Secondly, the MAPs restrict the ability of the devolved governments to *respond* to regulatory changes in *other* parts of the UK (e.g. UKG changes to precision breeding licensing in England under the Genetic Technology (Precision Breeding) Act 2023). The MAPs are protected enactments (e.g. Scotland Act 1998, Schedule 4 and Government of Wales Act 2006, Schedule 7B), meaning that the devolved parliaments are unable to legislate to 'undo' the effects of regulatory changes in areas of devolved competence should they wish to defend different (incl. higher) standards within their territories.

How are the devolved governments responding to the MAPs?

On the one hand, initial experience indicates that the MAPs have had *a chilling effect* on devolved policymaking thus far. The Scottish Government's decision to pause its introduction of a deposit return scheme in Scotland and the Welsh Government's approach to implementing its ban on single-use plastics (SUPs) evidence this clearly. In both instances, the UKG's refusal to grant exclusions from the MAPs resulted in the devolved governments – explicitly in the case of Scotland and the DRS; implicitly in the case of Wales and SUPs – reshaping (and lowering) their policy ambitions in areas of devolved competence.

On the other hand, there is growing evidence of *increased engagement with intergovernmental processes* as a means to navigate the practical effects of the MAPs on devolved policymaking. Rather than acting unilaterally and seeking exclusions for devolved policies, the devolved governments appear increasingly open to engaging with the UKG bilaterally (or with the UK and other devolved governments multilaterally) with a view to adopting joint UK-wide approaches in devolved policy areas. This started under the previous UKG already (eg on tobacco and vapes and wet wipes). It is likely to strengthen under the new UKG in line with its commitment to 'reset' relations with the devolved governments.

For devolved governments, engaging with intergovernmental processes has the advantage of circumventing possible conflicts with the MAPs (the MAPs cannot be used to challenge any jointly agreed UK-wide regulations). But it is associated with significant costs and legitimacy concerns. In terms of costs, intergovernmental decision making inevitably dilutes devolved policy ambitions: the devolved governments will inevitably be pushed to compromise on policy depth and timing, with the UKG retaining the final say as ultimate gatekeeper. With respect to legitimacy, the UKG should be aware that shifting policymaking to the intergovernmental level disempowers the devolved (and UK!) parliaments – intergovernmental processes prioritise executive politics over deliberative legislative processes.

What improvements could be introduced to facilitate more pragmatic management of the UK Internal Market Act's exclusion process? (Question 15) What evidence should be provided in support of an exclusion proposal by the proposing government? (Question 17)

The existing exclusion process is set out in an intergovernmental agreement negotiated by the UK and devolved governments in December 2021. It outlines a process through which the devolved governments (and, technically also the UKG regulating for England) may submit a proposal to exclude regulations from the MAPs pursuant to ss. 10 and 18 UKIMA. The UKG manages the process and is ultimately responsible for introducing legislation to the UK Parliament amending the UKIMA to give effect to any agreed exclusion. To date, only the Scottish Government has made use of the process in relation to legislation regulating the circular economy.[7]

The UKG should consider the following pragmatic improvements to the exclusions process:

Reversing the burden of proof. As outlined already (see Questions 3, 7 and 11, above), the burden of seeking an exclusion should be reversed. It should fall to the UKG in the first instance (acting as UK-wide regulator) to adduce evidence that a particular devolved regulation has (or is likely to have) an appreciable impact on intra-UK trade. No single change would have a greater positive impact on the operation of the MAPs.

Procedural Changes. The exclusions process requires procedural reform – whether or not the burden of proof is reversed as outlined above. Presently, there is a lack of certainty around the timing for seeking exclusions (and for decision making) as well as on the format for submitting responses. The UKG should work closely with the devolved governments to address these issues. A new 'exclusions form' should be co-designed by the UK and devolved governments. This form should set out an agreed workflow to manage the exclusions process. This is currently lacking. There are, for example, presently no safeguards for the devolved governments in relation to the timing of UKG decision making on exclusions. In relation to timing, the UK and devolved governments should formally (re)commit to engage in meaningful dialogue around exclusions at an early stage in the policy cycle, ideally through the Common Frameworks. Alternatively, the UK and devolved governments could agree to introduce a standstill obligation, according to which new regulations would not enter into force for a period of time (e.g. 6 months), allowing time to assess (and, if required, negotiate and enact) any necessary exclusions.

Clarifying the relationship with the Common Frameworks. The devolved governments will welcome the UKG's recommitment to the Common Frameworks to manage future regulatory divergence in devolved areas. However, (re)prioritising the Frameworks requires the UK and devolved governments to clarify their relationship with the UKIMA and, in particular, the exclusion process – the Frameworks do not currently address this. If the UKG wishes to recast the Common Frameworks as the principal tools to manage regulatory difference across the UK internal market, the UKIMA exclusions process requires adjustment to reflect this. Specifically, the UKG should consider formally committing to giving unconditional (and prompt) legislative effect to exclusions agreed with the devolved governments (bilaterally or multilaterally) through the relevant Common Framework. That commitment could be secured legally (e.g. by amending ss10 and 18 UKIMA), or politically by revising the text of the existing intergovernmental agreement governing exclusions.

Evidence. Decision making on exclusions should be evidence-based. Assessments of the actual or likely impact of regulatory changes on intra-UK trade must be supported by qualitative and quantitative evidence. The exclusions process should be revised to outline the methodologies for collating and presenting market data – these are currently inadequately defined. For example, there is presently no detail on how to define relevant

[redacted]

product and geographical markets for the purposes of assessing impacts on intra-UK trade. Pragmatic steps to clarify methodological approaches to defining markets would significantly reduce the scope for unprincipled political decision making around exclusions. The current exclusions process is too political. It provides too much space for political discretion, rather than data-led decision making. Consider, for example, the Scottish Government's experience with glue traps. The previous UKG was able to delay the introduction of a ban on sale of glue traps in Scotland without clear data defining relevant markets to substantiate its claim that the ban would have an appreciable impact on intra-UK trade. The current UKG has since given the Scottish Government the green light to proceed. From the perspective of the devolved governments, this all feels rather arbitrary. Evidenced-based decision making using recognised market analysis methodologies is mission critical to the proper functioning of the exclusions process.

A de minimis test. Under the current process, there is no agreed position on minimum thresholds triggering the requirement to seek an exclusion from the MAPs (Questions 18 and 19). It is suggested that the UK and devolved governments should reach agreement on a *de minimis* test, which would operate to shield devolved regulations from the MAPs in instances where there is evidence of no (or negligible) intra-UK trade in a particular product or service. This should be determined with reference to quantitative and qualitative assessments of the relevant product market(s) and/or its geographical extent. To support data collection, greater use could be made of the Office for the Internal Market's (OIM's) existing reporting powers. The OIM is already empowered, at the request of the UK and devolved governments (acting individually or jointly), to report on the economic impact of devolved (and for England: UK) regulations (proposed or passed) falling within the scope of the UKIMA (eg ss. 34 and 35). The OIM is well-placed institutionally to support the UK and devolved governments by providing data on the actual and/or potential impact of new regulatory proposals on intra-UK trade as part of the exclusions process. It is also expressly mandated to act even-handedly in the exercise of its existing statutory functions.

How can the Office for the Internal Market best support the UK internal market through its role in providing independent monitoring and advice? (Question 13)

Greater use could be made of the OIM's existing monitoring and reporting powers to support more data-driven decision making under the exclusions process – see Questions 15 and 17, above.

The OIM should also continue to support the functioning of the UK internal market through its public engagement and outreach activities. The OIM has proactively engaged with governments, business and stakeholders, and its reports provide robust and valuable insights into regulatory developments and market trends. Going forward, particular emphasis should be placed on supporting SMEs to understand and navigate the UK internal market and the MAPs.

Beyond this, however, it is suggested that the OIM could be given new responsibilities in relation to legislative tracking and potentially also notification.

Legislative tracking. Advanced notice of future regulatory divergence is essential to the proper functioning of any internal market. The UK internal market currently relies on political commitments to share information set out in intergovernmental agreements rather than on any formal framework. As outline above, this approach has proved weak in practice (eg Genetic Technology (Precision Breeding) Bill). It also creates uncertainty for the devolved governments, business and other stakeholders. The UKIMA could be modified to establish the OIM as a repository for legislative tracking. In effect, this would amount to formalising current practice: the OIM already tracks developments *de facto* when preparing its Annual Reports[8] and has recently launched a new ‘Dashboard’ mapping regulatory developments. Legislative tracking through a centralised body such as the OIM would provide a stronger platform to foster increased intergovernmental cooperation in areas of shared concern at an early stage of policy development. It would also enhance transparency for business and other stakeholders.

Notification. Alongside steps to formalise legislative tracking, the UK internal market would function much better with the introduction of a formal notification system, requiring the UK and devolved governments to notify each other of potential regulatory divergence. Presently, there is no such system comparable, for example, to that established under Directive 2015/1535 with respect to the EU internal market. Prior notification of proposed regulations with potential impacts on intra-UK trade would significantly improve transparency and further support early intergovernmental cooperation, incl. through the Common Frameworks. In operational terms, notification could simply be managed by the governments themselves, with the UK and devolved governments (re)committing to share details of regulatory proposals affecting intra-UK trade at an early stage in the policy cycle. However, past experience indicates that current reliance on intergovernmental commitments to share proposals often fails to deliver in practice (see eg Genetic Technology (Precision Breeding) Bill 2023 and Product Regulation and Metrology Bill 2024, discussed above). For that reason, it is suggested that the UK and devolved governments should consider nominating a central authority to act as a repository for the notification of regulatory proposals by the devolved and (regulating for England) UK governments. The OIM is institutionally well-placed to discharge this responsibility. The notification system could be managed confidentially.

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UK Internal Market Act – Review and Consultation

[redacted]

Introduction

[redacted]

[redacted]

Summary

We welcome the government reviewing the operation of the UK Internal Market Act and its intention to consider how to provide the right balance between devolved decision-making on regulation and protecting the integrity of the internal market, ensuring a continual drive for economic growth, jobs and higher living standards. The consultation document highlights that trade between the four nations of the UK is worth around 20% of the economies of Scotland, Wales, and Northern Ireland. For the [redacted], it is worth noting that if the UK were ranked amongst its global export markets, the UK would be the industry's fifth largest. Another important point to note is also the importance of the UK as the home market for SMEs to scale their business and become exporters – the integrity of the UK internal market thus central for continued growth as well as protecting and enabling as frictionless production and trade as possible. It is also critical to international trade deals through ensuring clear standards across the UK.

[redacted] benefits from the UK continuing to be a market with the minimum amount of regulatory divergence. The economies and supply chains of Scotland, England, Wales and Northern Ireland are closely interconnected, and it is important that no barriers to trade emerge between the constituent countries of the UK.

Businesses are looking for certainty of policy, regulation and legislation which in turns informs investment decisions. The operation of the UK Internal Market Act seems opaque and a mechanism seems to be lacking to ensure all administrations are required to impact assess for UK Internal market Act implications before considering introducing any new policies, regulation or legislation. A common set of criteria and thresholds to consider impact should be established, while acknowledging that over time relatively small exclusions, accumulatively have the potential to distort the UK internal market and hence needs careful consideration.

For the internal UK market to be strong and foster confidence, the different administrations across all parts of it must work collaboratively together, underpinned by a sense of trust. This is a requirement which must be given serious consideration by all administrations and includes recognition of the powers of devolved administrations to govern in areas of their competence. Our preference would be for administrations to proactively work together through intergovernmental processes and to resolve any disputes in a spirit of cooperation.

Common Frameworks

The Common Frameworks system could be improved. They do not seem transparent to business on what is being discussed and we are not aware of any direct ways in which businesses or their representatives can input to these discussions. We would ask that the frameworks are clear in their communication and engagement with businesses and representative organisations to ensure clarity of any planned forthcoming regulations, their timing and any proposed exclusions, bearing in mind our comments elsewhere on exclusions and business input. We include below a specific note on the UK Emissions Trading Scheme.

UK Emissions Trading Scheme

The UK Emissions Trading Scheme (UK ETS) Concordat established a Common Framework in which decisions relating to the scheme can be made by the UK ETS Authority which comprises of relevant departments of the UK Government, Scottish Government, Welsh Government and Northern Ireland Executive.

UK ETS captures 12 of the 151 [redacted] that are located throughout Scotland. Although UK ETS regulations apply throughout the UK, the scheme has placed the [redacted] at a competitive disadvantage compared to other spirits producers within the UK. [redacted] qualify for the scheme on account of their rated thermal combustion units (i.e. they are at least 20MWth). Although there are just [redacted] in the scheme, their combined production capacity accounts for approximately half of the [redacted] total distillation capacity. No other UK spirit drink outside of Scotland is captured by the scheme, and if we look further afield, we are aware of just 2 other spirits [redacted] in the EU that are captured by EU ETS. As a result, [redacted] are required to comply with the scheme's onerous, complex and costly requirements, whereas entire categories of other spirit drinks produced in the UK or EU are not. This places [redacted] at an obvious competitive disadvantage. We have long called for this anomaly to be addressed. The UK has the legislative power to correct this. In our responses to consultations on reform of UK ETS we have proposed a simple solution that would address these concerns[1]. Our concerns and comments on UK ETS therefore relate to the geographical nature of the competitive distortion that the UK has maintained following the transition from EU ETS to UK ETS in January 2021, rather than the implementation of the UK IMA but remains an important issue to address.

UK Internal Market Act's exclusions process

While noting the exclusions agreed to date, a bigger question that needs addressed is government process(es) for developing and introducing new policies and regulations. The uncertainty around e.g. the proposed Deposit Return Scheme for Scotland in relation to the UK Internal Market Act was exceedingly challenging for all stakeholders involved to navigate. We would argue there should be a transparent and upfront objective process, with clearly identified criteria applied at the very initiation of a policy, regulation or legislation. A UKIMA impact assessment should be carried out at the start before any further progression. We understand this will be raised as part of the Scottish Government's work under 'A New Deal for Business' but requires a uniform approach across all administrations, including setting out how

[redacted]

administrations must engage with stakeholders who would be affected by the potential proposals.

On this point, we note that the current mechanisms underpinning the UKIMA are predominantly driven by interactions between central and devolved governments, to the exclusion of businesses and other impacted stakeholders 'on the ground'. Unlike in the EU Single Market, which operates on similar fundamental principles to those underpinning the UK Internal Market, there is no formal mechanism for businesses and other stakeholders to comment on policy proposals which may have a distortive impact on the UK Internal Market at an early stage of development. The implementation of a procedure comparable to the EU's Technical Regulations Information System (TRIS), which requires advance public notification of legislative proposals by Member States and invites other Member States, the Commission and the public to comment on the potential repercussions for intra-EU trade before a Bill is finalised, would give business a stronger voice in discussions about UKIMA compatibility (and where the granting of an exemption may or may not be appropriate). This would also encourage the carrying out of a UKIMA impact assessment, and subsequent stakeholder discussions, at a much earlier stage in the legislative development process, providing greater certainty for businesses.

We highlighted above the challenge created by Scotland's proposed Deposit Return Scheme and the divergence and challenge this would create. Whilst the challenge of that divergence was correctly identified, the proposed Welsh DRS is continuing with different treatment of glass containers to other parts of the UK, despite the challenge this will undoubtedly create. This demonstrates the need for a clear process and objective criteria to ensure consistency of decision-making.

Where divergence is deemed to not have detrimental impact on the integrity of the UK Internal Market a key point remains in the administration proposing the divergence to work proactively with other administrations and wider stakeholders to ensure interoperability across the four markets.

Preventing market access barriers
The UK Internal Market Act is meant to act as a safeguard against divergent regulation within the UK. For example, it ensures that [redacted] produced in accordance with applicable market regulations in Scotland can be automatically compliant in other parts of GB. However, this is not strictly true in respect of Northern Ireland (NI) where labels on [redacted] products must provide details of either an EU (or NI) based Food Business Operator (FBO). This has, in many cases, required businesses to produce labels that are distinct from those used in the rest of GB since the end of the transition period. However, we understand that this issue has now been somewhat mitigated by the fact that GB FBO details are (we understand from our interactions with DEFRA) permitted as an alternative to EU/NI FBO details where a product has moved from GB to NI under the NI Retail Movement Scheme, as well as by the upcoming (May 2025) end of the requirement for tax stamps to be placed on labels for the UK market (including NI).

[redacted] These market access barriers can take the form of differing regulations on what information is required on the labelling of [redacted] In the case of the UK, at present, labelling requirements are the same across all four nations, although decisions on e.g. Deposit Return Schemes could impact this. Different labelling requirements in one of the administrations could lead to greater confusion for consumers in the UK. It would also increase compliance cost to businesses, as a greater number of Stock Keeping Units (SKUs) would need to be created for different parts of the UK. For a small business, each additional SKU could cost in the region of £1,000-£2,000 annually. We fully agree with the UK Government's aim to mitigate against the impact of regulatory changes on the cost of doing business across the devolved administrations. This is particularly relevant as the [redacted] sources production inputs from all parts of the UK.

Companies decide to source their production inputs based on a variety of factors, including, but not limited to, cost and environmental impact. If regulation becomes too complicated or restrictive in one devolved administration, then a company may choose to source from alternative sources. It is important that devolved administrations recognise that divergent regulation can have unintended consequences for the home economy.

UK Internal Market Act 2020: review and consultation relating to Parts 1, 2, 3 and 4 – [redacted]

Executive Summary

[redacted] welcomes the opportunity to respond the UK Internal Market Act 2020 review and consultation. Throughout this submission emphasis is placed on the importance of ensuring legal consistency with the rest of the UK, to avoid the internal markets becoming skewed. [redacted] is already under significant financial and regulatory strain and any further divergence or pressure placed on the industry will be detrimental to the industry's growth.

Introduction

[redacted]

Economic Context

[redacted] is facing continued challenges which have only been exacerbated by the recent Autumn Budget. Businesses in this sector have been operating under increasingly difficult conditions over recent years. The impacts of inflation, a tight labour market, disrupted UK border operations, hiked business rates, increased retail crime, and the weather, have challenged the ability for the sector to invest and grow. The new Budget announcements present a further triple hit to the sector, compounding existing issues. The National Insurance Contribution and National Living Wage increases will cost [redacted] In addition, [redacted] changes are further hitting sector businesses and their ability to plan, invest and set out a sustainable future.

Question 1: What are your views on how the UK internal market for goods is best supported using the UK Internal Market Act?

[redacted] benefits hugely from open and frictionless trade within the UK. Open markets allow for industry to operate at scale across the four nations and grow their reach and in turn support the UK's economy.

Devolved nations are able to develop and implement differing policy initiatives, this is of course right, however, the underlying principles of the Internal Market Act, of open, non-discriminatory, and mutual recognition, must not be lost. A joined-up approach, which complements the respective devolved nations priorities whilst also aligning with the principles of the Internal Market Act, will give businesses more confidence to invest and grow in the future.

Question 3: What is the right balance between the potential for local regulatory innovations in sectors and UK-wide alignment?

Local regulatory innovations in the [redacted] sector should be balanced with UK Wide regulatory agreements. Consideration needs to be given to the impact of any potential devolved regulatory diversion of the use of peat material which would likely distort the market and place businesses who are under the regulation at a disadvantage. With emphasis being placed on the importance of ensuring legal consistency with the rest of the UK, to avoid internal markets becoming skewed.

Businesses are being burdened by mounting costs of doing business. This is not just driven by inflation, but the growing impact of regulation and the cost of implementation and compliance undermining investment. As a sector of mostly SMEs, navigating packaging regulation, waste, transition to peat-free, business rates revaluation, energy costs, new border arrangements and more are overwhelming resources and undermining competitiveness. Government must reset the UK's approach to regulation, and work in partnership with businesses who are committed to becoming more sustainable and delivering net-zero. In relation to the Internal Market Act, Government must understand how divergence to regulation could impact the diverse sector which is the [redacted] industry.

Through understanding the value of environmental horticulture, government can act on the barriers faced by the sector which will unlock huge economic growth, for both the sector and the whole of the UK. The sector is ambitious to grow more, trade more, and to become more competitive and it has the potential to grow by 45% by 2030[2]. In order to achieve this government must expand its focus and recognise the potential the sector has.

Question 4: What are your views on the operation of the market access principles for goods to date?

Operation of market access principles must be upheld, this is an imperative element of the Internal Market Act, it ensures that goods such as plants and plant material can be bought and sold in every nation of the UK without discrimination or additional barriers based on the nation of origin. Whilst this has been upheld thus far, there is an element of uncertainty for businesses as to whether a policy will be enacted, or an exclusion and the extent of the exclusion may be implemented. This has been seen through the possible introduction of a ban on [redacted] in Scotland, uncertainty remains as to whether or not this will be implemented. There are significant ramifications if such a ban were to come into effect.

Question 5: What are your views on the use that has been made of the Part 1 amendment powers – for example the exclusion for single-use plastics? In particular, we would welcome views on whether the changes have had or will have a positive or negative impact and whether they have been effective. (An explanation of what the Part 1 amendment powers are and what use has been made of them can be found in the Annex).

Any regulatory divergence across the four nations would be challenging for the [redacted], as the sale of goods across UK is moved freely and without restrictions in devolved nations. The nature of the goods being sold are already under significant financial and regulatory strain, any divergence that further prohibits that would threaten a level playing field, must be avoided.

While the scope of this consultation does not consider Northern Ireland (NI) and the Windsor Framework, it must be noted that, NI is already under significant regulatory divergence from GB caused by NI being subject to alignment from both GB plant health and EU plant health regulations. This puts NI [redacted] at a significant disadvantage to the rest of the UK. For example, there are many key species of trees and plants that remain prohibited for exporting to NI. Iconic and popular native British species such willow, honeysuckle, and jasmine. These are still banned. This represents £millions of lost trade and biodiversity gains for NI. While most of the 11 "High Risk Plant" dossiers that had been submitted to EFSA before the WF was announced have been expedited under that agreement and the bans lifted, there remain at least 30 dossiers prepared on key prohibited plants that will still need to follow the existing procedure and many more species on the prohibited list such as Persimmon with no dossiers being submitted. It takes up to three years or more to complete the EU process in order to get the bans lifted. This means NI buyers still have restricted choice, and GB suppliers cannot provide a complete assortment to NI purchasers.

Question 6: What are your views on how the UK internal market for services is best supported using the UK Internal Market Act?

Access to service should not be restricted should not be restricted by the nation of the UK from or to which they are offered~~.~~ A service provider must be able to access all four nations of the UK, without restriction and with mutual recognition of their services. Whilst the majority of service provided is covered by legislation there is benefit in using mutual recognition when appropriate, such as the delivery of age-restricted products, and cross-border sales of services.

Clarity over jurisdiction of where a service originated from is beneficial and its within the service providers best interest to be able to offer the same services across the four nations. The Internal Market Act does help to avoid any potential divergence.

Question 7: What is the right balance between the potential for local regulatory innovations in services and UK-wide alignment?

Similarly to our answer to question 3, a level playing field must be ensured, across the devolved nations. [redacted] is comprised of 95% SME businesses to which resource whether that be staff or machinery can be limited. Any regulatory divergence that could occur has the potential to limit their service reach. Ensuring legal consistency is key, in avoiding the service market from being skewed.

Question 8: What are your views on the operation of the market access principles for services to date?

Please see our response to question 6.

Question 16: How should we ensure proportionate engagement with interested parties in relation to potential exclusions?

There are already consultations and engagement with the framework in place, whish assess the potential impact of new policies. It is imperative that robust processes continue to be in place to assess and consider any potential economic impact of proposed regulatory divergence. With the relevant sector/s being consulted.

Question 18: Should there be a different process to consider exclusions proposals which could lead to potentially significant economic impact, compared to those likely to lead to smaller economic impact?

It would be arbitrary to set a significant economic impact threshold. As a sector which is made up of 95% SMEs, the [redacted] would feel the economic impact more acutely and differently to a larger sector. All economic impact whether it is significant or not should be considered, and the relevant sector consulted with.

[redacted]

References

[redacted]

[redacted]

Review and Consultation on the UK Internal Market Act 2020
Response [redacted]

Question	Response
1. What are your views on how the UK internal market for goods is best supported using the UK Internal Market Act?	Our prime concern will always be the avoidance of any barriers to free movement of our products between the four nations. Regulatory divergence can only add to the costs for businesses and ultimately citizens. Within this context it is important to have the right framework in place to ensure that all the governments understand the impacts of their decisions on both businesses and citizens when advancing policy proposals. This should include the opportunity for businesses, citizens and other stakeholders to question and challenge decisions made by the four governments in this respect. The solution within the EU is derived from the Single Market Transparency Directive (EU/2015/1535) and the resulting TRIS procedure is designed for the early identification and avoidance of obstacles to the single market. This could potentially provide a useful model of the UK to consider if it is serious about protecting its own internal market.
2. What are your views on whether differing regulations that have effect later in the supply chain process are more straightforward for businesses to address?	Different actors operate in different parts of the supply chain process. As such, any impact, wherever it occurs, can be impactful for that business and for their corresponding upstream suppliers and/or their downstream customers. Also, obstacles add both complexity and costs wherever they occur in the supply chain and they will be almost always be passed along the supply chain to consumers.
3. What is the right balance between the potential for local regulatory innovations in sectors and UK-wide alignment?	In reality, companies such as [redacted] do not innovate for individual countries, either within the UK or the EU. When we innovate, it is more typically on a regional or even global scale, such that the advantages are made available to as many consumers as possible. The reality is that local regulatory initiatives within the UK are much less likely to shape the innovation landscape compared to examples of major regional initiatives such as those promoted by the European Green Deal. Regulatory divergence at the scale of the smaller UK nations may result in markets not being served. A Scottish, Welsh or Northern Irish 'tail' will not wag the European regional market 'dog'. The reality is, that the actions of companies dealing with the mass consumer

	market are much more likely to be driven by policy initiatives on a much larger scale. Maximisation of the UK's economic growth needs to be informed by this reality. It is also important to note that the repatriated competences that were previously vested in the EU have 'leap-frogged' central government and have been devolved. When exercised by the EU, these same competences were employed in a manner that expressly sought to achieve a degree of harmonisation across the EU single market (often with a single market legal basis) and so avoid a divergent and disparate regulatory landscape. Within the UK, these same competences have now been devolved to a sub-national level of government.
4. What are your views on the operation of the market access principles for goods to date?	To date, we have not experienced any significant issues. At one stage we were concerned that the four nations would generate a divergent landscape for Single Use Plastic regulation (affecting our feminine hygiene products and wet wipes), but this seems to have been avoided. Divergence and a duplicative, triplicate or quadruplicate compliance burden would only have added to overall costs to consumers of tailored products.
5. What are your views on the use that has been made of the Part 1 amendment powers – for example the exclusion for single-use plastics? *In particular, we would welcome views on whether the changes have had or will have a positive or negative impact and whether they have been effective.*	See response to Question 4 above.
6. What are your views on how the UK internal market for services is best supported using the UK Internal Market Act?	No Opinion
7. What is the right balance between the potential for local regulatory innovations in services and UK-wide alignment?	No Opinion

8. What are your views on the operation of the market access principles for services to date?	No Opinion
9. What are your views on the use that has been made of the Part 2 amendments powers – for example, removing exclusions for certain services? *In particular, we would welcome views on whether the changes have had or will have a positive or negative impact and whether they have been effective.*	No Opinion
10. What are your views on how the UK internal market for professions is best supported using the UK Internal Market Act?	No Opinion
11. What is the right balance between the potential for local regulatory innovations in professions and UK-wide alignment?	No Opinion
12. What are your views on the operation of the system for recognising professional qualifications to date?	No Opinion
13. How can the Office for the Internal Market best support the UK internal market through its role in providing independent monitoring and advice?	Maximisation of the UK's economic growth is dependent upon ensuring an internal market without significant obstacles resulting from the devolution of the repatriated decision-making powers. With this in mind, it is essential that stakeholders are provided with the appropriate means to challenge the decisions made by the devolved governments within scope of the IMA. Please see the comments on EU/2015/1535 in the response for Question 1.

14. What are your views on whether the current arrangements in Part 4 relating to the use of the Office for the Internal Market task groups are appropriate for securing the most effective and efficient performance of the CMA's Part 4 functions?	We are supportive of the current provisions and the role of the OIM in securing the Part 4 functions as they current stand. Regardless of the outcome of the current review, the degree of impartiality associated with exercise of these provisions by the OIM needs to be preserved.
15. What improvements could be introduced to facilitate more pragmatic management of the UK Internal Market Act's exclusions process?	Experience from the exclusion process to date is limited. Going forward, ensuring an appropriate formal framework for stakeholder challenges is necessary. Again, please see the comments on EU/2015/1535 in the response for Question 1. Exclusions need to balance the benefits of the intended policy with the resultant impacts, together with an obligation that any proposed measures are both proportionate and are the least discriminatory solution. '*Threats to human, animal or plant health*', '*taxation*', '*chemicals*' and '*fertilisers and Pesticides*' are excluded from the market access principles and businesses must therefore always follow the local legislation. Companies like [redacted] produce consumer products based on complex chemistry within a highly prescriptive inter-woven framework provided at the EU level (i.e., depending upon the interplay of REACH, CLP, Detergents Regulation, Cosmetics Regulation etc.). The current exclusions from the mutual recognition principle for '*chemicals*' (i.e., Article 67 - Annex XVII and Article 12 - Safeguard Clause) already raise the possibility that local legislation might have relevance for our product portfolio. In theory, the mutual recognition principle (Section 2 IMA) and the non-discrimination principle (Section 5) for goods should more generally preclude issues. However, this is yet to be effectively tested.
16. How should we ensure proportionate engagement with interested parties in relation to potential exclusions?	Early and effective consultation with impacted industries and other stakeholders is essential and should be a '*sine qua non*'. Tests for proportionality and non-discrimination are also necessary.
17. What evidence should be provided in support of an exclusion proposal by the proposing government, so the proposal can be fully considered (for example, information on potential impacts on businesses' ability to	Evidence that the tests for proportionality and identifying the least discriminatory option have been applied. Other evidence should include early engagement and feedback from impacted actors. There should also be a test of the overall impact on economic growth within the UK.

trade within the UK and the policy implications of not having an exclusion)?	
18. Should there be a different process to consider exclusions proposals which could lead to potentially significant economic impact, compared to those likely to lead to smaller economic impact?	Impacts are always relative to the size of the impacted actors. Evidence that the tests for proportionality and identifying the least discriminatory option have been applied should still be required even for smaller economic impact.
19. What do you think constitutes a potentially significant economic impact?	All economic impacts are generally passed along the various actors within the supply chain (wherever they might be) and will ultimately be passed on from the retailers to consumers. This is an economic reality. Such costs can evidently be inflationary for consumers. As such, even measures that are deemed 'minor' for multiple individual actors can become 'significant' when considered overall. Companies work hard to eliminate costs because they are aware of the reality of the impact on their price competitiveness towards consumers. In practice, policy makers are not particularly well placed to judge what is 'significant' in this context. What might be acceptable to well-to-do consumers, might well prove significant to families struggling to get by. Therefore, there is no easy response to this question. Whilst not directly related to the UK Internal Market, it is informative to look at the cumulative effects of the pending packaging EPR scheme in the UK. The EPR upcharge is likely of the order of 'only' 1% to 2% for many products. However when taken together this will add £1.5 billion of costs across the packaged goods industry and thereby contribute to a 0.37% increase in the overall RPI (Source: DEFRA Impact assessment). How do you judge '*significant economic impact*' here when all costs are ultimately passed along as '*inflation*' to consumers? This is the real benchmark to apply.
20. Is there anything else you want to tell us about the operation of the UK Internal Market Act?	No

March 2025

Improving the UK Internal Market Act 2020

What has happened since Brexit?

Before the UK left the European Union, the UK government and devolved administrations were aligned behind a common baseline of minimum EU standards. This baseline was kept high in part due to the requirement for environmental protection measures to aim at a high level of protection.[1] EU law also provided scope to go above and beyond these standards in certain circumstances, to protect the environment and human health.

Environmental matters generally fall within devolved competence. There have been examples from the devolved administrations of innovative policies that deliver legitimate public policy objectives and, specifically, progressive environmental rules and regulations. For example, Wales was the first country in the UK to introduce a charge on single use carrier bags.[2]

However, the market access principles of mutual recognition and non-discrimination, set out in the post-Brexit legislative framework of the UK Internal Market Act 2020, combined with the lack of fully functioning common frameworks, has impacted the ability of governments to innovate and push environmental standards and regulation upward in the past few years.

Definitions:

- **Mutual recognition:** "a good, which complies with regulation permitting its sale in the part of the UK it is produced in or imported into, can be sold in other parts of the UK, without complying with equivalent regulation there".[3]
- **Non-discrimination:** "regulatory requirements that discriminate against a good from another part of the UK, whether directly or indirectly, will not be enforceable".[4]
- **Common frameworks:** areas of devolved policy competence where the UK and devolved governments have agreed to work together to establish common approaches, including how this work will be operated and governed.[5]

Impact on devolved policy making

During the parliamentary passage of the UK Internal Market Bill, the then minister for small business, consumers and labour markets stated that "we want to make sure that we get the balance right between having the benefits of the UK internal market and having legitimate aims on an environmental basis, on public health or on any number of other areas."[6]

However, this balance was not struck, with only one exemption agreed since the introduction of the act on the banning of certain single use plastic items in Scotland.[7]

The Scottish government's plans to introduce a deposit return scheme (DRS) for drinks containers ahead of England was blocked by the UK government in May 2023 using powers in the UK Internal Market Act, unless it excluded glass.[8]

Environmental organisations highlighted the act's "unintended negative consequences for policy making across the UK, especially with regard to goods with environmental impact" and particularly the "lack of clarity around the point at which the devolved institutions should seek an exclusion on environmental or public health issues, even where the common frameworks processes are meant to apply".[9]

Similar problems have been experienced by the [redacted] recently confirming that Wales would not be proceeding with a joint DRS, as "in the time available it has not been possible to address the issues to the operation of devolution caused by the United Kingdom Internal Market Act 2020, inherited by the UK Government from the previous administration."[10]

Improvements needed

The common framework exclusions process is unclear

Whilst the UK government and devolved administrations did agree a mechanism for considering exclusions to the market access principles in the act at the end of 2021, this was only for areas covered by a common framework.[11] The process for agreeing an exclusion continues to be unclear, for example, in terms of timescales and evidence required.[12] Questions also remain as to what process would be followed for areas on which there is either no framework or where the framework is yet to be formally agreed.

A more expansive approach to exclusions is needed to support innovation and ambitious approaches across the UK, allowing an individual jurisdiction to introduce proportionate measures that deliver legitimate public policy objectives, and specifically on the grounds of measures to protect the environment.

Using the opportunity of the statutory review

The UK government's confirmation that it would launch the statutory review of the UK Internal Market Act in January 2025, and that it would seek the views of a wide range of public stakeholders was welcome.[13]

When it was launched, the consultation included an initial package of commitments on cross government working and recognised the potential of local policy innovation which, if successful, might be rolled out across the rest of the UK.[14]

This review must fully explore how to improve the act and its accompanying processes so that it sets a framework which ensures that all four nations of the UK can legislate ambitiously, progressively and effectively to protect the environment.

Our recommendations to the UK government:

1. **Use the statutory review of the UK Internal Market Act 2020** to ensure it does not impede proportionate environmental protection measures.
2. **Clarify the common framework exclusion process,** particularly in relation to timelines and information required.

Endnotes

[redacted]

[redacted]

[redacted]

[redacted]

Improving the UK Internal Market Act 2020

[redacted]

[redacted]

[redacted]

[redacted],

It would be better if this Government can list of the restrictions for businesses to sell or purchase products across the UK.

The current legislation if it applies in for products that are authorised and that is unlikely to change irrespective of devolved nations whose responsibilities are to collect taxes and pro provide services for both businesses and consumers, therefore we need a list.

Regards

[redacted]

[redacted]

Winners of the Federation of Small Business Awards in the Environmental Responsibility category

[redacted] **response to the Department of Business and Trade's review and consultation on the UK Internal Market Act 2020**

1. **Executive Summary**

1.1. [redacted] welcomes the opportunity to respond to the Department of Business and Trade's review and consultation of the UK Internal Market Act 2020 (IMA). We acknowledge the importance of balancing devolved decision-making with the need for regulatory consistency to protect the integrity of the UK internal market. However, regulatory divergence should not come at the expense of investment or undermine economic growth and business clarity. The current application of the IMA has not provided sufficient certainty for businesses, particularly due to the absence of a consultation processes to assess regulation that poses an IMA related risk. This lack of clarity has resulted in weakened industry confidence, and has the potential to discourage investment, and create operational inefficiencies.

2. **Background**

2.1. [redacted]

3. **Consultation response**

3.1. Challenges with the current operation of the IMA

The IMA is intended to uphold the principles of mutual recognition and non-discrimination, thereby enabling seamless trade across the UK. However, the practical application of the Act has exposed significant shortcomings, particularly concerning regulatory divergence, as exemplified by the implementation of the Deposit Return Scheme (DRS).

3.2. Regulatory divergence and barriers to trade

3.2.1. The case of Scotland's abandoned DRS, which was due to launch in March 2024, demonstrates the risks of regulatory fragmentation. Industry stakeholders invested significant financial resources and time in scheme preparations, only for the Scottish Government's IMA exemption request to be rejected unless they agreed to remove glass from the scheme. At this point industry had already significantly invested in a DRS that included glass, the removal of which undermined business confidence and contributed to the former Scottish deposit management organisation (DMO), Circularity Scotland (CSL), going into administration in 2023. This is policy divergence resulted in significant losses to investment and growth in the UK.

3.2.2. Our industry is investing billions into delivering the circular economy initiative, DRS, which is predicted to create over 4,000 new jobs and unlock £1.13 billion in private investment[1]. Yet the divergence in DRS policies between Wales and the rest of the UK

[redacted]

[redacted]

has resulted in substantial uncertainty for industry. While England, Scotland, and Northern Ireland are now committed to an interoperable DRS for PET, aluminium, and steel single-use drinks containers by October 2027, the Welsh Government has opted for a scheme that includes glass. This inconsistency has the potential to result in a number of complexities, including:

3.2.3.1 Increased fraud risk
The differing material scope of DRS policies and potential difference in launch date, if the Welsh Government decides to implement DRS post October 2027, could result in a £100 – 200 million loss in cross-border fraud per annum.

3.2.3.2 Supply chain segregation
A non-aligned DRS may result in producers having to create Welsh-specific stock-keeping units (SKUs) and labels leading to increased costs and operational inefficiencies.

3.2.3.3 Reduced consumer choice
As Wales makes up 3% of the UK's market share, the higher production costs and supply chain inefficiencies associated with the challenges divergent DRS policies creates, may result in reduced product availability in Wales.

3.2.3.4 Inflationary pressures
If producers have to manage bifurcated supply chains, fraud risks, and different labelling requirements it is likely product costs will increase, which may be passed on to consumers.

3.2.3. These complexities could severely impact the soft drinks industry's ability to invest in critical circular economy infrastructure, undermining growth, job creation, and the Department for Environment, Food and Rural Affairs' (Defra) zero waste roadmap.

3.2.4. IMA exemption procedure

3.2.3.1 While the [redacted] supports devolved Government having the flexibility to implement policies which fit the unique needs of its constituents, under the IMA a policy cannot be assessed for potential violation of market access principles unless a devolved government requests an exemption. This system means that if a devolved government introduces a policy that creates trade barriers but does not request an IMA exemption, there is no processes through which the policy can be assessed. This can lead to a lack of certainty and clarity for industry which in turn has the potential to stymie investment.

3.2.3.2 [redacted] suggests that a clear timeframe be introduced which stipulates a specified period following the announcement or amending of regulations, that an IMA exemption should be requested in. This would ensure that the policy is properly assessed before industry begins investing, thereby reducing unnecessary financial exposure and mitigating risks associated with regulatory uncertainty.

[redacted]

3.2.5. Industry input mechanism

3.2.3.1 At present, businesses have no means of commenting on new or changing regulations that fall within the scope of the IMA. This is concerning given the potential impact policies can have on investment planning, supply chains and product development. It is important to ensure businesses and citizens' concerns about the operation of the UK single market are heard; ensuring policies are workable and effective.

3.2.3.2 The European Union provides a clear precedent for addressing this issue. The Technical Regulation Information Procedure (TRIS), established under EU Directive 2015/1535, allows businesses and stakeholders to raise concerns about regulatory decisions, created deliberately or inadvertently by Member States, that create obstacles to the EU single market. This mechanism ensures that the EU Commission can scrutinise policy decisions and act, when required, in order to prevent unnecessary trade barriers.

3.2.3.3 [redacted] strongly advocates for the introduction of a similar provision within the IMA. Such a mechanism would allow businesses to raise concerns in situations where barriers may occur, and business perspectives have not been duly considered. Providing this avenue for industry input would enhance business confidence, facilitate investment, and support a more predictable and stable regulatory environment.

3.3. <u>Conclusion</u>

3.3.1. The IMA is intended to facilitate a cohesive and well-functioning internal market. However, the inability of industry to provide commentary on regulatory policy means regulatory concerns are at risk of not being considered. The cases of Wales's and formerly Scotland's DRS divergence illustrates the risks of uncoordinated policymaking, which has the potential to deter investment, increase operational complexity, and create market inefficiencies.

3.3.2. [redacted] urges the Department of Business and Trade to consider implementing a procedure akin to the EU's TRIS system within the IMA framework. Doing so would ensure that businesses and other stakeholders have a voice in situations where barrier to trade may occur. This would provide much-needed clarity and certainty, thereby ensuring that businesses can make long-term investment decisions with confidence and support the UK's economic growth. Ensuring that regulatory policies are developed in a manner that does not unduly hinder trade, investment and growth is paramount.

3.3.3. [redacted] remains committed to working collaboratively with the UK Government to enhance the effectiveness of the IMA and to ensure that producers can operate efficiently and competitively across the UK. We welcome the opportunity to discuss our concerns further and look forward to engaging with policymakers to find constructive solutions.

[redacted]

United Kingdom Internal Market Act 2020: Review and Consultation Survey

[redacted]

[redacted]

Introduction

1. [redacted]. I have examined UKIM from its inception in the 2020 White Paper, through to the legislative process in the House of Commons and the House of Lords, and have submitted reports, evidence and provided witness testimony to multiple parliamentary committees over the process of legislation and its implementation. My research interest concerns the interaction between the UKIM Act and devolution, and the place of UKIM amid the other legislative and procedural mechanisms that uphold the UK domestic market and the broader set of relationships between the UK and devolved governments. UKIM's effects on devolution have been most keenly felt in relation to the internal market for goods, in particular, in the application of the mutual recognition principle. [redacted]

Scope of the Review

2. The consultation document makes clear that the option of repealing the UKIM Act, or any part of it, is not part of this review process. The document also notes, as a starting point, that the Government 'do not believe that the protections that flow from the (market access) principles should be weakened, but we do want to ensure that the processes around their application are appropriate and transparent'.

3. There are many other legislative and procedural instruments that support the internal market, including the reserved powers written into the devolution settlements as well as common frameworks and a machinery of interministerial committees. Taken together, these do not presently appear sufficiently robust to suggest that bespoke legislative underpinning for the internal market is unnecessary in light of the UK's departure from the EU internal market. However, in my strong view, the detrimental effects of the legislation *in its current form* on the authority and policy autonomy of the devolved governments and legislatures are so significant

[redacted]

to suggest that new processes alone will be insufficient to provide stability both to the internal market and to devolution.

4. One of the unfortunate features of the UKIM legislation was the manner in which it was concluded. Having sought the consent of the devolved legislatures for those substantial elements of the legislation that affected devolved matters, in accordance with the Sewel Convention, the UK Parliament proceeded to enactment in the face of that consent being withheld. A failure to recognise this foundational problem will be a barrier to securing a durable, stable and consensual approach to underpinning the UK internal market, as well as creating a barrier to a lasting reset of UK Government-devolved government relations.

The Impact of the UKIM Act

5. The UK already has a highly integrated market for both goods and services. The introduction of devolution in 1999 did not alter that. The Market Access Principles (MAPs) in the UKIM Act apply to legislation introduced after its enactment and were intended to avoid new barriers to trade emerging.

6. The operation of the MAPs have had significant effects on devolution, with varying degrees of visibility. The restrictive impact of the UKIM Act on the policymaking opportunities of the devolution institutions is expected to increase over time. The visible impact is most apparent when devolved governments have sought exclusions from the MAPs in order to maximise the regulatory reach of devolved laws. To date, most of these instances have been in environmental policy. Less visible impacts include the uncertainty that has surrounded the policymaking, particularly in the devolved legislatures, with implications for pace of the policymaking process, the resources required in navigating the intersection between devolution and the UKIM Act, and the scope for policy innovation and experimentation that had characterised devolution in its first two decades.

7. In the case of The Environmental Protection (Single Use Plastics Products) (Scotland) Regulations 2021, which prohibited the manufacture and supply of a range of products in Scotland that contained single-use plastics, the Scottish Government's exclusion request was granted. However, any amendment to these regulations that broadened the range of products beyond those excluded in The United Kingdom Internal Market Act 2020 (Exclusions from Market Access Principles: Single-Use Plastics) Regulations 2022 would require a further exclusion to disapply the MAPs. By contrast, the Deposit and Return Scheme for Scotland Regulations 2020 were shelved after protracted intergovernmental negotiations resulted in a temporary exclusion, ahead of a planned scheme covering the rest of the UK, subject to glass being excluded and other conditions on logos and barcodes. The firm set up to administer the DRS, Circularity Scotland, went into administration in June 2023, with reported debts and liabilities of £86mn. Biffa, the logistics partner for the scheme, launched legal action against the Scottish Government, which is ongoing.

8. The issues surrounding the DRS highlighted how the UKIM legislation, which was designed to provide businesses with 'certainty and clarity to operate smoothly across the UK'[2] can have the opposite effect. Considerable uncertainty surrounded the planned implementation of the scheme in Scotland as a result of its interaction with the UKIM Act. Business uncertainty was also cited by the Scottish Government in its decision to halt the scheme's introduction.

[redacted]

9. The DRS episode also shone a light on the accountability issues resulting from the UKIM Act's effect on devolution. The exclusion process largely involves confidential negotiations between officials and ministers, which are not subject to any reporting requirements to parliaments. Only regulations to amend the scope of the MAPs are subject to the affirmative resolution procedure, following consent being sought by devolved ministers. There is no *requirement* for consent, nor is there any formal role for the devolved legislatures, whose legislation is the subject of exclusion requests and any decisions that result from them. This is despite negotiations and outcomes of exclusion requests having a direct impact on the legislative function of devolved parliaments. Excluding them from a process that also lacks transparency exacerbates uncertainty, undermines the authority of the devolved legislatures, and diminishes their capacity to hold their executive to account.

10. Questions 3, 7 and 11 in the consultation document ask what is the right balance between the potential for local regulatory innovation and UK-wide alignment. There is no objective 'right' or 'wrong' balance; the balance to be struck will always be the result of political choices. The political choice made by the UK Government in office in 2020, when the legislation was enacted, prioritised UK-wide alignment and unrestricted trade over the policy-making autonomy of the devolved legislatures. This has reduced the scope for devolved policy innovation and diminished the capacity of devolved governments to pursue policy objectives, for example, to achieve environmental goals, promote public health or improve animal welfare, as a result of their potential effect on the internal market.

Improvements to the UKIM Act

11. The UKIM Act was intended to safeguard the UK internal market following the UK's departure from the EU internal market. However, the Act is, in many respects, much broader in its scope than EU law, particularly in relation to goods, where there are very few exemptions. For example, whereas EU Internal Market law enables governments within member states to introduce justifiable regulations on a broad range of public interest grounds, including protecting the environment, protecting public health, or preserving cultural heritage, permissible exclusions to UKIM's mutual recognition principle are restricted to combatting the spread of pests, diseases or unsafe foodstuffs, and those specific additional exclusions that have emerged from the s10 exclusion process.

12. These restrictions in the UK legislation are the root of the Act's detrimental impact on devolution. It may be possible to secure a pragmatic consensus were a broader range of exclusions written into the legislation, altering the balance between unrestricted market access and devolved policymaking autonomy.

13. To safeguard the integrity of the UK internal market, a broader set of exclusions could be accompanied by a requirement to consider whether the divergence that may result from regulations would be proportionate and justified on specified public interest grounds, and not result in an unnecessary barrier to intra-UK trade. Such proportionality tests are a common feature of internal markets. This would require the government seeking to introduce regulatory divergence to make similar evidence-based justifications as required when seeking an exclusion, with the advantage of increasing transparency.

14. The UKIM legislation, in its current form, has diminished the authority of the devolved governments and given the UK Government an effective gate-keeper role in the exercise of some devolved functions. The authority of the devolved institutions could be restored by amending the legislation to include subsidiarity requirements, which are also a common

feature of other internal markets. This would shift the burden to another body – for example, another government or the Office of the Internal Market – to demonstrate that proposed regulatory divergence would have sufficient distorting effects on intra-UK trade to justify the application of the MAPs. Such a measure would result in a rebalancing of market access and devolution, and enable devolved authorities to make their own policy choices and be held accountable for these choices by devolved parliamentarians and electorates.

Improvements to the Exclusion Process

15. In my view, process-based changes are insufficient to secure a consent-based, durable functioning of the internal market simultaneous with a durable system of devolution. However, there is considerable scope for the processes surrounding the operation of the UKIM Act to be improved.

16. The process for seeking exclusions, in particular, has been unjustifiably protracted, resulting in delays to legislation that increase uncertainty for stakeholders, including businesses, and undermined the legislative function of devolved legislatures. There is no time restriction on the process, and while negotiations to secure a consensus position may be intergovernmental, the decision over whether or not to grant an exclusion is subject to Whitehall decision-making processes. The process has also largely been conducted behind closed doors, without being subject to democratic scrutiny. The timing over such decisions has also been contentious, with decisions often made *after* legislation has already been passed by the devolved legislatures, and the full details of the legislation are known. The process also places a considerable burden of proof on the administration seeking an exclusion to provide evidence of impacts in the future. Evidencing the future will always be challenging, and subject to many uncertainties that often cannot be foreseen.

17. The exclusion process would be improved by introducing stricter requirements on the time taken to make decisions as well as the point at which such decisions are made. One option would be to mirror the process of securing legislative consent for UK legislation that affects devolved matters, i.e. prior to completion of the conclusion of the legislative process. This would have the advantage of bringing the process into the parliamentary domain, and would reduce the uncertainty over the implementation of legislation already passed by devolved legislatures.

18. A procedural version of the proportionality and subsidiarity tests noted above would also help to improve the process. This could be written into a memorandum of understanding that recognised that laws introduced to each parliament within the scope of their law-making competences would *normally* be considered to be compatible with maintaining the integrity of the UK internal market, provided the restrictions on competition or trade that they may generate were proportionate to the policy objectives being pursued, and without obvious alternative means of achieving the same goal.

19. The burden of determining market impacts should not solely fall on the devolved governments. The Office of the Internal Market could be tasked with providing market analysis on the potential effects of regulatory divergence. This could be accompanied by thresholds agreed between the governments on the level of market distortion that could be accommodated within the UK's domestic market (noting that some degree of market distortion is an inevitable consequence of any system of multi-level government).

20. Questions 18 and 19 concern whether a different process to consideration of exclusion proposals should be put in place where they might lead to a potentially significant economic impact. This may occur, for example, were they to restrict trade for a product that originates in one town or region. In my view, this should not by itself be a determining factor. To take an (almost) hypothetical example: one territory of the UK may have a particular problem with underage drinking involving a product that its produced in a single county of another territory of the UK. Consumption of that beverage may be deemed to be a significant concern for young people's health and for anti-social behaviour that prompts a policy response seeking to discourage its consumption. Such an intervention could only be made with an exclusion from the scope of the MAPs. Following the recommendations above, judgments about the public interest grounds of such a regulation, and whether the response is proportionate and justifiable, should centre on the policy objective being pursued, rather than the source of the product.

REVIEW OF THE UK INTERNAL MARKET ACT

[redacted]

Written Evidence

The benefits and challenges of the UK Internal Market Act 2020

Benefits:

The UK Internal Market Act (UKIMA) provides a framework for products and services lawfully made or imported into one part of the UK to be able to be sold in any other part. Particular beneficiaries therefore include businesses operating across the UK, including those located outside the UK, who should have a degree of certainty about their access to the whole of the UK market.

Challenges:

UKIMA is a solution to the challenges of market management that is inherently antagonistic to devolution. The legislation was made at pace, and without the buy-in of all constituent parts of the UK. The collaborative, shared governance approach offered by Common Frameworks was not given opportunity to effectively develop and bed-in before it was overtaken by the imposition of the top-down discipline of the UKIMA. A number of key elements were not properly worked out at the time the legislation was made, and these first five years of its operation have seen ongoing attempts to find solutions to challenges raised by the legislation.

These include determining the relationship between UKIMA and the common frameworks process (the latter now presented as 'the most important tool for the UK government and devolved governments to find shared approaches or agree how to manage where one or more parties wish to take a different approach'[1]), and defining a process for granting exclusions from the scope of operation of the market access principles.

The devolved Parliaments and Governments especially have been confronted with the challenge of factoring the reach of UKIMA into their policy processes. As a result of the mutual recognition principle, legislation made in any of the devolved parts of the UK will potentially have effect only for locally produced or imported goods and services. The cost and benefits of legislating under these conditions will now need consideration. The implications of legislating 'only' for England are less problematic, given the relative size of that market, and the ability to use Westminster legislation to displace the operation of the MAPs, an option not open to the devolved legislatures.

Procedurally, challenges arise in the opportunity for scrutiny of measures which are made in London, within the scope of devolved competence, and which will have

[redacted]

indirect impact on the local market through the operation of the MAPS. The usual legislative consent mechanism would appear not to operate in these circumstances.

These substantive and procedural challenges affect the ability of the devolved legislatures to exercise their democratic mandate. UKIMA, it should be recalled, operates across areas of devolved competence, beyond the core market related policy areas which are otherwise reserved to Westminster and the UK Government. Whilst the precursor to UKIMA, EU internal market law, adopted a progressively expansive concept of areas falling within the scope of the EU internal market provisions,[2] it did so with a correspondingly expansive set of grounds of justification allowing local laws to operate over all products and services present within their jurisdiction.[3] It also operated in an open and transparent manner, with proposed measures being notified to the European Commission in advance of their introduction, and a standstill period operate during which any market inhibiting impacts are determined, with other states and stakeholders able to make representations.[4]

The current review should therefore seek to mitigate as many of the challenges posed by the legislation as possible, to enable the benefits to be appropriately maintained. Specifically it is submitted that:

1. **The preference for UK wide alignment should be rebalanced to permit greater local regulatory innovations in line with devolved competence**

It would certainly appear that the UKIMA regime has had a chilling effect, constraining local regulatory innovations, with policies not being advanced due to uncertainty over whether exclusions from the scope of the Act would be granted. Governments and legislatures are now operating the shadow of UKIMA, and without any guarantee that their regulations will be excluded from the scope of the Act. The risks this presents might lead to a more shared, collaborative approach to policy making (eg as seen on issues such as tobacco and vaping regulation), however, there is evidence too of a lowest common denominator drag on regulatory measures approached collaboratively (eg Wales' frustration with a GB wide approach in favour of a more demanding Deposit Return System, in keeping with its more advanced starting point in recycling).

The UK Internal Market Act places the goal of freedom of movement for economic operators and the integrity of the UKs internal market above all else. The market

[redacted]

access principles are cast in much more absolute terms than seen in any corresponding market legislation. The grounds for justification under UKIMA are more narrowly drawn than those provided for under the previous EU system. This is all the more remarkable given that the EU's very foundational purpose is to create a common, internal market. In such a system, the general constitutional priority of free movement rights over other interests (albeit one that can be overturned for good cause) may be viewed as conceptually coherent. UKIMA suggests an attempt to translate the same constitutional priority to free movement and a unified market into the UK – though this has not been done with the agreement of all participants to that union. The prioritising of a unified, uniform UK wide market pays insufficient notice to the commitments to devolution, and carries over only a partial account of the EU system. It does not bring with it the commitment to subsidiarity or recognition of the wider grounds for justification apparent in that system. The review of the legislation should permit a considered review of the balance between the commitment to devolution and subsidiarity, and the commitment to an internal, unified market.

2. **The exclusions contained in the Act should be revised**

At present, the Act provides a very limited set of defined grounds that can be relied on to exclude new legislation from the effects of the mutual recognition principle. A wider set of grounds is available for indirectly discriminatory measures ('legitimate aims' of local measures cover the protection of the life of humans, animals, or plants, the protection of public safety or security'), though it is of course an open question how broadly these terms can be interpreted (eg it is unlikely that 'protection of animal life' might extend to issues of animal welfare. A broader 'health, life or wellbeing' may be necessary to achieve that). At the very least, the same set of grounds applying to indirectly discriminatory measures should be confirmed as applying to the mutual recognition principle. Conceptually, under EU internal market law, the introduction of the market access principle of mutual recognition in *Cassis de Dijon* was seen as a broadening out of the reach of EU rules into national regulatory choices, beyond directly and indirectly discriminatory measures. With this extension in reach, came an extension in the grounds potentially available to justify local laws.

Under EU law, the consideration of whether something is compatible with the internal market rules can operate both ex ante, through the notification procedure of proposed measures to an independent third party (see further below), or ex post, through the involvement of the Commission, and administrative market initiatives such as SOLVIT, and ultimately through judicial consideration.

The choice in UKIMA was to introduce very limited specific grounds to justify local measures in the legislation, but allow for further exclusions to be added, under the control of the UK government. This is provided for goods in section 10, and for services in section 18. Effectively, this could be seen as corresponding with the general 'public interest justification' operating in respect of non-discriminatory measures in EU law. However, experience to date of the UK system is of a piecemeal, ad hoc, highly politicised approach, controlled by UK government, and without clearly articulated guiding principles.

3. **There should be more robust requirements to share proposed legislation within the scope of the legislation, operated through an independent third party, building in the exclusions process ex ante**

Currently, the UK Government, acting for Northern Ireland, is required to notify the European Commission of new regulatory standards affecting goods and some services, proposed for NI.[5] This is as a result of the EU's Technical Regulations Directive, which requires draft legislation (including secondary legislation and wider administrative action) that has the potential to create new barriers to trade to be shared, through the Commission, with other Member States and stakeholders. The draft legislation is then subject to a standstill of at least 3 months[6] before it can be adopted. During that time, the Commission, and other Member States and others could raise concerns about the measure creating a possible barrier to trade. If no evidenced market concerns are identified, the legislation can be adopted at the end of the stand still period.

Consideration should be given to reintroducing a variation of this notification requirement for the participants in the UK's internal market, and giving it a statutory footing in the legislation. The advance notification could ensure appropriate and effective scrutiny of proposed measures, as well as providing for an ex ante operation of the Sections 10 and 18 exclusions process, which could operate though the independent Office for the Internal Market. The OIM would need to factor in other matters than purely economic, which is its current focus. Should an exclusion not be granted, this would not preclude the adoption of the legislation, but will affect its applicability under the mutual recognition principle.

Formalising intergovernmental communications and cooperation in this way is of particular importance to carry forward the system in times where more informal arrangements are not operating effectively. Certainly (intergovernmental) sharing of proposed legislation would be expected to take place under the relevant common frameworks, this requirement could overlay their operation and capture proposals which are outside any extant framework (eg Gene Editing legislation).

[redacted]

[redacted]

[redacted]

[redacted] RESPONSE TO THE UK GOVERNMENT CONSULTATION ON THE INTERNAL MARKET ACT 2020

[redacted]

1. [redacted]

[redacted]

2. [redacted]

3. [redacted]

Importance of the UK Single Market to [redacted]

4. [redacted]

Deposit Return Scheme

5. To date the only major issue of concern has been the divergence between the countries of the UK over the implementation of a Deposit Return Scheme (DRS). However, the introduction of a DRS throughout the UK has been delayed until October 2027. Nevertheless, the Welsh scheme will include glass, whilst all others will be PET plastic, aluminium and steel only.

6. The UK Government could use the Internal Market Act to enforce a consistent approach, but the Welsh Government have made it clear that they feel this would be a misuse of the legislation.

Burden of Enforcement

7. Our concerns with the Act are primarily focused on ensuring that the burden of enforcement for the Act does not fall on businesses. This would be achieved by ensuring the Government has effective mechanisms in place to pre-empt any regulatory divergence that is in contradiction to the Act.

[redacted]

[redacted]

8. Currently if a member country of the UK puts in place a regulation that prejudices the ability of companies to trade throughout the UK, then it is the responsibility of the affected companies to launch a legal challenge against the Government of that country.

9. We are advised that there is no mechanism by which the UK Government takes responsibility for this role. This places a potentially significant cost burden on any company if it wanted to undertake a legal challenge. Costs would include:

   - Legal fees; any resort to lawyers inevitably incurs great expense. With appeals the process could be protracted. A challenge would be handicapped by the complete absence of case law in this area.

   - Reputational Costs: companies invest significant time and resource in cultivating a positive relationship with their respective Governments. That relationship can be central to their long-term sustainability. Companies rely on Governments for either tacit or active support for their continued operation. It becomes particularly important if a company wants to change or expand their activities. Mounting a legal challenge would prejudice that relationship.

10. A mechanism needs to be put in place for the UK Government to take responsibility for legal challenges to enforce the Act. The full burden of the cost, both financial and reputational, should fall on the Government, and not on private sector operators.

11. It is worth noting that a provision for businesses and others to challenge policies proposed by national governments is in place within the European Union (EU). It is the Technical Regulation Information Procedure (TRIS) embodied in the EU 2015/1535 procedure. The TRIS procedure ensures obstacles created (deliberately or inadvertently by Member States) to the operation of the EU single market could be investigated by the EU Commission and actions taken, as required, for the single market to operate as seamlessly as possible without obstacles. The feasibility of adopting such a mechanism should be investigated by the Government.

12. There are also two mechanisms that could also be enhanced to avoid any resort to a legal challenge in the first instance: Common Frameworks and the Office for the Internal Market.

Common Frameworks

13. As stated in the consultation document '..they establish structures for regular engagement to discuss, make decisions, and resolve disputes about developments in policy areas that are within devolved competence'.

14. [redacted] welcomes the commitment by the Government to continue to expand and strengthen common frameworks to pre-empt unnecessary regulatory divergence.

[redacted]

[redacted]

Office for the Internal Market

15. The OIM, which sits within the CMA, supports the operation of the internal market. Currently its role is confined to producing non-binding reports and technical advice to the Governments of the UK.

16. Consideration should be given to granting the OIM powers to enforce the Single Market Act and handle disputes. This would provide a ready-made solution to ensuring that the burden of enforcement does not fall on individual companies.

Subsidy Control

17. The consultation does not extend to subsidy control as it is a matter reserved to the UK Parliament.

18. [redacted] wishes the Government to note that devolution of agricultural policy to the countries of the UK is producing growing divergence in the type and value of public support provided to agriculture. In time this could significantly distort the pattern of agricultural production in the UK, including [redacted] [redacted] would not want to prejudice the higher levels of support provided by the devolved administrations, however in time, [redacted] farmers in England may justly feel that they are not competing on a level playing field.

[redacted]

03/04/2025

[redacted]

RESPONSE TO THE UK GOVERNMENT DEPARTMENT FOR BUSINESS AND TRADE REVIEW OF THE INTERNAL MARKET ACT

[redacted] welcomes the opportunity to respond to the UK Government Department for Business and Trade on their review of the Internal Market Act.

The Market Access Principles for Goods

Question 3: What is the right balance between the potential for local regulatory innovations in sectors and UK-wide alignment?

The right balance has not been struck

The UK Internal Market Act has not struck the right balance between regulatory innovations and UK-wide alignment.

The right balance is one where devolved nations are able to regulate where they deem necessary to protect and improve their nation's public health. The nature and extent of public health problems can vary across UK jurisdictions and devolution enables each to innovate in how it responds. For example, the rate of alcohol-specific mortality in Scotland remains significantly higher than that in England.[1] The existing devolution settlement has allowed the Scottish Government to develop and implement the internationally path-breaking policy of minimum unit pricing for alcohol (MUP), which is estimated to have reduced alcohol-related hospitalisations by 4% and alcohol-specific deaths by 13%.[2]

The opportunity for different administrations across the UK to innovate in public health policy can be of mutual benefit as the evidence obtained from implementing such policies in one country can help inform decision-makers in others. Since the introduction of MUP in Scotland, the policy has been introduced in Wales, and Northern Ireland has announced its intention to introduce it. The previous UK government had noted that, while it had no plans to introduce MUP in England, "it will continue to monitor the progress of MUP in Scotland and will consider available evidence of its impact". Under the new Labour administration we hope that evidence from devolved nations will be considered and the possibility of introducing this life-saving measure in England revisited. Similarly, the Scottish Parliament legislated to ban smoking in public places in 2006; an approach which was subsequently adopted by other administrations, and which has saved and improved tens of thousands of lives across the UK.

However, as the [redacted] states, the UK Internal Market Act "limits the ability of the devolved governments to set and apply their own ambitious standards, especially in relation to the production and sale of goods. The UKIMA'S operational impacts to date have been felt mostly in environmental policy, animal welfare, agriculture policy and public health, particularly in Scotland and Wales."[3]

The UK Internal Market Act gives the UK Government significant powers to frustrate, delay and diminish policy and law-making by devolved governments – an effective UK veto over devolved action. [4] While this has forced some cooperative working towards a four-nations approach on key policy areas, having this driven by the IMA risks stifling policy innovation at the devolved level, slowing the pace of policy development and generating pressure to conform to the standards that the UK Government deems appropriate for England.

[redacted] is particularly concerned that the legislation limits the ability of Scotland and other devolved nations to adopt effective policies for reducing alcohol harm (and harm caused by other health-harming products), including regulatory action on marketing and labelling of these products.

For example, [redacted] has long called for statutory regulation on alcohol labelling given the alcohol industry's ongoing failure to provide basic health information on a voluntary basis. The Scottish Government has made clear its preference for mandatory labelling across the UK but has supported the UK Government's attempts to encourage voluntary approaches by the industry. [redacted], however, reserved the right to legislate: "if insufficient progress is made by the time of the UK Government's deadline of September 2019, the Scottish Government will be prepared to consider pursuing a mandatory approach in Scotland."

The Act limits the capacity of the Scottish Parliament to regulate on alcohol labelling without the agreement of UK government. Labelling will be subject to common frameworks, a mechanism through which the UK Government and devolved administrations can work together on policy areas where powers returned from the EU intersect with devolved competence. The Food Compositional Standards and Labelling provisional common framework, published in January 2023, is yet to be approved by Ministers across the UK government and devolved administrations. We understand that the aim is to ensure that the programme to establish Common Frameworks is complete by Easter 2025.

If agreement is not reached between the Scottish Government and the UK Government, the UK Government would not have to pass the regulations necessary to allow for divergence. Alcohol Focus Scotland has concerns that this has both deterred the Scottish Government from bringing forward proposals to improve alcohol labelling and constrains the ability of the Scottish Parliament to ensure that people have access to the information they require to make informed decisions about their drinking.

Redressing the balance

[redacted] supports the suggestions put forward by the [redacted] to redress the balance between market access and policy-making autonomy.[5] These include changes to the legislation, such as introducing principles of proportionality and subsidiarity, and/or expanding the list of policy areas that are excluded from the reach of the market access principles. Non-legislative change options include having a more robust, evidence-based and transparent exclusions process, and more rigorous legislative tracking to encourage intergovernmental communication and cooperation at an earlier stage of the law-making process.

Proportionality test
Introducing a proportionality test would require decision-makers to balance the effects of the regulatory variations on trade across the UK's borders with the protection of recognised public interests. This would consider:

- Whether the public interest is sufficiently important to justify potential limits to intra-UK trade;
- Whether the regulations are designed to address the public interest; and
- Whether the same objective could not be achieved using a measure less restrictive of intra-UK trade.

This would create the space to moderate the impact of the market access principles on a case-by-case basis through a structured, evidence-based assessment.

Subsidiary test
The introduction of a subsidiary test would protect the regulatory authority of the devolved nations, removing the veto power that the UKIMA gives to the UK Government over the exercise of those law-making powers that intersect with the market access principles. It would leave open the possibility of common standards and harmonised regulations, but the burden of proof to demonstrate the necessity of these would fall to the UK Government, should they face resistance from one or more devolved governments.

Expanding the list of excluded policy areas
There are very few permissible exclusions to the UKIMA market access principles, especially in relation to goods. The exclusions are much more limited than the broad public interest grounds under EU internal market law. We therefore support legislative changes to expand the set of legitimate public interest requirements justifying restrictions on intra-UK trade, including public health.

Reform of the exclusion process
There is a need for reform of the exclusion process. See our answer to question 15 on improvements that could be made to this process.

Legislative tracking
A new framework for legislative tracking would support coordination and planning between the UK and devolved governments. It could provide a platform for increased intergovernmental coordination in areas of shared regulatory concern at an early stage of policy development and encourage cooperation and shared learning, such as through agreements on joint consultations.

There may be a role for the Office for the Internal Market as a suitable repository for legislative tracking. The OIM operates as an independent regulatory body, and its statutory functions already include monitoring the operation of the UK internal market. Alternatively, the UK and devolved governments could charge the [redacted] with responsibility for legislative tracking.

Question 5: What are your views on the use that has been made of the Part 1 amendment powers – for example the exclusion for single-use plastics?

There is a lack of consensus and transparency over the operation and timing of submissions and decisions under the agreed exclusions process.[6] Moreover, the UKIMA and the exclusions process give the UK Government significant powers to frustrate, delay and diminish policy and law-making by devolved governments and parliaments. This could be seen as an effective UK veto over devolved action. The evidence base for exclusion decisions is also unclear, generating considerable uncertainty and potentially wasted resource for devolved governments, parliaments and key stakeholders.

We urge the UK Government to consider changes to the legislation to introduce tests of proportionality and subsidiarity and/or to expand the list of policy areas that are excluded from the reach of the market access principles. Procedural changes can also be put in place to reform the exclusions process (see our answer to question 15) and introduce legislative tracking.

<u>The management of the UK internal market and operation of the UK Internal Market Act</u>

Question 15: What improvements could be introduced to facilitate more pragmatic management of the UK Internal Market Act's exclusions process?

We highlight the concerns raised by the [redacted] on the exclusion process, which they state "remains problematic both structurally and operationally. It generates uncertainties and slows the pace of policy development and, in effect, gives the UK Government a veto power over exclusion requests emerging from devolved governments."

[redacted] supports their proposals for a clearer exclusion process to be developed. This includes the introduction of an exclusion request form, submitted to an impartial body, alongside requirements for timing and format in which the relevant parties are required to respond. This could be accompanied by an agreed evidence base required to evaluate exclusion decisions to grant or withhold an exclusion. The Office of the Internal Market could potentially expand its role to include assessing proposed exclusions, in addition to regulatory proposals. Alternatively, the independent secretariat established recently to support intergovernmental relations - and accountable to the UK and devolved governments - could commission evidence to support the exclusion process in a way similar to its role in resolving intergovernmental disputes. Such evidence should be published and reported to parliaments, to aid the transparency of the decision-making process.

To address issues with timing, rather than waiting for the completion of devolved legislative processes prior to making decisions, the UK Government should consider implementing a similar process to that in place under the Sewel Convention where legislative consent is sought before the law has gone through all of the law-making stages in parliament.

Consideration should also be given to expanding the set of legitimate public interest requirements justifying restrictions on intra-UK trade to include public health.

[redacted]

[redacted]

[redacted]

7th March 2025

UK Internal Market Review
Old Admiralty Building
Admiralty Place
London
SW1A 2DY

6th March 2025

Dear Sirs,

INTERNAL MARKET REVIEW Questions 1-8

[redacted]

[redacted]

[redacted]
and we hope that we have provided them with enough evidence to refrain from banning these products. If they were to do so they would have deprived themselves of the only way to prevent the accumulation of plastic which has escaped into the environment, and which would therefore lie or float around for decades.

If however one or both governments decide to do so we do not think that they should be given an exclusion from the market access principles for legislation prohibiting the sale of oxo-biodegradable plastic products.

The masterbatches are sold to the manufacturers of large quantities of plastic products for sale anywhere in the United Kingdom, and it would be impossible to know which products would be sold in which parts of the UK.

[redacted]

[redacted]

[redacted]

[redacted]

UK Internal Market Review

Old Admiralty Building

Admiralty Place

London

SW1A 2D

Dear UKIM team,

[redacted]

[redacted]

[redacted]

The last few years has been challenging for many businesses across the United Kingdom, particularly on the trading landscape. They have been faced with ongoing uncertainty due to changes to the trading relationship with the EU and an unstable geopolitical environment. Businesses are now spending significantly more time and money on Brexit-related administration. Many have hired extra staff to manage customs processes, or to oversee the export end of the business. But it is clear that the administrative burden is particularly affecting smaller businesses and less frequent exporters, who do not necessarily have the same knowledge, resource and time bigger businesses do to overcome these challenges.

Consumers across the United Kingdom benefit enormously from open and frictionless trade from each nation. That sizeable open market allows our members to operate at scale across the four nations. They are able to develop business models which can be widely replicated , and in doing so are able to benefit significantly from economies of scale (thus lowering business costs and in turn prices for consumers), including spreading the costs of new product development. This allows businesses to operate high volume low margin businesses

which create a highly competitive market which incentivises businesses to provide the best range, value, quality, and service to consumers.

Although we support the UKIM review and its outcomes, we must stress that each of the four nations must still have the ability to take distinct positions on policy issues pertaining that nation. [redacted] is a passionate supporter of the value of the devolution settlements across the United Kingdom. In supporting devolution, we recognise that there will inevitably be consequential regulatory divergence. Of course, we hope Governments will only look to bring forward divergent regulation when other alternatives have been exhausted and there is a definite public good. Our experience suggests home nation governments often have similar or reasonably similar policy goals and as outlined in our evidence session, we believe there is value in learning “best practices” from each nation.

Unfortunately in recent years, some of our members have been impacted by the deposit return scheme in Scotland. Our members in the food and drink sector had brought in and invested money in infrastructure and fulfilling their legal requirements. It is in such areas that we ask whether we can use the internal market act and the common frameworks to have a clearer, more transparent framework for regulation that allows businesses to plan for the longer term. A number of our members have also highlighted some of the high-level exclusions from the Act covering threats to health, taxation, chemicals and fertilisers and pesticides. We would also be supportive of these exclusions.

In general, we believe the market access principles have been protected since the Act came into force. That being said, we believe there are areas that could be improved upon. One of the arguments for change is that the broad, undefined discretion that the UK Government has on the exemptions process should be replaced with a specific and defined set of criteria for exemptions. This is one area that we feel would give some greater clarity and certainty to Governments and stakeholders about how the act operates and how decisions would be made. This could also provide devolved nations with greater clarity as to potential changes and the rationale behind them.

To build greater confidence in the operating of the Internal Market there needs to be greater opportunities for stakeholder consultation and engagement. The last few months we have been pleased with the level of opportunity for consultation and engagement around this topic, but as stated in previous correspondence and evidence sessions, we need to see this continue as we move forward.

Yours Sincerely,

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Sent on: Monday, January 27, 2025 8:58:21 PM

To: UKIM Review <UKIMReview@businessandtrade.gov.uk>

Subject: Response to UK Internal Market Act consultation

Hi,

I am responding to the UK Internal Market Act consultation [redacted].

You may consider this a response to question 5, or question 20, or both.

As you have indicated in the consultation document, this is not the place to rehearse all of the arguments as to why the UK Internal Market Act 2020 is an egregious undermining of Labour's own devolution settlement. This point has been well made by academics, current and former politicians, and others, many of whom are strong supporters of the continued success of the United Kingdom - not least of all, the Welsh government.

However, it shouldn't be controversial for us to propose simply returning the devolution settlement to the status quo ante - a settlement that was, after all, introduced and then sustained by UK Labour for 13 years.

With respect to the internal market in goods, where the encroachment on devolved powers has been the most obvious and far-reaching, this can be done very simply by modifying Schedule 1 of the act so as to allow the market access principles to be disapplied in all of the same cases as were permitted prior to Brexit. These are, inter alia, those enumerated in Article 36 of the Treaty on the Functioning of the European Union, and those provided for by the case law of the Court of Justice of the European Union, at least up until the end of the transition period (including, and in particular, *Cassis de Dijon*).

The UK government should not be getting involved in discussions about particular devolved policy questions - eg, which types of single-use plastic it is acceptable to ban and which it is not - where inevitably the discussion will become political (as we saw with the arguments between the UK and Scottish governments around the Scottish government's proposed deposit return scheme). There should be broad exclusions for legitimate public policy aims, and Schedule 1 should never routinely need to be modified moving forward. (If nothing else, each debate about a Schedule 1 exclusion wastes a huge amount of human time in both the UK and devolved governments - time which would be better spent doing things which have a more direct benefit for each government's citizens.)

[redacted], the UK internal market is of more importance to Scotland, Wales and Northern Ireland than it is to England. If the Welsh government chooses to regulate in such a way as to make it slightly more inconvenient for English companies to do business in Wales, this will have no impact on those companies' ability to serve their vast domestic market in England, from where, in almost all cases, the majority of their revenue and profit will be derived. If the Welsh government's hypothetical new regulation makes particular products or services in Wales more expensive, or reduces Welsh consumers' choice, the Welsh government will be answerable to the Welsh electorate for this at the next Senedd election.

If devolution is to continue to work for another 25 years or more, we need to get back to the original spirit of devolution, with the centre once again becoming more relaxed about policy and regulatory innovations which make Scotland, Wales and Northern Ireland different to England.

Regards,

[redacted]

UK Internal Market Act 2020: review and consultation

[redacted]

02 April 2025

About [redacted]

[redacted]

The [redacted]

[redacted]

Review and consultation of the UK Internal Market Act 2020

[redacted] would firstly like to express our appreciation to the Department for Business and Trade (DBT) for the opportunity to provide a response on behalf of the logistics sector on the review and consultation on the UK Internal Market Act 2020. [redacted] respects the vital role that devolution plays in bringing policy making and decisions closer to communities. We note the co-operation between devolved governments and Westminster to date when it comes to regulatory divergence which would impact the UK Internal Market post EU Exit.

[redacted], and the vast majority of the members we represent, operate within the UK's internal market. Therefore, it is vitally important that the logistics industry is able to continue with their operations with the least amount of friction possible. [redacted] is a very competitive market, with firms typically operating on a profit margin of 2.5%. As a result of this, it must operate with a very high degree of efficiency. There are significant cost pressures on [redacted], such as increased resource costs, pressures from taxation and increases in employer national insurance contributions, as well as a significant increase in trade documentation processes and paperwork on GB to NI trade and GB-EU trade. All these factors add cost pressure to [redacted]. Whilst [redacted] try to absorb some of these costs, there becomes a point when this is not possible, and therefore costs have to be passed on to the consumer adding to inflationary pressures, as well as hindering the UK's prospects for economic growth. These challenges can be partly mitigated with regulatory consistency to help with the efficient transportation and trade of goods with the UK Internal Market. This should also include the mutual recognition of qualifications where possible.

While the Windsor Framework is outside the scope of this consultation, the ongoing impact of regulatory divergence is evident in GB to NI trade. [redacted] would urge devolved governments and the UK government to ensure that avoiding barriers to trade remains a shared priority. If impactful regulatory divergence were to occur, it could create confusion and result in additional costs for businesses serving the UK Internal Market with a negative, location-based effect on product availability.

[redacted] recognises the importance of regulatory consistency in international trade. [redacted] strongly supports the UK Government's intention to have a Sanitary and Phytosanitary (SPS)/ veterinary agreement with the EU as part of

[redacted]

the wider UK-EU Reset. Post EU Exit, there are significant cost pressures, for UK SPS exports to, and imports from the EU. Currently, over 80% of the goods brought from the EU into the UK are transported by EU logistics businesses and drivers. New processes, requirements and costs are resulting in goods being delayed at the border which in turn reduces the shelf life and value of these products. While GB EU trade is not the focus of this consultation, reducing the overall regulatory burden on UK traders and logistics businesses must be a priority across government.

Given the ongoing challenge of divergence where NI is concerned in particular, [redacted] would support publication by the Office of the Internal Market of a register/tracker to horizon scan and monitor for potential issues. This should be made available and accessible to businesses and wider stakeholders to assist in the management and mitigation of barriers to trade.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted] [redacted]

[redacted] [redacted]

[redacted] [redacted]

[redacted] [redacted]

[redacted]

1. Introduction

1. We welcome the opportunity to respond to this consultation on the statutory review of the United Kingdom Internal Market Act 2020 ("the 2020 Act").

2. As a [redacted], we have taken particular interest in the operation of the UK internal market.

3. We welcome the decision taken to expand the scope of the review from the narrow parameters provided for in the 2020 Act. However, we regret that the review will not be considering whether to repeal the 2020 Act (or any part of it) and the UK Government's view that protections for the free movement of goods, provision of services and recognition of professional qualifications that flow from the market access principles should not be weakened.

4. In our view, this review should act as an opportunity to fully assess whether the regime put in place by the previous UK Government adequately manages the operation of the UK's internal market, whilst recognising the democratic legitimacy of the devolved legislatures and governments. This should include consideration of whether the 2020 Act, or parts of it, should be repealed and replaced with new legislation or by strengthening the Common Frameworks programme.

5. To that end, we welcome the recognition in the consultation document that Common Frameworks are the most important tool to find shared approaches or agree on how to manage divergence, with the 2020 Act sitting "in the background". The commitments made by the UK Government to finalise the Common Frameworks programme by Easter 2025 are also important steps towards improving the management of policy divergence between the four nations of the UK.

6. As well as respecting the democratic legitimacy of each devolved legislature to make (and effectively implement) laws within its competence, policy divergence can also lead to shared benefits through policy innovation and shared learning, which the consultation rightly acknowledges.

7. Beyond the operation of the UK internal market, we are very disappointed that the review will not be considering Part 6 of the 2020 Act, which provides a Minister of the Crown with the power to provide financial assistance. This power can be used to fund activities in policy areas that are devolved in Wales, without a role for the [redacted] to ensure this financial assistance is aligned with Wales' devolved priorities. We agree with our predecessor [redacted] in the Fifth [redacted] which stated that these powers represent an unnecessary and confusing intrusion on the ability of the [redacted] and the [redacted] to act on behalf of Wales' citizens. It is disappointing that the UK Government has not recognised this review as an opportunity to address this issue and ensure a proper and appropriate role for the [redacted] in determining how this funding is allocated.

8. We would encourage the UK Government to engage extensively with the [redacted] (as well as the other devolved governments) and Welsh stakeholders as part of the review. It is critical that these views and experiences are understood and able to contribute towards the review's considerations.

9. We note the [redacted] during a recent appearance at the [redacted] that she thinks the UK internal market was "imposed" upon the [redacted] and that there are "a few things to iron out" in relation to that.

10. The [redacted] wrote to stakeholders with whom it has engaged as part of its work on the 2020 Act to draw their attention to the review and encourage them to respond to the consultation. [redacted] wrote to the [redacted], confirming that it would be submitting a response to the consultation through its membership of the [redacted], while also setting out its views on the operation of the 2020 Act and its impact on law and policy in Wales.

11. Our response will set out our experiences and views on the operation of the 2020 Act. If it would be of benefit, we would welcome the opportunity to meet with the [redacted] to discuss our views on the 2020 Act further.

2. Overview of [redacted] previous work on the UK Internal Market Act 2020

12. The development and operation of the UK internal market has been of particular interest to our [redacted] and to its predecessor in the [redacted] (2016-21), due to its implications for devolution.

13. [redacted]

14. In its report, our predecessor [redacted] was clear that it would have been more appropriate to have, at least initially, followed the Common Frameworks process, rather than seeking to legislate through the UK Internal Market Bill.

15. Our predecessor [redacted] noted that the Bill's effects on the exercise of devolved legislative and executive competence would be "profound" and that the Bill would "frustrate the [redacted] ability to determine easily whether it is practical to legislate and greatly impact the [redacted] capability to make coherent and accessible laws that meet the needs and aspirations of Welsh citizens".

16. In its report, our predecessor [redacted] concluded that the Bill presented "a risk to devolution" and took the exceptional step of breaking its usual practice not to comment on whether the [redacted] should give its consent to provisions in UK Bills, stating:

> *"...we consider that the Bill would have a profound effect on the devolution settlement and therefore, in our view, the* [redacted] *should not give its consent to the Bill in its current form".*

17. In light of our experience of the operation of the 2020 Act, we must conclude that the concerns outlined by our predecessor [redacted] have indeed been realised.

18. Our [redacted] has considered specific pieces of Welsh and UK legislation that interact with the 2020 Act, as well as looking at broader constitutional level effects of the Act. The [redacted] has considered the effects of the 2020 Act in its reports [redacted]

- [redacted]
- [redacted]
- [redacted]
- [redacted]

[redacted]

19. The [redacted] work has generally focused on the potential impact that the 2020 Act's market access principles for goods have on the effectiveness of [redacted] legislation. For example, in relation to the Environmental Protection (Single-use Plastic Products) (Wales) Bill, the [redacted] raised significant concerns about the enforcement of the Bill's proposed bans on some single-use plastic products not covered by the narrow exclusion on plastics included in the 2020 Act. The [redacted] was concerned that the 2020 Act's provisions would mean that these plastic products could continue to be sold in Wales even if a ban was introduced. Unfortunately, the prohibition on the supply of some of those products has yet to be commenced by the [redacted], so the [redacted] concerns cannot yet be put to the test. Whilst the [redacted] has not acknowledged that the 2020 Act influenced this decision, we believe that it demonstrates that the 2020 Act is having an effect on the implementation of a [redacted] Act. We return to this matter later in our response.

20. More recently, the [redacted] has been looking at the impact that the 2020 Act is having on the [redacted] approach to legislating, including its willingness to seek intergovernmental agreements for policy alignment to avoid any potential impacts from the market access principles. The [redacted] has confirmed to the [redacted] that the 2020 Act was a contributing factor to its decision to agree to legislation in the UK Parliament about the supply of tobacco and vapes products being taken forward on a UK basis.

21. Whilst we would welcome positive and constructive relationships between governments, this should not be at the expense of the [redacted] ability to legislate or act as a means of by-passing the barriers to legislating created by the 2020 Act.

22. A significant challenge that the [redacted] has faced in bringing attention to these matters is the unwillingness of the [redacted] to engage on the practical implications that result from the 2020 Act. Our [redacted] attempts to ask [redacted] for assessments of the impact of the 2020 Act on Welsh legislation have been frustrated by a lack of engagement and transparency on the matter. We will return to this matter later in the response.

23. [redacted] has maintained its position, as set out in its legal challenge to the Act, that it does not recognise the impact of the 2020 Act on the practical effect of [redacted] legislation. As a [redacted], we have consistently accepted that the 2020 Act cannot limit the [redacted] competence to legislate on matters that are devolved but are concerned that once law is made by the [redacted] the 2020 Act impacts on how effective that law is as it can no longer be enforced on products and services made, imported into and regulated elsewhere in the UK. There are examples of legislation that pre-date the 2020 Act that could, if they were made today, not be enforced in the same way and to the same extent.

24. In order to support the [redacted] understanding of the impact of the 2020 Act on the effectiveness of Welsh law, we have been working with [redacted] with [redacted] to generate new knowledge and understanding regarding the 2020 Act and to explore the impact of the Act on intra- and inter- parliamentary procedures.

25. The research contributed towards a publication of a report on the UK Internal Market Act and Devolution, and [redacted] held a private briefing session with the [redacted] in July 2024.

3. The UK Internal Market and Common Frameworks

26. Whilst we acknowledge that this review is not about how the Common Frameworks programme has operated, we welcome the commitments made by the UK Government when announcing the review in relation to the programme. The commitment to finalising the programme by Easter 2025 is a welcome one, particularly after little progress has been made over the last few years. Commitments to develop closer working relationships and to increase transparency between the UK and devolved governments are also welcome and will be crucial if the Common Frameworks programme is to operate most effectively.

27. As we have noted in the introduction to this response, we welcome the acknowledgement in the consultation that Common Frameworks are "the most important tool" for the UK and devolved governments to find shared approaches or agree how to manage divergence. This approach can help to rebalance the management of the UK's internal market, away from a system which overly favours central control, towards one that values co-operation and recognises the benefits of policy divergence.

28. In June 2023, we published a report on the provisional Common Frameworks, bringing together the views and recommendations of f[redacted] that had been scrutinising the provisional frameworks. One of the key matters considered in this report was the importance of improved transparency for the [redacted] and stakeholders when policy is being developed through a Common Framework and when disputes are escalated to ministerial level.

29. We recommended in our report that the [redacted] should seek intergovernmental agreement to ensure the regular reporting to legislatures on the operation of each Common Framework. We continue to believe that this would be beneficial for scrutiny and transparency.

30. In its first periodic report, the Office for the Internal Market (OIM) noted that most business and trade bodies that they engaged with were not aware of Common Frameworks. Amongst those who were aware of them, many did not understand what issues are discussed through particular Common Frameworks, nor whether there were any opportunities for them to input into discussions. The OIM reported that businesses had raised concerns about the lack of role for non-governmental stakeholders in Common Frameworks.

31. Whilst the use of Common Frameworks could lead to better decision-making and recognition of devolved autonomy, [redacted] have raised concerns about the impact that Frameworks can have on the legislative competence of the [redacted] and executive competence of [redacted]. Policymaking through Common Frameworks and other intergovernmental decision-making processes has the potential to limit the role of the [redacted] (and other devolved legislatures) in the policy-making process. This can be true of both decisions made through Common Frameworks, but also those made through other intergovernmental forums. This is why a focus on improving the transparency of decisions taken through this process is key.

32. We have seen a recent example of this with the previous UK Government's Tobacco and Vapes Bill (2023-24 session). The Bill took a 'four nations' approach to legislating for the whole of the UK, with delegated powers to the relevant government. We [redacted] whether the 2020 Act had influenced the [redacted] decision to take this intergovernmental approach. She told the [redacted] that it was:

> *"... one of the considerations why it would be appropriate to adopt a four-nations approach to the UK Tobacco and Vapes Bill, however the overriding consideration was public health benefit. Our decision to engage in this Bill is because, if passed, it represents one of the most significant public health interventions in a generation."*

33. A similar Bill was subsequently introduced by the current UK Government in the 2024-25 session. In our report on the [redacted] legislative consent memorandum on the re-introduced Bill, we noted that health is an area of devolution that has resulted in intra-UK divergence, including on restrictions on smoking, and that should there be evidence and support for public health legislation to differ in Wales to that of the rest of the UK, then divergence may be desirable.

34. We would not wish the [redacted] to be reluctant to legislate on an important devolved matter, such as public health, for fear of the potential consequences of the 2020 Act.

35. In order to improve transparency when policy is being developed through a Common Framework, we recommended in our report that the [redacted] should make it clear to the [redacted] and stakeholders when this approach is being taken.

4. The operation of the market access principles

36. As we stated in the introduction to this response, we are disappointed that the Review will not be considering whether the 2020 Act (or any part of it) should be repealed. However, we do welcome the recognition in the consultation document that the market access principles should sit "in the background" rather than being used to manage the UK internal market.

37. In our view, the market access principles (as they are set out in the 2020 Act) pose a threat to the ability of the devolved governments and legislatures to effectively implement laws in the policy areas that they are responsible for. We would therefore support a more holistic review of whether any reforms could be made to the principles in order to enable greater flexibility for the devolved governments. This could be achieved, for example, by widening the scope of the definition of the legitimate aims outlined in the 2020 Act[1] to justify indirect discrimination, or by considering the principles of 'subsidiarity' and 'proportionality' enshrined in the EU's single market.

38. However, even without these wholescale reforms, there are improvements that could be made to the current operation of the market access principles that would provide greater oversight and transparency of the regime and protect the autonomy of devolved governments and legislatures to make effective policy in areas they are responsible for.

39. As we noted in the previous section, we support a move towards a system that gives preference to manging policy divergence through Common Frameworks and negotiation, rather than one which relies on the market access principles.

40. To support this, there should be a more routine use of the exclusions process, both to consider whether much broader areas of devolved policy could be excluded and to normalise the process for agreeing ad hoc exclusions from the market access principles.

41. Broadening the areas of devolved policy that are excluded from the 2020 Act would provide greater certainty to legislators, businesses and other interested stakeholders who could be affected by a regulatory requirement. We experienced this kind of uncertainty when considering the [redacted] proposals to prohibit the sale of certain single-use plastic products in the Environmental Protection (Single-use Plastic Products) (Wales) Act 2023.

42. Due to the specific nature of the products that had been excluded from the market access principles, there was a narrow path in which the legislation could operate effectively without interacting with the market access principles. This was perhaps clearer cut for two of the products that formed part of the [redacted] proposals (carrier bags and oxo-degradable plastics). However, polystyrene lids for cups and takeaway food containers were likely to be captured by the market access principles as the exclusion only referred to containers or cups made from polystyrene, and not their lids.

[1] Sections 8(6) and 21(7)

43. An exclusion with a broader scope that covered all single-use plastic products (as had been originally requested by the [redacted]) would have removed this confusion. The [redacted] has subsequently implemented the bans in two stages, with the second phase (covering the three items likely to be impacted by the market access principles) not scheduled to be introduced until Spring 2026.

44. In our report on the commencement Order for the bans on the products already covered by the exclusion, we asked the [redacted] to explain why the prohibitions relating to the other three products were not being commenced at the same time and highlighted the symmetry between the items being prohibited in the second phase and the products excluded from the 2020 Act.

45. It is positive that the review will be considering the process for agreeing these exclusions. Improvements are needed to the process to ensure that there is greater certainty around the length of time that a request should be completed within, the format and form of a request and an agreed process for approval and appeal of decision-making. The Common Frameworks and existing intergovernmental structures should provide an appropriate arena for this process to operate within, including making use of the independent secretariat and dispute-resolution process that already exist.

46. However, reforms to the process for agreeing exclusions would still not address the fundamental issue that the UK Government remains the gatekeeper of exclusions being agreed due to its role in making subordinate legislation to add exclusions to the 2020 Act. In this process, the UK Government acts as both a policymaker for England (and in some cases the whole of the UK) as well as government for the UK, with responsibility for overseeing the exclusions process. Without reforms to this element of the process, it is unlikely that it will be rebalanced towards a more equitable partnership between all four governments.

47. One of the challenges we, and other [redacted], have faced is the lack of available information about the potential effects of the market access principles. This has likely been impacted in Wales by the position that the [redacted] has adopted in relation to the Act. Indeed, in our report on the Health Service Procurement (Wales) Bill, we highlighted that in our view the evidence we received from the then [redacted] in respect of the practical effect of the 2002 Act on the Bill was unsatisfactory.

48. We believe that there should be more routine information provided, for example, in explanatory memoranda or other notes that accompany legislation, about whether any assessment has been undertaken about the interaction between the regulatory proposals and the market access principles. This would provide legislatures and other interested stakeholders with critical information to understand whether the proposal would be effective.

49. We did see this level of openness from the [redacted] when a legislative consent memorandum was laid in the [redacted] in relation to the Genetic Technology (Precision Breeding) Bill [now Act] in 2023. We agreed with the [redacted] analysis that the Bill's provisions would have an effect on Welsh law as a result of the market access principles. However, we did not believe that the legislative consent process was the appropriate place to bring this matter to the attention of the [redacted], as the Bill's provisions applied only to England and as a result did not come within the legislative competence of the [redacted].

50. In our report on the memorandum, we recommended that the [redacted] should review the [redacted] so that they make appropriate provision to ensure the practical effect of the 2020 Act is taken into account when [redacted] legislation is introduced and when legislation passing through other UK legislatures may have an effect on [redacted] that is already on the statute book.

5. Office for the Internal Market

51. The [redacted] has enjoyed a positive working relationship with the Office for the Internal Market (OIM) and recognises the important role that the OIM has to play in building understanding about the operation of the UK internal market.

52. The OIM's annual and periodic reports make a unique contribution towards this goal, and we have been fortunate to welcome representatives from the OIM to give evidence to the [redacted] on its annual and periodic reports in 2023 and on its annual report in 2024.

53. The provisions in sections 34-36 of the 2020 Act that enable the UK and devolved governments to request advice from the OIM can also provide critical information in the policy development process. However, we believe that this resource has so far been underutilised by the [redacted] and other governments, and that improvements are needed to the process to improve transparency when requests for advice are made.

54. We would support changes that would ensure that legislatures are notified when requests for advice are made and that any subsequent reports are then laid before each of the four legislatures in the UK.

55. Under the provisions in the 2020 Act, this advice can only be requested by a "relevant national authority", which for [redacted]. However, we have welcomed the willingness of the OIM to offer its support to our [redacted], and others in the [redacted], if we are considering a matter which may affect the operation of the UK internal market.

56. For example, we were grateful to receive the views of the OIM in relation to the interaction between the 2020Act and the Product Regulation and Metrology Bill when we were [redacted]

57. Expanding opportunities for the OIM to support the scrutiny role of legislatures would be a welcome step forward.

58. We are also supportive of calls made by the House of Lords Common Frameworks Scrutiny [redacted] for the OIM to make clear in its reports how it takes into account devolved policy autonomy when advising on, and assessing, the impact of policy divergence agreed through Common Frameworks on the UK internal market. It is crucial that the democratic legitimacy of the [redacted] to make laws for [redacted] in devolved areas is recognised when these assessments are being made.

59. This should also include an understanding of the wider policy benefits that may occur as a result of policy divergence. Currently, the OIM only assesses the economic impact that could occur as a result of a proposed regulatory provision, aligning with the requirements in the 2020 Act. However, a fuller cost benefit assessment that recognised, for example, the positive environmental or health impact that could result from a policy proposal, would provide a more comprehensive picture of the proposal. This would then enable the UK and devolved governments to make more informed decisions through Common Frameworks and to agree an exclusion from the 2020 Act if necessary.

60. Whilst section 34(4) of the 2020 Act does allow for advice to be given to consider "among other things" the potential economic effects of a proposed regulatory provision, we believe that this should be amended to give greater flexibility for the OIM to consider wider policy benefits that could arise from a proposed provision.

[redacted]

[redacted]

UK Internal Market Review
Old Admiralty Building
Admiralty Place
London
SW1A 2DY

3rd April 2025

RE: UK Internal Market Act 2020: review and consultation

Dear UK Internal Market Review Team

[redacted] welcomes the opportunity to provide views on how the UK Internal Market Act has developed since its establishment in 2020.

[redacted] Since 1978 the union has been formally recognised by the UK Government and subsequently by the Welsh Government, as independently representing those interests.

[redacted] [redacted] while the Mission of the Union is *To advance and protect Wales' family farms, both nationally and individually,* in order to fulfil the Union's vision.

[redacted]

[redacted]

[redacted]

Following consultation with members, [redacted] agreed in September 2016 that frameworks should be established which prevent unfair competition between devolved nations. [redacted] also stated that UK Governments should secure and protect adequate long term funding for UK agriculture whilst respecting devolved powers over agriculture and the need for flexibility which allows devolved governments to make decisions which are appropriate for their regions (Filling the Void).

[redacted] therefore welcomed the introduction of Common Frameworks in 2017 and the creation of the UK Internal Market Act in 2020 to provide a governance structure to manage the increased likelihood of divergence between the devolved nations.

Whilst the consultation paper outlines certain scenarios where the UK Internal Market Act has effectively intervened, there is a need to bolster a better understanding of the role and scope of the UK Internal Market Act across devolved governments and stakeholders. Welsh farming businesses and associated supply chains are often impacted, either directly or indirectly, by decisions made by UK Governments which inadvertently result in (good and bad) divergence and competition.

Whilst the UK Agriculture Policy Collaboration Group has been established to discuss and provide advice on agricultural support policies and spending in each of the devolved nations, it could be argued that decisions made by the UK Government on areas such as devolved budget allocations in the first instance opens the door for unfair divergence between nations at a UK Ministerial level.

This includes the recent decisions made by the UK Government to apply the [redacted] to future proportional adjustments to the [redacted], resulting in a fall from a 9% share to a 5% share of any proportional uplifts (or reductions) to the UK agriculture budget. Previously, EU funding for UK agriculture was allocated across the UK nations under the Common Agricultural Policy (CAP) formula, based on rural and farming criteria such as the size, number and nature of farms. This resulted in 9.4% of the total UK agriculture budget coming to Wales. [redacted] is simply an outdated population based distribution method and unsuited to protect the needs of Welsh agriculture.

As such, spending thresholds need to be agreed which provide flexibility which reflects devolved powers and varying national priorities, while also ensuring relative uniformity, to the extent that market distortion and other adverse effects are minimised.

What is the right balance between the potential for local regulatory innovations and UK-wide alignment affecting goods and services?

Given the complexity of this issue, it is not one where it is possible to provide either a definitive or exhaustive list of what should be covered by local regulatory innovations or UK-wide alignment in terms of goods and services.

As a general principle, [redacted] would not support local regulatory measures which undermine the Welsh Government's ability to legislate in order to protect the health and welfare of plants and livestock, and Wales' ability to export to important overseas markets.
Examples of potential areas for divergence as a result of local regulatory innovations and/or UK-wide interventions could include:

- Significant divergence between the key objectives of rural support policies
- Significant divergence between the funding allocated to those key objectives
- The absence of a protected budget for rural spending and agriculture which would allow divergence in overall spending
- Inappropriate national allocations which benefit certain regions more than others
- The absence of minimum and maximum spending thresholds for key objectives and policies
- Failure to recognise the damage likely to be caused by significant divergence from key objectives, levels and types of support applied in the countries of the UK's main trading partners and competitors

How can the process for considering exclusions from the UKIM Act be improved and how should interested parties be engaged? What criteria should be considered for an exclusion from the Act?

[redacted] maintains that the devolved governments and relevant stakeholders should be directly involved in the process for considering exclusions from the UK Internal Market Act, either through specific working groups or formal consultation.

Such processes should consider set criteria such as the potential socio-economic impacts, impacts on domestic trade (volume and price) across the devolved nations, the ability for a particular nation and/or the UK as a whole to trade with other countries. They should also consider compliance with World Trade Organisation (WTO) principles, the ease of relevant businesses to adapt to such exclusions, and the wider impacts throughout the supply chain in terms of costs, regulatory bureaucracy and reduced investment.

In all cases, potential impacts (significant or otherwise) should be avoided wherever feasible, or effectively mitigated, through the work of the UK Internal Market Act and the Office of Internal Market.

How can the OIM best support the internal market through its role in providing independent monitoring and advice?

[redacted] welcomes the work of the Office for Internal Market through its role in providing independent advice on internal market issues. In 2016, [redacted] called for fully independent bodies comprising individuals who can fairly reflect the full range of interests of all of the UK's four nations, and be capable of making decisions and recommendations should be established, as well as bodies which can arbitrate and take action where rules and principles agreed by the four nations are breached or challenged. Notwithstanding their independence, such bodies should ultimately be answerable to all of the UK Governments.

[redacted] believes the UK Government should seek to mitigate against both 'direct' and 'indirect' discrimination in areas which affect the provision of goods and services by working closely with the devolved administrations to reach agreement before introducing any legislation, while also introducing mechanisms to govern and arbitrate which fully respect the devolved nature of the UK's systems of government - as opposed to legislation and decisions being, in effect, solely directed by Westminster in spite of devolution.

The UK Government is right to recognise the dangers of direct and indirect discrimination, unfair competition, market distortion and other issues that could arise within the GB/UK internal market. However, given the current trade negotiations with the EU, USA, Japan, New Zealand etc. it should also recognise the likelihood of such adverse impacts occurring as a result of inappropriate or ill-considered trade deals.

This is a particular concern with regard to agricultural produce produced to environmental, health and welfare, social and other standards that do not meet those required of UK producers.

Furthermore, the UK Government must realise the intensifying risk of trade distortion and market volatility across the globe which has the potential of presenting further challenges for the UK Internal Market Act in future.

In regards to the market access principles for goods and the introduction of the Genetic Technology (Precision Breeding) Act 2023, [redacted] highlight that moves to produce bespoke legislation for precision breeding technologies have only been made possible in a post-Brexit environment, highlighting the complexities inherent in differing post-Brexit legislative changes between the devolved administrations.

Crucially - and of immense concern to [redacted] and its associated membership - the Act and its associated secondary legislation applies to producers residing within England only. The effects of PBO legislation on the other devolved administrations will be significant due to the UK Internal Market Act.

[redacted] maintains that further research should have been conducted to determine the extent to which this secondary legislation will detrimentally affect the competitiveness of producers in other administrations prior to its introduction. [redacted] members strongly believed that moves to downgrade GMO products in England should only have been considered once the full impacts of asymmetry between the devolved administrations had been fully and properly researched and considered.

Under UK Internal Market Act principles, PBO food and feed produced in England - and for which Market Authorisation has been granted - can also be lawfully sold in Wales and Scotland. This is the case even if such PBOs 'were not authorised for use in food and feed under existing GMO regulation' relating to these countries. At present, PBOs produced in other countries are unable to enter the UK market where they are not authorised as GMOs or labelled as such. The secondary legislation provided under the current Act therefore permits an indirect hypocritical disparity between the regulatory requirements of PBOs imported into England and those PBOs being moved from England into other devolved administrations.

[redacted] notes with concern that the UK Internal Market Act does not apply to processing after sale if this constitutes a 'significant production step' for UK Internal Market Act purposes. Therefore, any food or feed from PBOs sold in Wales or Scotland under these principles, which then undergoes a 'significant production step' after sale, is subsequently considered to have been produced in that nation and is therefore subject to tougher and more burdensome GM legislation.

The above is a brief summary of [redacted] views on the functioning of the UK Internal Market Act, and the Union would welcome further engagement with both the Department of Business and Trade and the Office of Internal Markets to further understand the work of the UK Internal Market Act and how it is developed with relevant stakeholders and the devolved governments in future.

[redacted]

[redacted]

Internal Market Act Consultation: [redacted]

[redacted]

[redacted]

Market Access Principles on Goods

Question 1: What are your views on how the UK internal market for goods is best supported using the UK Internal Market Act?

[redacted] strongly support the principle of the Internal Market Act. A clear and stable regulatory environment across the whole of the UK is critical to ensure that food and drink businesses can strategically and financially plan for the long term.

The Internal Market Act is also critical to international trade deals through ensuring clear shared standards across the UK. Trade deals are of importance to our exporting members.

The Internal Market Act is also important for growth across all parts of the UK. The original impact assessment showed the potential for reduction in GDP from trade friction which was higher in the devolved nations than across the UK as a whole (1.18% Scotland, 1.61% Wales, 0.7% Northern Ireland vs 0.34% UK as a whole).

However, the way the Act has been used to date has created uncertainty for businesses on devolved lawmaking. The Deposit Return System decision for Scotland meant businesses lost money and confidence; the ongoing lack of clarity on the introduction of Deposit Return in Wales adds to this. We therefore think that the future use of the Act by governments should be much earlier in the legislative process and/or with a much longer implementation period for business planning purposes. This would allow businesses to have long term clarity and build confidence in the legislative system.

We also believe that the Common Framework system – which includes a range of regulatory policy which directly affects the food and drink industry – could be improved. The frameworks are not transparent to business on what is being discussed, and there appears to be no direct way for businesses or their representatives to input into these discussions.

Question 3: What is the right balance between the potential for local regulatory innovations in sectors and UK-wide alignment?

Any regulatory divergence that impacts the food and drink industry is likely to directly increase business costs to deal with increased complexity. These costs then increase costs for consumers. Therefore, [redacted] view is that uniformity across the UK is to be desired in most situations.

[redacted]

Question 4: What are your views on the operation of the market access principles for goods to date?

[redacted] members have been directly affected by decisions, particularly the decision on the Deposit Return System for Scotland. This decision was made very late in the day, costing significant amounts of money to those who had invested in their compliance responsibilities under Scottish Parliament legislation. We therefore think that the future use of the Act by governments should be much earlier in the legislative process and/or with a much longer implementation period for business planning purposes. This would allow businesses to have long term clarity and build confidence in the legislative system.

<u>Questions on the management of the UK internal market and operation of the UK Internal Market Act</u>

Question 15: What improvements could be introduced to facilitate more pragmatic management of the UK Internal Market Act's exclusions process?

Businesses need as transparent and clearly timetabled regulation across the four UK nations as possible to allow them to plan effectively. Early decisions and realistic implementation times are critical to this, ideally agreed in conjunction with affected industries and their representative groups. The continuing uncertainty over the Welsh Government's approach to a Deposit Return System, for example, is creating uncertainty over the progress of implementation and will most likely lead to additional business cost to deliver.

Question 16: How should we ensure proportionate engagement with interested parties in relation to potential exclusions?

We would like to see an expectation that clear business engagement has been evidenced before exclusions are considered. Ensuring business views are understood from individual businesses and their representative organisations should be critical all the way through the legislative process. Business and representative insight can be particularly important when considering the realities of practical implementation of legislation. This will of course vary for each potential exclusion, but we would expect any piece of legislation to have long term established mechanisms for business engagement.

Question 17: What evidence should be provided in support of an exclusion proposal by the proposing government, so the proposal can be fully considered (for example, information on potential impacts on businesses' ability to trade within the UK and the policy implications of not having an exclusion)?

We would expect that business impact would be transparently considered. This should include a consideration of the impact on all sizes of business (so different impact on small, medium and large businesses). It should also cover cost to implement, monitor and report on any change, the on ongoing cost of regulatory compliance, and any costs required to deliver the change (for example new software or physical infrastructure).

Question 18: Should there be a different process to consider exclusions proposals which could lead to potentially significant economic impact, compared to those likely to lead to smaller economic impact?

From a business point of view, even 'small' decisions can have significant impact. We would expect governments to be able to clearly evidence the impact on businesses no matter their estimation of the size of the economic impact.

Question 19: What do you think constitutes a potentially significant economic impact?

This will vary based on impact of regulation and business size. If the different impact on small, medium and large businesses is to be considered as part of the evidence required for an exclusion then this should give a reasonable measure of its economic significance.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]	[redacted]
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[redacted]

[redacted]

26 March 2025

Dear Review Team

UK INTERNAL MARKET ACT 2020 REVIEW: CONSULTATION RESPONSE

I am grateful for the opportunity to respond to the review of the UK Internal Market Act (UKIMA) and pleased to see some recognition that current arrangements for regulation of the UK internal market are not working as effectively as they should.

There has been a significant academic legal consensus since the outset that the Act is not an appropriate way of regulating internal trade in the context of asymmetric devolution. (See S Weatherill, 'Comparative Internal Market Law: the UK and the EU' (2021) 40 *Yearbook of European Law* 431; KA Armstrong, 'The Governance of Economic Unionism after the United Kingdom Internal Market Act' (2022) 85 *Modern Law Review* 635; M Dougan *et al*, 'Sleeping with an Elephant: Devolution and the United Kingdom Internal Market Act 2020' (2022) 138 *Law Quarterly Review* 650; T Horsley, 'Constitutional Reform by Legal Transplantation: the United Kingdom Internal Market Act 2020' (2022) 42 *Legal Studies* 1142.) In particular, the Act does not strike an appropriate balance between the facilitation of internal trade and recognition of the legitimacy of regulatory divergence in devolved policy areas. Regulatory divergence may be appropriate for reasons of regulatory innovation, to address local concerns and conditions, and/or to respect local democratic choices about the balance to be struck between free trade and the pursuit of non-market objectives. Where that balance appropriately lies is not something that can answered in the abstract, or in an all-or-nothing fashion. There will be a range of factors to be taken into account including the seriousness of the economic effects of divergent regulation, including distributional concerns; the perceived importance of the countervailing policy aims being pursued; and the availability, suitability and effectiveness of alternative means of pursuing those objectives.

The balance that is struck in UKIMA itself is strongly titled towards facilitating market access – both in the sense that there are few opportunities, as compared with the EU law internal market rules which it replaces, to displace the market access principles in favour of non-market objectives, and because rules which breach the market access principles are automatically disapplied without any process having to be followed to challenge them and to show that they do indeed cause disproportionate economic harm. The market access principles also largely apply in an all-or-nothing fashion – market sectors are either included within their scope or they are excluded altogether. With the exception of the indirect discrimination principle for goods and services, there is no opportunity to balance market access against countervailing policy aims on a case-by-case basis; even there, legitimate aims are defined very narrowly.

Although in principle applicable equally to divergent legislation affecting all four parts of the UK, in practice, the effect of UKIMA – for reasons both of market size and constitutional asymmetry (parliamentary sovereignty plus the UK institutions' dual role as regulators for England and guardians of the UK internal market as a whole) - bears much more heavily on devolved decision-makers than it does on UK ministers or the UK Parliament when legislating for England. While devolved legislative competences are in theory unaffected by the Act – legislation which breaches

[redacted]

[redacted]

the market access principles remains valid and enforceable against local economic actors – in reality the ability to regulate *effectively* in areas of devolved competence is significantly constrained if rules cannot be enforced against importing suppliers or service providers.

The operation of the Act also has to be understood in its wider political context. The Act permits further exclusions to be made from the market access principles via secondary legislation. This has taken on far greater significance than was originally anticipated, and effectively means that the balance to be struck between market access and regulatory divergence has been pushed to the exclusions process. This is problematic, first, because the operation of the exclusions process is largely unregulated in substance, making decisions about whether or not to amend the list of exclusions almost entirely a matter of political judgment (which in consequence are likely to be very difficult to challenge via judicial review). Second, it is also problematic because UK ministers have an effective veto over the exclusion process through their exclusive power of initiative of the statutory amendment process. This in turn gives UK ministers a *de facto* supervisory role over the exercise of devolved legislative powers (seen, for example, in relation to the Scottish Deposit Return Scheme, and the ban on supply of rodent glue traps in Scotland), which has the potential to be used in a way which privileges the UK Government's policy preferences and/or which forces the devolved governments into joint policy-making (with potential adverse consequences both for the speed and content of regulatory decision-making).

The consequences of the exclusions process for the operation of the internal market framework are threefold. First, it further increases the uncertainty that is already inherent in the Act – adding a layer of political uncertainty to legal uncertainty in the meaning of the market access principles, and factual uncertainty about their effects in any specific context. While uncertainty cannot be entirely eliminated, it is highly problematic for legislators and policy-makers, for businesses, and for other policy stakeholders. Second, reliance on the exclusions process pushes decision-making into an intergovernmental space which is not transparent, where decisions are hard to influence and to scrutinise, and where there is manifestly significant scope for heightening tension between the UK and devolved governments. Third, it means that the Act itself is effectively being bypassed: businesses are not relying on the market access principles, which are not being tested and clarified in court; and governments are not using the advisory powers of the Office of the Internal Market in relation to proposed regulations. Rather, all stakeholders are seeking greater certainty than UKIMA is able to offer, either by not pursuing regulations which may fall foul of the market access principles at all; by pursuing *de facto* or *de jure* harmonisation; or by seeking the comfort of a UKIMA exclusion.

In my view, the key objectives for reform should be:

1. To improve the balance between market access and regulatory divergence that is struck by the Act itself, by enabling the proportionality of regulatory divergence to be assessed on a case-by-case basis;
2. To reduce the uncertainty and chilling effect of the Act on devolved law-making by shifting the burden of proof onto those who wish to disapply local regulations to demonstrate that they have a disproportionately adverse economic effect;
3. To reduce reliance on political discretion by reducing the significance of the exclusions process;
4. To the extent that the exclusions process remains relevant, by regulating the process more tightly to improve transparency, improve opportunities for stakeholder

[redacted]

[redacted]

participation and democratic scrutiny, and to constrain the gatekeeping power of UK ministers;

5. To enhance the role of the Office of the Internal Market (OIM) in providing impartial advice and guidance about the operation of the market access principles and the economic effects of proposed regulations.

I will elaborate on these points in relation to the specific questions asked in the consultation.

Question 1: What are your views on how the UK internal market for goods is best supported using the UK Internal Market Act?

There is a role for a set of horizontal principles to regulate the UK internal market for goods, provided that such principles properly acknowledge that facilitating market access is only one relevant consideration in successful internal market regulation. An effective set of market access principles can help to improve transparency and predictability for all relevant stakeholders (governments/legislatures, businesses and civil society), and reduce reliance on more *ad hoc* and potentially contentious political interventions.

Question 2: What are your views on whether differing regulations that have effect later in the supply process are more straightforward for businesses to address?

No specific comment.

Question 3: What is the right balance between the potential for local regulatory innovations in sectors and UK-wide alignment?

As noted above, this is not a question that can be answered in an abstract or all-or-nothing fashion. The answer given will depend on the specific factual context in which the question is being addressed and will be a matter of political judgment upon which reasonable people can disagree. The best that can be achieved is a framework for assessing the proportionality of particular regulatory choices, whilst respecting the authority of the primary decision-makers to which responsibility for those choices has been entrusted. This implies moving back to something closer to the system which applied under EU internal market law whereby: 1. decision-makers have freedom to balance market access against a range of non-market objectives, subject to a proportionality test; and 2. it is for those seeking to challenge regulations to demonstrate that the balance which has been struck is disproportionate. While this approach would increase costs on business seeking to challenge divergent regulations, it would have advantage of creating greater certainty about the effective application of regulations and over time would produce valuable judicial clarification of the meaning of the market access principles. Moreover, it is a system which operated reasonably unproblematically prior to Brexit, and absent the need for CJEU references, dispute resolution would be quicker even for cases which need to be resolved in court. It would, however, be desirable to accompany this model with more robust processes for considering the internal market implications of proposed regulations, so as to prevent disputes arising as far as possible (see further answer to question 13, below).

Question 4: What are your views on the operation of the market access principles for goods to date?

[redacted]

[redacted]

It is difficult to answer this question as the operation of the principles is, by design, largely non-transparent. Evidence from the OIM suggests that large businesses at least are not relying on the market access principles and there has as yet been no litigation in relation to their application. From my personal experience, the market access principles are poorly understood by legislators and stakeholders (they have a certain 'there be dragons' quality), and there are points at which their meaning is unclear – for example, when a manner of sale requirement would be fall within the mutual recognition principle (s.3(6)), what amounts to a 'substantive change' to a pre-commencement regulation such as to bring it within the scope of the market access principles (ss.4(4) and 9(2)), or what amounts to a significant adverse effect on competition for the purposes of the indirect discrimination principle (s.8(3)).

Question 5: What are your views on the use that has been made of the Part 1 amendment powers – for example the exclusion for single-use plastics?

Single-use plastics is a good example of an area in which there are proven benefits from regulatory divergence in terms of permitting regulatory innovation in order to enhance environmental protection, and therefore in which it is appropriate to allow environmental objectives to take precedence over market access. The exclusion that was granted was, however, much more limited than the exclusion which was requested by the Scottish Government, being restricted to a list of specific single-use plastic products, and more limited than the list of single-use products included in the Environmental Protection (Single-Use Plastic Products) (Wales) Act 2023. The scope for regulatory innovation therefore remains tightly constrained, meaning that there may be a need for further exclusions in future, thus slowing down any future regulatory response to new (and harmful) disposable products which may be developed. Notably, there were issues with the timing of the single use plastics exemption, which did not come into force until several weeks after the relevant Scottish regulations had come into force. It may be that this preference for narrow exclusions is linked to the effect of the exclusions process as removing the affected market sector from the scope of the market access principles altogether rather than allowing a case-by-case assessment of the proportionality of a particular restriction.

Question 6: What are your views on how the UK internal market for services is best supported using the UK Internal Market Act?

See answer to question 1, above.

Question 7: What is the right balance between the potential for local regulatory innovations in services and UK-wide alignment?

Again, this is a question that is difficult to answer in the abstract. There is a substantially longer list of exclusions from the market access principles for services than in relation to goods, which may reflect a judgment that certain kinds of services should not be provided on a competitive basis at all. Nevertheless, there clearly remains scope for political disagreement about the appropriate extent of marketisation of services, as well as for a balance to be struck between market access and non-market objectives in relation to services which are subject to the market access principles. The approach outlined in answer to question 3, above, in relation to goods would be more appropriate than the current approach in relation to services as well.

Question 8: What are your views on the operation of the market access principles for services to date?

[redacted]

[redacted]

Again, there is a lack of transparency around the operation of the market access principles for services to date, and there has been no litigation. As with goods, there is some unclarity in the statutory language (e.g., 'substantive change', s.17(5)(c); 'significant adverse effect on competition', s.21(5)).

Question 9: What are your views on the use that has been made of the Part 2 amendment powers – for example, removing exclusions for certain services?

I have no comment to make on the use that has been made of the Part 2 amendment powers to date, save that it is a reminder that the scope of exclusions can be narrowed as well as extended.

Question 10: What are your views on how the UK internal market for professions is best supported using the UK Internal Market Act?

See answer to question 1, above.

Question 11: What is the right balance between the potential for local regulatory innovations in professions and UK-wide alignment?

Again, this is a question which is difficult to answer in the abstract.

Question 12: What are your views on the operation of the system for recognising professional qualifications to date?

No specific comment

Question 13: How can the Office for the Internal Market best support the UK internal market through its role in providing independent monitoring and advice?

The OIM has a valuable role to play in providing impartial information and advice about the state of the UK internal market and about the likely effects of proposed regulations. Its advisory functions have been underused to date, and consideration should be given about how best to incentivise the UK's four governments to make more use of this service. (This is something that each legislature may want to consider as part of its own process for scrutinising primary and secondary legislation.) However, the OIM's role is limited to considering the *economic* effects of proposed regulations and it is important to avoid giving the impression that economic effects are the only relevant factors when considering the appropriateness of new rules.

The OIM could also do more to provide general guidance on the operation of the market access principles.

Question 14: What are your views on whether the current arrangements in Part 4 relating to the use of the Office for the Internal Market task groups are appropriate for securing the most effective and efficient performance of the CMA's Part 4 functions?

No specific comment.

[redacted]

[redacted]

Question 15: What improvements could be introduced to facilitate more pragmatic management of the UK Internal Market Act's exclusions process?

As already noted, I think it would be preferable to reduce reliance on the exclusions process by moving towards a system whereby proportionately assessments are baked into the market access principles.. However, to the extent that it remains relevant, three issues need to be addressed:

1. By what process should an exclusion be agreed between the UK and devolved governments?
2. How is that intergovernmental agreement translated into an amendment to Sch 1 or 2 of the Act?
3. What arrangements are there for stakeholder participation in and democratic scrutiny of exclusions decisions?

As far as the first issue is concerned, there clearly needs to be much more detailed agreement between the UK and devolved governments about: the timing of exclusions requests; the evidence that needs to be adduced in support of, or in opposition to, a proposed exclusion and where the burden of proof lies; who the relevant decision-makers are, particularly at UK Government level (e.g., is it portfolio ministers, territorial ministers, or both?); what reasons should be given for refusing to agree to an exclusion request; and what mechanisms are available for resolution of disputes.

On the second issue, consideration needs to be given to constraining UK ministers' largely unrestricted statutory discretion to make amending regulations. An improved intergovernmental process is important, but not enough by itself, especially since it does not provide any guarantees against a future deterioration of intergovernmental relations. Consideration could be given to creating a statutory process for requesting exclusions, subject to the agreement of all four governments, with a *duty* on UK ministers to lay amending regulations if agreement is reached, and a duty on all four governments to give reasons for failure to agree.

To address issues of stakeholder participation and democratic scrutiny, a super-affirmative procedure could be adopted for amending regulations, with a duty to consult on, and legislative scrutiny of, draft regulations. There could also be a requirement for all four legislatures to approve the amending regulations, akin to the existing procedures under the devolution statutes for amending the boundaries of devolved competence by Order in Council, subject to parallel approval by both Houses of Parliament and the relevant devolved legislature.

Question 16: How should we ensure proportionate engagement with interested parties in relation to potential exclusions?

See answer to question 15.

Question 17: What evidence should be provided in support of an exclusion proposal by the proposing government, so the proposal can be fully considered (for example, information on potential impacts on businesses' ability to trade within the UK and the policy implications of not having an exclusion)?

No specific comment.

[redacted]

[redacted]

Question 18: Should there be a different process to consider exclusions proposals which could lead to potentially significant economic impact, compared to those likely to lead to smaller economic impact?

There is certainly a case for adopting a different approach to regulatory divergence where the economic impacts are minimal. However, whatever decision-making process is used to reach agreement, the exclusions route still requires a formal statutory amendment, involving an affirmative vote in both Houses of Parliament, which seems hard to justify where the regulation in question have no significant adverse effect on trade. A *de minimis* rule could be more satisfactorily accommodated by adopting the process outlined in answer to question 3 – i.e, by making the application of the market access rules subject to a proportionality test and putting the burden of proof on those seeking to disapply divergent regulations.

Question 19: What do you think constitutes a potentially significant economic impact?

No specific comment.

Question 20: Is there anything else you want to tell us about the operation of the UK Internal Market Act?

The enactment of UKIMA is an object lesson in how not to reform territorial governance. The flaws in the legislation were obvious from the outset and have been borne out in practice. It did not gain the consent of any of the devolved legislatures, and its operation in practice has further undermined intergovernmental trust. This review process represents an opportunity to strike a more satisfactory balance between the facilitation of internal trade and respect for devolved autonomy, and to establish a degree of trust in the internal market framework both now and – crucially – for the future as well. In order to do that, more fundamental reform is required than merely tinkering around the edges of the exclusions process. The review has ruled out repeal of UKIMA. However, that should not preclude the possibility of amendment of the legislation. Moreover, any programme of reform must have the consent of all four governments and legislatures which are affected by the Act.

Yours sincerely

[redacted]

[redacted]

[redacted] to the United Kingdom Government Review of the Internal Market Act

Introduction

1. [redacted] tells the story of retail, working with our members to drive positive change and use our expertise and influence to create an economic and policy environment that enables retail businesses to thrive and consumers to benefit.
2. We do this in a way that delivers value back to our members, justifying their investment in the [redacted]. This membership comprises over 200 major retailers - whether operating physical stores, multichannel or pureplay online - plus thousands of smaller, independent retailers through a number of niche retail Trade Associations that are themselves members of [redacted]. A great retail offering is often scalable and most of our members have a presence in all four home nations of the UK.
3. Retail is an exciting, dynamic and diverse industry. It is a driving force in our economy, a hotbed of innovation and the UK's largest private sector employer. Retailers touch the lives of millions of people every day, supporting the vibrancy of the communities they operate in.
4. The [redacted] appreciates the opportunity to respond to the Government's Review.

General Comments

5. UK Consumers benefit enormously from open and frictionless trade within the United Kingdom. That sizeable open market allows retailers to operate at scale across the four nations. They are able to develop business models which can be replicated at scale, and in doing so are able to benefit significantly from economies of scale (thus lowering business costs and in turn prices for consumers), including spreading the costs of new product development. This allows businesses to operate high volume low margin businesses which create a highly competitive market which incentivises businesses to provide the best range, value, quality, and service to consumers.
6. It is of course right that each of the four nations should be able to take distinct positions on the policy areas which have been devolved. The retail industry recognises the value of the devolution settlement and the consequential regulatory divergence which is an inherent feature. Of course, we hope Governments will only look to bring forward divergent regulation when other alternatives have been exhausted and there is a definite public good. Our experience suggests home nation governments often have similar or pretty similar policy goals and so a collegiate approach is optimal.
7. However, we believe there is significant value in championing the underlying principles of the Internal Market Act, of non-discrimination and mutual recognition. Those principles open up trade opportunities within the United Kingdom, making it simpler for businesses to sell products as widely as the market allows. Perhaps more importantly they allow customers in all four nations to benefit from the advantages of a larger market through increased competition and choice. Therefore whilst the Act is not perfect, we believe the underlying framework is valuable and continues to be advantageous in delivering relatively frictionless trade within the United Kingdom.

Responses to the Consultation

Question 1: What are your views on how the UK internal market for goods is best supported using the UK Internal Market Act?

[redacted]

1. UK Consumers benefit enormously from open and frictionless trade within the United Kingdom. That open market allows retailers to operate at scale across the four nations. They are able to develop business models which can be replicated at scale, and in doing so are able to benefit significantly from economies of scale. This allows businesses to operate high volume

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low margin businesses which create a highly competitive market which incentivises businesses to provide the best range, value, quality, and service to consumers.

2. It is of course right that each of the four nations should be able to take distinct positions on the policy areas which have been devolved. The retail industry recognises the value of the devolution settlement and the consequential regulatory divergence which is a feature.
3. However, we believe there is significant value in championing the underlying principles of the Internal Market Act, of non-discrimination and mutual recognition. Those principles open up trade opportunities within the United Kingdom, making it simpler for businesses to sell products as widely as the market allows. Whilst the Act is not perfect, we believe the underlying framework is valuable and continue to be supportive.
4. We also believe it remains right that one devolved government should not be able to de facto impose regulatory requirements on businesses operating outwith their jurisdiction. If Governments wish to regulate on areas which have impacts on businesses operating elsewhere it's appropriate there should be a joined-up approach involving the different governments.
5. We support the high-level exclusions from the Act covering threats to health, taxation, chemicals and fertilisers and pesticides. It is sensible the Act should not intervene on those policy areas. However, we note in these areas that divergent approaches in these areas, such as we saw in the Covid-19 pandemic, can cause significant disruption for businesses operating across the UK – so we would emphasise the imperative for collaboration when practical.

Question 2: What are your views on whether differing regulations that have effect later in the supply process are more straightforward for businesses to address?

6. As a general principle we believe each regulation should be considered on the impact on the Internal Market rather than its place in the supply chain.

Question 3: What is the right balance between the potential for local regulatory innovations in sectors and UK-wide alignment?

7. We believe that when one of the four nations governments considers a new policy which could impact on the market access principles in the Act then there should be a relatively straightforward process. Firstly, whether there is common agreement with other nations that a policy initiative is required. We have seen this with the new ban on disposable vapes, a policy which is being enacted simultaneously across the United Kingdom. Secondly if there is significant need for the policy initiative, i.e. if the market disruption is outweighed by a greater social imperative. Thirdly if non-regulatory mechanisms, such as standards which can be mutually recognised, are not an appropriate or effective mechanism.
8. If these steps still mean a government wishes to take unilateral action then there should be an assessment on what impact the policy has upon the wider internal market. This should include formally taking a view from the Office of the Internal Market on whether the policy interacts with the internal market.
9. Finally we would note there are policy areas such as net zero where the four nations government all have very similar overarching objectives. In these areas there are significant opportunities for alignment to ensure the pareto-optimal approach to sustainability can be delivered by industry and government.

Question 4: What are your views on the operation of the market access principles for goods to date?

10. Broadly we believe the market access principles have been protected since the Act came into force. Our experience working in the devolved nations indicates the Act has an effect on regulatory policy in those nations, eventually encouraging a more considered approach – such as with the deposit return scheme.
11. However, it is also true the Act has created some uncertainty in policymaking. At the moment the Act provokes significant debate on whether a policy is applicable to the internal market

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[redacted]

principles which creates a level of uncertainty about whether a policy will be enacted, whether an exclusion is required, or whether and under what terms an exclusion may be granted.

12. In short we believe the Internal Market Act has worked reasonably well when governments agree, but there have been significant challenges when there is disagreement.

Question 5: What are your views on the use that has been made of the Part 1 amendment powers – for example the exclusion for single-use plastics? In particular, we would welcome views on whether the changes have had or will have a positive or negative impact and whether they have been effective. (An explanation of what the Part 1 amendment powers are and what use has been made of them can be found in the Annex).

13. The single use plastics exclusion worked well as an example of how the Internal Market Act can operate. Whilst retailers generally prefer for there to be a four nations approach to policy, nonetheless this issue itself clearly fell within the aegis of the Scottish Government, there was effective consultation in advance, the measure itself was in line with other policy initiatives businesses had already implemented. Most pertinently the application was made in advance, on clear criteria, and was agreed by the United Kingdom Government in good time. The latter point is most relevant for our members. Early clarity on whether an exclusion will be allowed and what criteria are involved is paramount to allow businesses time to prepare for policy implementation. The later an exclusion is agreed the harder it is for businesses to prepare.
14. That is the situation we have found ourselves in twice with proposals for a deposit return scheme. In Scotland the lack of certainty over whether an exclusion to the Internal Market Act would be allowed or what conditions would apply meant retailers were left in an impossible position where one government said they were fast approaching a legal requirement and another did not. Everything possible should be done to avoid that situation occurring again.
15. There has been a similar challenge with the new deposit return scheme. The Welsh Government held a strong view their scheme design, which included a requirement for glass containers, would not require an Internal Market Exclusion – even though the Scottish Government had believed one was required. This lack of clarity and consistency is something which requires resolution in order to allow the IMA to function more effectively.
16. With regards to the Rodent Trap exclusion we would note that applying a test of economic impact is reasonable. However, we would also note a mechanism is needed to ensure exclusions are considered in the context of previous decisions – both to develop a consistent approach but also to avoid the exclusions process being 'gamed' by incrementalism. That would ensure distinct policies could be excluded, but prevent, for example, a large number of specific exclusions being applied for which would cumulatively be higher than a reasonable threshold.
17. Finally, we believe the management of the Act, including the discussions over exclusions, would benefit from greater transparency in the process.

Question 6: What are your views on how the UK internal market for services is best supported using the UK Internal Market Act?

18. We broadly hold the same perspective on the market for services as we do for the sale of goods. Whilst many of the services our Members provide are currently covered by reserved legislation, where they are devolved our default perspective is that mutual recognition is appropriate unless there is significant justification for divergence.
19. In practice these are areas where consumers often don't have clarity over which jurisdiction a service may originate from and it's in their interest for the same offer to be available within the internal market. We therefore think the Act is helpful in avoiding unnecessary divergence.

[redacted]

Question 7: What is the right balance between the potential for local regulatory innovations in services and UK-wide alignment?

20. In practice there should be a threshold which the four nations governments should consider when exploring new regulatory initiatives. Firstly, whether there is common agreement that a

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policy initiative is required. We have seen this with the new ban on disposable vapes, a policy which is being enacted simultaneously across the United Kingdom. Secondly if there is significant need for the policy initiative. Thirdly if non-regulatory mechanisms, such as standards which can be mutually recognised, are unable to be used. Finally, an assessment on what impact the policy has upon the wider internal market. These are reasonable considerations which would allow governments to assess whether the regulatory measure is necessary and proportionate.

Question 8: What are your views on the operation of the market access principles for services to date?

21. Please see our answer to Question Six.

Question 9: What are your views on the use that has been made of the Part 2 amendment powers – for example, removing exclusions for certain services? In particular, we would welcome views on whether the changes have had or will have a positive or negative impact and whether they have been effective. (An explanation of what the Part 2 amendment powers are and what use has been made of them can be found in the Annex).

22. Please see our answer to Question Six.

Question 10: What are your views on how the UK internal market for professions is best supported using the UK Internal Market Act?

23. We do not have a view on this question.

Question 11: What is the right balance between the potential for local regulatory innovations in professions and UK-wide alignment?

24. We do not have a view on this question.

Question 12: What are your views on the operation of the system for recognising professional qualifications to date?

25. We do not have a view on this question.

Question 13: How can the Office for the Internal Market best support the UK internal market through its role in providing independent monitoring and advice?

26. Our experience of the Office of Internal Market is it is only able to provide advice, but that due to the lack of case law it is unable to provide definitive advice. It is also unclear to what degree the OIM is able to provide guidance to the different governments on whether an exclusion is required or not.
27. As a consequence, the OIM is unable to clarify whether policy is or is not lawful. In practice that means unless there is political agreement, it is unable to provide a definitive view. This means if there is a dispute over the applicability of the IMA it would come down to local authority enforcement action which would then potentially be subject to legal challenge.
28. One way this could be changed is to enhance the role of the Office of Internal Market. We believe the first step for any government consulting on a new policy which may require an exclusion should be required to consult with the OIM. If the OIM's view is that the policy could impact on the Internal Market then the government should have to include within its consultation process an impact assessment which includes the interrelationship with the market access principles.

Question 14: What are your views on whether the current arrangements in Part 4 relating to the use of the Office for the Internal Market task groups are appropriate for securing the most effective and efficient performance of the CMA's Part 4 functions? We would welcome views in particular on any

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advantages or disadvantages of continuing with the current arrangements as compared with other possible ways of carrying out the Part 4 functions. (A full list of functions is set out in the Annex).

29. We do not have a view on this question.

Question 15: What improvements could be introduced to facilitate more pragmatic management of the UK Internal Market Act's exclusions process?

30. When a government brings forward a policy initiative there should be an early assessment of whether the initiative is likely to require an IMA exclusion. We believe that a low threshold should be applied to this assessment, so if there is a chance an exclusion is required then early discussions should be opened up with other governments and with the Office of Internal Market. We believe finding a common approach, or the use of common frameworks should be considered as part of this discussion. If those measures are not appropriate, then there should be a transparent process to application of exclusions.
31. At the moment there can be a mutually exclusive barrier to exclusions. Devolved administrations are unable to commit to regulations without clarity over whether an IMA exclusion will impact on their legislation. The UK Government wants to see final regulations and impact assessments to determine whether it's appropriate to grant an exclusion. The consequence is a deadlock which creates uncertainty for stakeholders. Where there are common frameworks and other discussions this can be resolved. However, when there is a more adversarial climate, as we saw in the last Parliament, the stand-off can put regulatory implementation at risk. Therefore an approach which gives devolved administrations more clarity earlier in the process would be advisable.
32. We believe regulations which require an Internal Market exclusion should not have a final implementation date set until the final details of the exclusion have been agreed. That would avoid the scenario where one government is asking businesses to implement a policy without clarity over exactly what that policy should involve.

Question 16: How should we ensure proportionate engagement with interested parties in relation to potential exclusions?

33. Already there are consultation and engagement frameworks in place in the different nations for assessing the impact of new policy initiatives. These forums should be used by the UK Government to understand the impacts of a policy intervention from the key stakeholders.

Question 17: What evidence should be provided in support of an exclusion proposal by the proposing government, so the proposal can be fully considered (for example, information on potential impacts on businesses' ability to trade within the UK and the policy implications of not having an exclusion)?

34. We would hope any new policy initiative would have a significant impact assessment conducted in advance. It would seem reasonable for the impact assessments to include an assessment of the effect of the policy on the UK Internal Market. Those assessments could then be used by the proposing government as part of the exclusion application process. In essence this should be about ensuring the impact of the IMA is fully absorbed into the Better Regulation agenda - ideally requiring little extra administration for any of the interested parties.

Question 18: Should there be a different process to consider exclusions proposals which could lead to potentially significant economic impact, compared to those likely to lead to smaller economic impact?

35. We believe setting a threshold for exclusions would lead to an arbitrary line. It is better to encourage a more open market than to create de facto de minimis thresholds for policy which will ultimately create market distortions. As stated above there is also a risk of incrementalism if there is a distinct threshold.

Question 19: What do you think constitutes a potentially significant economic impact?

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36. As explained in answer to question 18 we believe it would be very challenging and deeply arbitrary to set a significant economic impact threshold.

Question 20: Is there anything else you want to tell us about the operation of the UK Internal Market Act?

37. We would note that there is a significant lack of transparency over the current operations of the Internal Market. Discussions over Common Frameworks tend to exclude businesses whilst decisions over whether an exclusion is required are conducted at a Government level. To build greater confidence in the operating of the Internal Market there needs to be greater opportunities for stakeholder consultation and engagement.

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April 2025

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[redacted] Position Paper on the Internal Market Act 2020

April 2025

Contents

Introduction

The Internal Market Act (IMA) was imposed by the previous UK Government without the consent of any devolved legislature. It remains the single greatest impediment to more effective and respectful intergovernmental relations. It is unnecessary for – and indeed works against – a transparent, proportionate and workable system of regulatory co-operation. It has the potential to impede both policy innovation and the ability of [redacted] to tailor legislation to deliver better outcomes in areas like public health and environmental protection.

[redacted] notes that the new UK Government was elected last year on a manifesto commitment to reset relations with the devolved governments. The failure to even consider repeal within the terms of the statutory review suggests this ambition may be more difficult to achieve than it would otherwise be.

This paper sets out the [redacted] position on the Act. First, it outlines the IMA's far-reaching effect on the devolution settlement.

Then it examines how the Act compares with the European Single Market (ESM) and the differences between the Act's effect and what we enjoyed as an EU member state.

It then explores how the IMA interacts with Common Frameworks, demonstrating the incompatibility of the Act with the principles and approach these frameworks seek to foster and how that has already affected business, trade and regulatory policy.

The paper also considers a range of international comparators, demonstrating the extent to which the IMA is an international outlier in its design and effect. The principles of balance, proportionality, transparency and the ambition to operate based on agreement and consent are achievable outcomes in other parts of the world and should be here.

In preparing this paper, the [redacted] has engaged with a wide variety of stakeholders: business and industry bodies, environmental campaign groups, public health charities, farming and crofting organisations, and academic authorities on the UK's territorial constitution.

From these discussions, we remain in no doubt of the importance of ensuring businesses in Scotland face no unnecessary barriers to trade with the rest of the UK.

It is equally clear from stakeholder engagement that the IMA is not a necessary or proportionate means of achieving this outcome.

Indeed, it has the potential to promote regulatory uncertainty, as well as inhibiting productive and respectful co-operation on regulatory policy, which is what business organisations want to see.

We have a better model on hand, in the form of Common Frameworks, and the [redacted] welcomes UK ministers' ambition, as set out in the consultation document, that these should be the 'key mechanism' for managing policy divergence and managing regulatory co-operation. However, the IMA does not allow Common Frameworks to perform this role – the automatic application of the Market Access Principles in the Act, in nearly all relevant cases, conditions and undermines the operation of Common Frameworks.

[redacted] recognises stakeholders' concerns over the visibility and transparency of Common Frameworks; we would note though that the imposition of the Act, without consent, has greatly impeded both the technical operation of Common Frameworks and the principle of respect for devolution on which they are founded.

[redacted] position is clear, in line with two votes in the [redacted]: [redacted] IMA should be repealed and replaced with an equitable, co-designed system built around the Common Frameworks approach.

[redacted]. We hope that the UK Government will acknowledge the arguments set out in this paper, and work with the [redacted] to deliver an agreed and workable alternative to the IMA.

[redacted]
April 2025

Summary of Recommendations

Recommendation 1: Acknowledging the Act's far-reaching and damaging impact on the devolution settlements is a precondition for delivering meaningful change.

Recommendation 2: The argument that the Act is necessary due to the provision at Part 5 relating the Windsor Framework is unfounded. The UK Government should confirm that there is no impediment to preserving this provision, which sits largely separate from the rest of the legislation, while addressing the wider defects in the Act.

Recommendation 3: The IMA is demonstrably more restrictive, arbitrary and unpredictable than the system of market oversight which was in place when the UK was an EU member state. The principles of proportionality and subsidiarity, central to the operation of the European Single Market, are entirely absent from the Act. It should be replaced with a more balanced system, which acknowledges and protects the ability to make divergent policy, while ensuring overall market coherence and guarding against regulatory friction that may inhibit growth.

Recommendation 4: The UK Government must set out in detail how it proposes to remove the Act's effect from the operation of Common Frameworks. [redacted] and shares, the UK Government's ambition that Common Frameworks act as the key mechanism for managing policy divergence and ensuring regulatory co-operation. However, the IMA does not allow for the proper functioning of Common Frameworks.

Recommendation 5: The UK Government must adhere to the Common Frameworks Statement of Principles. These principles offer a coherent conceptual model for the operation of an internal market regime that ensures a functioning market while respecting devolution. If the consultation document's stated ambition for Common Frameworks is to be met, these principles must be upheld, including ensuring the democratic accountability of the devolved legislatures. There must also be at least equivalent flexibility to tailor devolved policy as was afforded under EU rules. The IMA does not allow for these principles to be upheld.

Recommendation 6: The UK Government must acknowledge and address the way the Act works against the operation of a responsive, proportionate and effective system of post-Brexit regulation. Far from providing a stable and predictable regulatory environment, the Act introduces radical uncertainty as to the legal effect of relevant regulation, works against ensuring a level playing field for business, and creates the conditions for endless legal disputes.

Recommendation 7: A new approach to creating a responsive and proportionate regulatory environment for business is needed. This should build on the existing Common Frameworks approach and be grounded in the principles of co-design and, crucially, consent. From its inception, the Act has been justified on the grounds that it is necessary to protect jobs, facilitate trade and underpin economic growth.

The logic of this position is clearly flawed; the Act's necessity is always asserted, never demonstrated. The beneficial economic outcomes we all want to encourage are wholly achievable with a more proportionate, balanced and workable system of market oversight.

Recommendation 9: The UK Government should acknowledge the new constraints on devolved competence which have come with the reservation of subsidy control, and with the Subsidy Control Act 2022.

Recommendation 10: The Part 6 spending powers provisions should be repealed, with funding for devolved matters in Scotland provided in the usual way, to ensure proper policy alignment and democratic oversight. At the very least, there should be no use of the powers without the consent of the [redacted], and there should be guarantees of no detriment to the Block Grant as a result of the powers being used.

Recommendation 11: The UK Government must acknowledge that co-decision, co-design and consent are essential features of a well-functioning internal market regime – features entirely absent from the IMA. The unilaterally determined scope of the statutory review limits the likelihood of it delivering the change necessary to reverse the Act's damage to devolution and see the full restoration of the [redacted] powers. Moreover, it ensures that the review commences from a fundamentally damaging point - namely without any sense of co-design or collaboration. Specifically, there is no justification to unilaterally ruling out consideration of repeal of the Act, in part or in whole.

Recommendation 12: The UK Government must acknowledge the fundamental flaws in the IMA's design and operation, as set out in this paper. It must commit, post-review, to joint working with the devolved Governments on the co-design of a new, agreed and workable model of regulatory co-operation that both guards against unnecessary barriers to trade and respects devolution. There should be a formal role for the [redacted] in directing and overseeing this work.

The Act and devolution

1. The IMA is perhaps the single most significant threat to the devolution settlements established over a quarter of a century ago.

   - [redacted]
   - It introduces radical new uncertainty as to the effect of devolved laws, effectively introducing a far-reaching and unpredictable new constraint on the powers of the [redacted].
   - It provides UK Ministers with an open-ended power effectively to nullify laws passed by a democratically elected – and accountable – legislature.
   - It enables UK Ministers to alter unilaterally the effect of the Act and consequently its impact on the [redacted] by adjusting the Act's schedules to allow currently excluded matters to be covered by the Market Access Principles.
   - This means [redacted] and other areas of devolved responsibility could be brought under the scope of the Act without the consent of the [redacted].
   - The entire Act was placed into Schedule 4 of the Scotland Act (list of protected enactments). This effectively places an additional new constraint on devolved competence, as laws passed by the [redacted] cannot in any way modify the Act's operation.

2. In 1997, the people of Scotland voted, by a decisive majority, for the establishment of a new devolved parliament, based on the detailed prospectus set out in the UK Government's 1997 White Paper[1]. These proposals went significantly beyond those set out for a [redacted]

3. It is instructive to reflect on what the then [redacted]

   "A … crucial difference from 1978 … is that we have moved to define the reserved rather than the devolved powers, to ensure maximum clarity and stability. Anyone looking at the 1978 Act would see a somewhat grudging document, which would have required frequent updating. There would have been a greater danger - I put it no higher than that - of arguments over vires. We wished to minimise the difficulties of interpretation and to allow for maximum flexibility in future. We have done so.

   "… [redacted] will not have what is sometimes called the governor-general role, which was at the heart of the 1978 Act and was put upon the shoulders of the [redacted]. [redacted]

[redacted]

[redacted]

> "Legislation passed by the [redacted] will not need to go to the [redacted] for consideration and approval before it is passed to the Queen for Royal Assent. It is important that we do not have such overriding decisions. It would have sullied the atmosphere and made for great difficulties. I am glad about that particular extension."[2]

4. The IMA has ushered in precisely the scenario that [redacted] worked to avoid: radical and far-reaching uncertainty as to the effect of devolved law; an open-ended power for UK ministers to second-guess the decisions and overrule the powers of a democratically accountable legislature; and a system of intergovernmental relations beset with unnecessary difficulty.

5. The devolution settlement endorsed by the people of Scotland in the 1997 Referendum is a reserved powers model. It establishes that a power is devolved unless expressly reserved, thereby reducing significantly the scope for disputes over competence. The 1998 Scotland Act makes clear there is no hierarchy of governments in the UK,[3] and UK Ministers have no oversight role in the decisions of the democratically elected and accountable [redacted] (with very limited exceptions).

6. The IMA is fundamentally incompatible with the principles and practice of devolution in the UK's constitutional arrangements since 1997. The Market Access Principles of mutual recognition and non-discrimination cut across the clear reserved powers model to introduce wide ranging constraints on devolved competence. It does this in ways that are unpredictable and have led to regulatory uncertainty and increased legal disputes. The mutual recognition provisions, in particular, undermine the ability of the [redacted] to use its powers to pursue devolved social and economic objectives in Scotland for which it is accountable.

7. The Act's effect is far reaching but subtle. [redacted] can still pass laws in areas of devolved competence, but the market access provisions can undermine or effectively nullify the intended legal effect. In other words, while the [redacted] can continue to legislate that a product made in Scotland must meet a particular standard, it can do nothing about goods entering Scotland produced to different or lower standards.

8. By default, the mutual recognition provisions apply automatically in nearly all cases (in respect of goods); to an unusual degree, discretion on any change

[redacted]

to the application of the market access provisions lies with UK ministers and UK ministers alone.

9. The Act's effect is asymmetrical in two ways. First, it encourages deregulation or the lowering of standards, given that goods or services meeting the lowest requirements set in any part of the UK must be accepted across the UK as a whole, whatever the views of each administration or legislature on matters within their competence. The incentive is then to adjust all standards to this new lower threshold, or to disadvantage producers or service providers in each domestic market.

10. There is no equivalent mechanism to impose, or even encourage, higher standards across the UK. Indeed, any attempt by any administration to increase standards potentially disadvantages their own producers. Any higher standards introduced in Scotland can effectively be ignored by those introducing goods and services from other parts of the UK. This is particularly significant for key sectors of the Scottish economy, such as food and drink, where success is built upon the quality guarantee that comes with the Scottish brand.

11. In theory this is true for each part of the UK, so, for example the [redacted] could effectively adjust standards in England by deregulating for their domestic markets.

12. However, this illustrates the second fundamental asymmetry in the Act. Unlike devolved legislatures, the UK Parliament retains the authority to use primary legislation to exclude the Market Access Principles for any sector if it does not support the consequences of deregulation in Scotland, Wales or Northern Ireland for producers in England.

13. As part of the review, the [redacted] has sought clarity from the UK Government on its assessment of the Act's impact on devolution, and how it intends to address this. The Act's explanatory notes acknowledge that 'the Act's provisions create a new limit on the effect of legislation made in exercise of devolved legislative or executive competence' (paragraph 75).[4] How we address this novel, far-reaching constraint is key to resolving the challenges the Act poses. That must start with an acknowledgement of the Act's constitutional effect.

14. It has been suggested to the [redacted] that the Act is necessary due to the provisions in Part 5 which relate to the operation of the Windsor Framework. This is not a convincing argument. It is entirely possible, indeed relatively straightforward, to preserve that provision while addressing the rest of the Act.

[redacted]

Recommendation 1: Acknowledging the Act's far-reaching and damaging impact on the devolution settlements is a precondition for delivering meaningful change.

Recommendation 2: The argument that the Act is necessary due to the provision at Part 5 relating the Windsor Framework is unfounded. The UK Government should confirm that there is no impediment to preserving this provision, which sits largely separate from the rest of the legislation, while addressing the wider defects in the Act.

The Act compared with the European Single Market

15. The previous UK Government's position was that the Act replaced EU rules with similar rules for the UK upon exit from the EU Single Market (ESM).[5]

16. However, this claim fails to take account of the fact that the process through which EU rules are developed is fundamentally different from those now in place through the Act. EU processes seek to find agreement between member states, whereas the Act unilaterally imposes regulation on the devolved institutions. The EU rules aim for a balance between economic interests and other policy goals (the principle of proportionality), as well as valuing and protecting the principle that decisions should be made as locally to people as possible (the principle of subsidiarity). The Act has no such balance or protection.[6]

17. Devolution in the UK was established in the context of EU membership. EU rules governed not only the UK's external trade relationships with other EU member states but also questions of trade and regulatory coherence across the UK's nations.

18. The previous UK Government's view was that EU exit could lead to differences emerging between the UK and devolved governments in regulation governing the access of goods and services to their respective domestic markets, and that this will be to the detriment of internal UK trade flows.

19. It argued that the Act is necessary because of the UK exiting the ESM, where the implementation of mutual recognition and non-discrimination principles are key tools preventing impediments to the smooth operation of the EU single market.[7]

20. In the [redacted], this does not adequately reflect the way in which the EU manages the single market and draws an inaccurate equivalence between the EU regime and that which the Act imposes. Although non-discrimination and mutual recognition are foundational principles of the ESM, so too is an approach whereby all member states jointly and collectively agree on the broad regulatory framework – including the basic or minimum standards with which goods and services must comply.

[redacted]

This ensures all EU member states are represented when minimum EU-wide standards for goods and services are decided.

21. This also ensures mutual recognition – the principle that a good or service that meets the regulatory standards in one part of the single market can be sold in any other part of that market – does not involve a race to the bottom.

22. Even so, EU law allows for exceptions to both principles of non-discrimination and mutual recognition (and therefore to free movement of goods and services) for specified non-economic reasons, as long as such exceptions can be justified as necessary and proportionate to the outcome that is obtained and cannot be achieved by other means.

23. Article 36 of the Treaty on the Functioning of the European Union (TFEU) provides that prohibitions or restrictions on imports or exports may be permitted if justified on a number of grounds, including the protection of:

> "…public morality, public policy or public security; the protection of health and life of humans, animals or plants…"[8]

24. Member states, and indeed sub-state governments, may legally impose measures that restrict the free movement of goods within EU internal market in pursuit of one of the objectives specified in Article 36 TFEU or of some other overriding public interest requirement. The grounds in Article 36 include protecting public health, protecting animals, plants or sites of national importance provided that any such measures serve the public interest and are proportionate. Furthermore, the European Court of Justice has held that the protection of the environment is a mandatory requirement which may be invoked to justify restrictions on free trade.[9]

25. The provisions of Article 36, and the manner in which it has been applied, demonstrate that EU law respects the subsidiarity principle: that there will be instances where local responses to local problems are justified, even though this might involve prohibiting imports and thereby contravening the underlying principles of the EU single market and restricting free movement of goods.

26. The contrast between the cohesion and flexibility in the EU single market and the rigid Internal Market Act definitions of non-discrimination and mutual recognition is stark. In the UK legislation, the principles of non-discrimination and mutual recognition are almost absolute - even if this will be to the detriment of the social, environmental and health goals; and legislation of a particular UK nation. There are only very limited provisions that permit the prohibition of the sale of goods or services in one UK nation that are legally sold in other parts of the UK.

[redacted]

27. The development of the European Single Market, over decades, has been based on principles of trust, equality, co-operation, co-decision, proportionality, subsidiarity[10] and consent, and setting a baseline of minimum agreed standards for member states' own rules. In contrast, the Act is based on unilateral decision-making and imposition, with no minimum standards or guarantees. The Act also creates a power for UK Ministers to alter what is in or out of the scope of the Act unilaterally (for example, health services are currently excluded), without the consent of devolved administrations.

28. Some recent commentary has suggested that low growth in the EU has been exacerbated by regulatory divergence between member states.[11] However, even if this premise was to be accepted, it would not follow that the UK adopting an approach more like the European Single Market would have similar consequences. Our starting point in the UK is a highly integrated market; there are also far fewer regulatory levers at the disposal of the devolved legislatures to introduce significant non-tariff barriers to trade.

Recommendation 3: The IMA is demonstrably more restrictive, arbitrary and unpredictable than the system of market oversight which was in place when the UK was an EU member state. The principles of proportionality and subsidiarity, central to the operation of the European Single Market, are entirely absent from the Act. It should be replaced with a more balanced system which acknowledges and protects the ability to make divergent policy, while ensuring overall market coherence and guarding against regulatory friction that may inhibit growth.

[redacted]

The IMA and Common Frameworks

29. The [redacted] welcomes and shares the UK Government's ambition that Common Frameworks are the key mechanism for managing policy divergence and ensuring regulatory co-operation. That, after all, was the role for which they were designed, a role made much more challenging by the imposition of the Internal Market Act.

30. The Act, as matters stand, is incompatible with the operation of Common Frameworks and the principles that inform them.[12] During the Act's parliamentary passage, this argument was made by former [redacted] – it is helpful to consider these points here (emphases added):

> "... when you consider the effect of the market principles on [common frameworks], to say that they complement each other seems **a complete misuse of language**.
>
> "... [prior to Brexit] The devolved nations had been able, within the limits of EU law, to fulfil their responsibilities as devolved Governments to formulate and apply policies that best suited their local circumstances.
>
> "So, it was agreed that they and the United Kingdom Government would work together through common frameworks in order to enable the functioning of the UK internal market, while — this was a crucial part of the agreement — acknowledging policy divergence.
>
> "Not only does the Bill ignore the common frameworks process but it destroys one of the key elements in that process that brought the devolved Administrations into it in the first place: **it destroys policy divergence**. It destroys those Administrations' ability through that process to serve the interests of their own people, and to innovate.
>
> "The common frameworks operate by working out solutions by agreement between the four nations... ... The Market Access Principles system, on the contrary, does not operate by agreement; it is hard edged. **It is a set of strict statutory rules which, apart from the few limited exceptions, do not allow for any divergence at all.**"

31. This has echoes in the earlier consideration of [redacted] characterisation of the reserved powers model's clarity and effectiveness. The devolution settlement endorsed by the people of Scotland in 1997 was, and is,

[redacted]

expressly designed to allow for policy divergence in areas of devolved responsibility. The Act's effect is to nullify this foundational principle of devolution. Frameworks are left with little or no divergence to manage, as the Act removes the possibility of meaningful divergence.

32. [redacted] analysis remains true. The UK Government must set out how it proposes meeting its ambition of having Common Frameworks as the key mechanisms for managing market and regulatory discussions between the governments of the UK. Given the Market Access Principles currently apply automatically in almost every circumstance, this must amount to more than simply a restated commitment to using Common Frameworks: it must set out how the Act's legal effect on the operation of Common Frameworks will be removed.

33. This is not simply a matter of potentially being able to secure post hoc disapplication of the Act's market access provisions to divergent policy agreed through Common Frameworks. The starting point must be an acknowledgement that the automatic application of these provisions (in almost all circumstances in the case of goods) conditions and undermines the operation of Common Frameworks.

34. What should be a process, whereby proposed divergent policy is tested against the Common Frameworks Principles, risks becoming a binary consideration of whether UK ministers will permit laws, passed in wholly devolved areas by a democratically accountable legislature, to have their intended legal effect. This is not a sustainable approach.

35. The Common Frameworks Statement of Principles remains key. These require, for laws passed in relevant areas of devolved competence, that there is "at least equivalent flexibility" to tailor policy as was afforded under EU law.[14] The IMA does not provide for this, for the reasons Lord Hope has set out: it stifles and nullifies the effect of divergent policy, instead of managing divergence based on co-operation and agreement.

36. It also acts as a disincentive to reach agreement on policy divergence when the Act nullifies the effect of divergent policy.[15] As part of the review the

[redacted]

[redacted] needs to understand how the UK Government proposes to ensure that Common Frameworks allow governments of the UK, in areas of exclusive devolved competence, to enjoy at least equivalent flexibility to design policy as was afforded when we were in the EU.

Recommendation 4: The UK Government must set out in detail how it proposes to remove the Act's effect from the operation of Common Frameworks. The [redacted] welcomes, and shares, the UK Government's ambition that Common Frameworks act as the key mechanism for managing policy divergence and ensuring regulatory co-operation. However, the IMA does not allow for the proper functioning of Common Frameworks.

Recommendation 5: The UK Government must adhere to the Common Frameworks Statement of Principles. These principles offer a coherent conceptual model for the operation of an internal market regime that ensures a functioning market while respecting devolution. If the consultation document's stated ambition for Common Frameworks is to be met, these principles must be upheld, including ensuring the democratic accountability of the devolved legislatures. There must also be at least equivalent flexibility to tailor devolved policy as was afforded under EU rules. The IMA does not allow for either of these principles to be upheld.

The Act's impact on business, trade and regulatory policy

37. The [redacted] acknowledges the importance of avoiding unnecessary barriers to trade. However, it does not follow that the IMA is the necessary means of ensuring that outcome. The IMA's necessity is always asserted, never demonstrated. This central confusion has been the source, not just of intergovernmental dispute, but also radical new uncertainty as to the effect of devolved law. The Act also acts as a source of regulatory uncertainty for businesses and consumers.

38. Two recent regulatory developments are instructive. The first concerns folic acid fortification of flour and demonstrates what can be achieved across the UK without the need for the IMA.

39. There is clear evidence that inadequate folic acid status increases the chance of foetal neural tube defects (i.e. anencephaly, spina bifida, encephalocele, abbreviated to NTDs). There is therefore a compelling public health rationale to improve the folic acid status of pregnant women.[16] Although the (then UK-wide) Food Standards Agency recommended mandatory fortification of flour, no regulatory action was taken at the time.

40. [redacted] subsequently requested advice on the steps necessary to proceed with mandatory folate fortification on a Scotland-only basis. However, [redacted] decided in August 2017 not to recommend a Scotland-only policy. This was due to the practicalities of fortifying flour specifically for the Scottish market, not because fortification was unwarranted or ineffective. Indeed, FSS noted the strong evidence supporting the policy.

41. In December 2024, new UK-wide legislation came into force requiring millers and flour producers in the UK to fortify non-wholemeal wheat flour with folic acid by the end of 2026.[17]

42. In other words, although the [redacted] would have been able to introduce a stand-alone Scottish requirement for folic acid fortification of flour, there was a recognition that, despite the public health benefit, the impact on businesses would have been disproportionate.

43. This outcome was achieved without the need for the IMA; it was the result of rigorous scrutiny and testing of policy outcomes and robust business and regulatory impact processes.

44. The second example demonstrates the real-world impacts on regulation and enforcement caused by the implementation of the Act over the use of

[redacted]

Common Frameworks. It relates to England-only precision breeding regulations under the Genetic Technology (Precision Breeding) Act 2023.[18] While the policy divergence introduced by the new legislation is significant, there was very little engagement on the Act on the part of the UK Government through the relevant Common Frameworks. Engagement on the secondary legislation has been better, but there are limits as to what the secondary legislation can do to ease the issue of diverging policy.

45. The Act and implementing regulations remove gene edited plants (and, in the future, animals) from the regulatory regime which applies to traditional GMOs. The impact of the mutual recognition principle means that these products will now be marketable, bypassing the role of the [redacted] in determining policy in a devolved area. Rather than removing barriers to trade, this creates a complex and divergent regulatory and enforcement landscape across the UK.

46. The IMA is therefore a source of confusion, not certainty, for businesses and consumers, and creates the possibility of multiple, even contradictory regulatory requirements and enforcement regimes in different parts of UK. This works against informed consumer choice. It also, potentially, threatens the quality guarantee that is essential to the [redacted].[19]

47. For this reason, while the [redacted] notes the UK Government's recent announcements on regulatory policy,[20] it believes that the IMA itself has the potential to contribute to an unclear and potentially burdensome regulatory environment.

48. The IMA is premised on the assumption that divergence is always disruptive and unwelcome. This assumption ignores the benefits that different approaches in different nations can bring – not only to addressing local circumstances, but also to driving policy innovation, which in turn can be a driver of economic growth, as Lord Hope's points illustrate.

Recommendation 6: The UK Government must acknowledge and address the way the Act works against the operation of a responsive, proportionate and effective system of post-Brexit regulation. Far from providing a stable and predictable regulatory environment, the Act introduces radical uncertainty as to the legal effect of relevant regulation, works against ensuring a level playing field for business, and creates the conditions for endless legal disputes.

Recommendation 7: A new approach to creating a responsive and proportionate regulatory environment for business is needed. This should

[redacted]

build on the existing Common Frameworks approach and be grounded in the principles of co-design and, crucially, consent. From its inception, the Act has been justified on the grounds that it is necessary to protect jobs, facilitate trade and underpin economic growth. The logic of this position is clearly flawed; the Act's necessity is always asserted, never demonstrated. The beneficial economic outcomes we all want to encourage are wholly achievable with a more proportionate, balanced and workable system of market oversight.

International comparators

49. While internal markets in other multi-level devolved or federal states have of course developed in their specific histories and context, there are important lessons to learn in comparing these examples to the UK Internal Market Act.

50. Academics have noted that the UK's Internal Market Act is an outlier when compared to other internal market regimes,[21] and that, "whilst the legislation draws on familiar tools of internal market management, it does so in a way that is ill-adapted to the distinctive features of the UK, wherein one territory, England, is so much larger in market terms than the rest".[22]

51. The Act affords less autonomy to its constituent units in shaping market regulations and has far less in the way of automatic exemptions or derogations from Market Access Principles. A comparative assessment of its provisions stated that the ways in which the IMA 'departs from existing blueprints' has resulted in an internal market that is 'marked by a high degree of centralisation, substantial means of political control, a simultaneous propensity towards judicialisation and a far-reaching potential for deregulation'.[23]

52. The IMA is distinct from internal market regimes elsewhere in the world, whether in terms of reaching consent prior to implementation, meaningful consent provisions underpinning its operation, or ensuring sensible, proportionate derogations and exceptions to the general application of market access requirements.

53. These differences are explored in more detail in the annex to this paper.

Recommendation 8: Commission further research into how a proportionate and agreed alternative model of regulatory co-operation can learn from international comparators. The IMA is an outlier when compared with market regimes in other multi-level devolved or federal states, which manage to protect local regulatory autonomy and ensure market efficiencies without the rigid centralisation, legal uncertainty and arbitrariness of the IMA.

[redacted]

Areas out of scope of the review

54. Matters reserved by the IMA, and powers which undermine democratic accountability in the allocation of public money, have been unilaterally ruled out of scope of the statutory review.

55. The IMA preceded the Subsidy Control Act 2022 (SCA). Powers over subsidy control were reserved to the UK Government via the IMA. T[redacted] had requested equal powers with the [redacted] in regard to 'calling in' potentially challenging subsidies and in designing streamlined subsidy schemes or routes via which subsidies could be granted. The UK Government retains complete ownership of any decision-making around the regime.

56. The financial assistance power in Part 6 of the IMA provides a means for the UK Government to spend directly in devolved areas, including economic development, infrastructure, sport and culture. This enables the UK Government to extend its powers in Scotland beyond those reserved in the Scotland Act 1998 and bypass the role of the [redacted] in these areas.

57. The previous UK Government used the IMA power to deliver, among other funds, the Shared Prosperity Fund, which replaced EU Structural Funds, and the Levelling Up Fund, which had originally been announced as England-only and was expected to generate Barnett consequentials. This resulted in no role for the [redacted] in the decision-making or delivery of these funds.

58. The [redacted] has consistently opposed the use of the Part 6 financial assistance power and called for funding to instead be provided to the devolved governments in the usual way.[24] As the UK Government looks to the next Spending Review period, it has a choice to make in how future funding is delivered. It is important that the UK Government fully engages with devolved governments on this, and that the policy outcome respects the devolution settlement across all parts of the UK. It is noted that the Labour Party's 2024 manifesto committed to "restore decision-making over the allocation of structural funds to the representatives of Scotland, Wales, and Northern Ireland".

[redacted]

59. The [redacted] remains of the view that the Part 6 financial assistance power should be repealed. However, as the UK Government has excluded Part 6 from the review and intends retaining it in legislation, then it should at least put in place conditions on its use. The UK Government should work with the devolved governments to codify the circumstances in which it may consider using the Part 6 power and agree that this power should only be used with the consent of the devolved government in question.

Recommendation 9: The UK Government should acknowledge the new constraints on devolved competence which have come with the reservation of subsidy control, and with the Subsidy Control Act 2022.

Recommendation 10: The Part 6 spending powers provisions should be repealed, with funding for devolved matters in Scotland provided in the usual way, to ensure proper policy alignment and democratic oversight. At the very least, there should be no use of the powers without the consent of the [redacted] and there should be guarantees of no detriment to the Block Grant as a result of the powers being used.

The statutory review and immediate next steps

60. The UK Government was elected in July 2024 on a manifesto commitment to reset relations with the devolved administrations. This was a welcome recognition of the need to address the significant strain placed on intergovernmental relations as a consequence of the actions and behaviours of the previous UK Government. The IMA, both in the manner of its imposition, and its far-reaching effect on the devolution settlement, had contributed significantly to the previous poor state of intergovernmental relations.[25]

61. The UK Government launched the statutory review of the IMA on 23 January. The review's scope was set unilaterally by the UK Government, with no reference to the preferred option of the [redacted] – repeal and replacement with a workable alternative built around Common Frameworks.

62. This is difficult to reconcile with a commitment to resetting relations with the devolved governments. Despite the impact the Act has had on the powers and responsibilities of the [redacted], no devolved government had the opportunity to contribute to the scope or terms of reference of the consultation document. Ultimately, the consultation document was shared with the [redacted] just 24 hours prior to publication.

63. The UK Government's position is that, because the IMA is UK legislation, the review must be its sole responsibility. This fails to acknowledge the circumstances in which the Act was imposed without consent by the previous UK Government, or of its profound implications for devolution in Scotland and across the UK.

64. This is regrettable; nevertheless the [redacted] is committed to engaging with the UK Government, the devolved governments and other stakeholders through the review, on the basis that it is a prelude to subsequent joint working and a shared approach to addressing the substantive issues in play. While the review is unlikely on its own terms to deliver the change required, it is hoped that it can act as a catalyst for a move to genuine, respectful engagement and the co-design of a better, indeed a workable, alternative to the IMA.

65. The [redacted] is clear that the Act should be repealed and replaced with an equitable, workable alternative, built on the foundation

[redacted]

provided by Common Frameworks. This is of course also the view of the [redacted].

66. The UK Government consultation document is right to note the [redacted] particular frustration at the way in which the exclusion process has operated to date. Its operation has been opaque, lengthy, indifferent to evidence and open to misrepresentation. As a result, laws passed by a democratically elected legislature have effectively been nullified in an arbitrary and unaccountable manner.

67. Notwithstanding our position that the Act should be repealed, any consideration of immediate improvements to the process must include the need for objective tests, rigorous and effective consideration of evidence, and proportionality and balance. Rigid de minimis thresholds should not be allowed to impede balanced and proportionate consideration of economic and non-economic factors.[26]

68. What is an appropriate threshold will vary according to the issue under consideration: a given policy may be designed to have a significant market impact, precisely because the public health or environmental outcome will be a more significant consideration (and the financial cost of remedying problems after the fact much greater).

69. For example, it is easy to envisage a scenario where a policy measure may be proposed with the aim of driving consumers away from a product which contributes to particularly poor health outcomes in one part of the UK. That policy intervention may entail a significant market impact well in excess of an arbitrary threshold of, say, £10 million, but could contribute to much greater savings on future public health expenditure, increased productivity through a reduction in sick days and so on. This is before taking into consideration the non-economic quality of life benefits of a healthier population, and the scope for scaling up policies tested in one part of the UK.[27]

70. In the [redacted] view, the only course of action that will satisfactorily address the issues set out in this paper, as well as meeting the UK Government's stated objective to reset intergovernmental relations, is to repeal the Act and establish a workable, co-designed system that has the confidence of all governments in the UK.

[redacted]

Recommendation 11: The UK Government must acknowledge that co-decision, co-design and consent are essential features of a well-functioning internal market regime – features entirely absent from the IMA. The unilaterally determined scope of the statutory review limits the likelihood of it delivering the change necessary to reverse the Act's damage and see the full restoration of the [redacted] powers. Moreover, it ensures that the review commences from a fundamentally damaging point - namely without any sense of co-design or collaboration. Specifically, there is no justification to unilaterally ruling out consideration of repeal of the Act, in part or in whole.

Recommendation 12: The [redacted] must acknowledge the fundamental flaws in the IMA's design and operation, as set out in this paper. It must commit, post-review, to joint working with the devolved Governments on the co-design of a new, agreed and workable model of regulatory co-operation that both guards against unnecessary barriers to trade and respects devolution. There should be a formal role for the [redacted] in directing and overseeing this work.

ANNEX: International comparators

1. Compared to other countries, the UK IMA affords its constituent units less regulatory autonomy in shaping local market regulations than is the case in, for example, Switzerland, Australia and Canada.

2. The IMA is also noticeable for the absence of meaningful consent provisions, in either its development, implementation or operation. In contrast, all Australia's states and territories voluntarily signed the Mutual Recognition Act (MRA) in 1992 after participating in its development. The MRA allowed for the recognition of regulatory standards regarding goods and occupations across Australia.[28]

3. Similarly, in Canada, the federal, provincial and territorial governments signed the Canadian Free Trade Agreement (CFTA) in 2017 after renegotiating the previous Act, the Agreement on Internal Trade (AIT).[29]

4. Switzerland's Internal Market Act was based on the same principles as the EU. The Act, signed in 1995, was adopted to allow for compliance with the EU Single Market. Switzerland aligned the Act with the *Cassis de Dijon* principle allowing for free movement of goods and services among the cantons.[30] Swiss cantons participated in the development of the Act, given that, under the Swiss constitution, they are granted powers "organise their own affairs" and they must be consulted on any federal policy.[31] Cantons may introduce exemptions if they can be justified as proportionate, are necessary to "safeguard overriding public interests", and the exception applies equally to local and non-local suppliers.[32]

5. Regarding the management of exceptions or derogations to the general application of mutual recognition and non-discrimination principles, other countries provide a broader list of possible exceptions than that provided for under the IMA. Under the Australian MRA for example, exceptions can be granted when a state law is deemed necessary for public health and safety or for environmental reasons. There are permanent exemptions of laws relating

[redacted]

to goods that are included in schedule 2 of the Act which were agreed by all the Australian parties.[33]

6. The state or territory can apply to the Commonwealth to seek an exemption for mutual recognition of a good or class of goods when it is necessary for environmental reasons or public health and safety. This exemption can last up to 12 months while a decision is reached on whether a permanent exemption, common minimum standards or mutual recognition is most appropriate.[34] The states or territories can also refer a question about the standards applicable to a good to the relevant Ministerial Council.[35] The Ministerial Councils include Commonwealth, state and territory ministers and, importantly, decisions are made by consensus.[36]

7. Federal and provincial governments were able to specify a list of exemptions to which the Canadian Free Trade Act does not apply. Parties can remove exemptions, but they cannot add new ones.[37] The CFTA allows parties to adopt measures that are inconsistent with the Act if it meets a legitimate objective and does not restrict trade more than necessary. Legitimate objectives include, but are not limited to, environmental protection (including climate change mitigations), customer protection, and plant and human health.[38] The CFTA established the Regulatory Reconciliation and Cooperation Table (RCT) which aims to align regulatory frameworks between participating governments through mutual recognition or harmonisation. Parties can opt out of negotiations on a particular regulatory barrier if they 'determine that reconciliation is not a desirable option for their jurisdiction'.[39]

8. Spain illustrates the deficiencies of a top-down approach where buy-in on the design and implementation of an internal market regime is not secured. Madrid aimed to establish a greater version of mutual recognition than many other multi-level states through the Guarantee Law of the Unity of the Market (LGMU) in 2013.[40] The law was based on the principles of mutual recognition and non-discrimination to address perceived "fragmentation" in the Spanish internal market.[41] The LGMU offered no provision for autonomous regions to

[redacted]

apply for an exemption to the “region of origin” rule which established absolute mutual recognition across Spain.[42] The Act was subject to challenges under the Spanish Constitutional Court by the regional Parliament of Catalonia, and by the Executive of Andalusia.[43]

9. In three rulings in 2017, the court declared numerous provisions of the Act unconstitutional including the “region of origin” rule and the “principle of national effectiveness” under the under the argument that it breached provisions in the constitution regarding regional autonomy.[44] Now, mutual recognition only applies in Spain under strict circumstances if the Spanish government can demonstrate a specific sector where market fragmentation is a barrier.[45]

10. On monitoring and implementation of regimes, both Australia and Canada afford greater autonomy to their constituent territories than is possible under the IMA. The Australian MRA is monitored and reported on in tandem with the Trans-Tasman Mutual Recognition Arrangement (TTMRA). The Productivity Commission carries out periodic reviews to assess the effectiveness of the Acts.[46] The review includes consultation with state and territory governments, industry bodies and professional bodies. The Cross Jurisdictional Review Forum (CJRF) is an interjurisdictional committee who are tasked with commenting on the findings of these reviews, and where necessary implementing them.[47]

11. Under the CFTA in Canada, the Ministerial Committee on Internal Trade was mandated to supervise the implementation of the Act, the resolution of disputes linked to the Act, and the oversight of the numerous working groups under CFTA. It is comprised of representatives from the 14 Parties and has an annually rotating chair. Decisions are made on the basis of consensus.[48]

[redacted]

[redacted]

[redacted]

[redacted]

By email to: UKIMReview@businessandtrade.gov.uk

3 April 2025

Response to the UK Internal Market (UKIM) Act Review

Dear [redacted],

I am writing in response to your department's review of the UK Internal Market (UKIM) Act, following a consultation meeting with your officials.

[redacted]

We welcome your decision to conduct a review of the UKIM Act. The principal points we ask you to consider are:

1. **Consult Early** – Engage with industry stakeholders from the outset of any proposed use of the Act. Early dialogue ensures sector-specific insights can shape decision-making and lead to better outcomes.
2. **Maintain Transparency** – Clear, open processes for invoking UKIM provisions are essential. Transparency builds trust and allows businesses to prepare for change.
3. **Involve Industry** – Active involvement of industry in the application of the Act ensures decisions are grounded in practical realities and economic context.
4. **Assess Economic Impact** – Publish economic impact assessments for any decisions made under the Act. This helps stakeholders understand the effects on trade, investment and employment, and supports more informed responses.

We recognise that UKIM operates across a complex landscape of EU, UK and Scottish regulation. Our focus is on ensuring a pragmatic, transparent framework that supports frictionless trade within the UK, while upholding the integrity of

Scotland's £16 billion food and drink industry. Our industry delivers £24 billion in value to the Scottish economy through its supply chains. England remains our largest trading partner, followed by the EU. Simplifying trade into our key markets remains a clear priority for our members and partners.

We welcome the UK Government's commitment to ongoing engagement with devolved administrations and stakeholders. [redacted] is happy to contribute further to this review and to any work that follows.

[redacted]

[redacted]

UK Internal Market Act 2020: review and consultation

[redacted]

Overview

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

The response is based on our experience with the Deposit Return Scheme (DRS) and our work as a representative body navigating the process under the Internal Market Act (UKIMA).

[redacted]

[redacted] Perspective on the UK Internal Market Act (UKIMA)

Summary

[redacted] for a balanced approach to the UK internal market: one that aligns regulatory standards to minimise complexity and risk with the necessary flexibility to respect devolved powers and Scottish needs. We want a strong internal market that supports businesses of all sizes, secures the food supply chain, and preserves consumer choice across the UK.

Protecting the Food and Drink Supply Chain

We believe that a well-functioning internal market is critical for safeguarding the food and drink supply chain, not only in Scotland but across the whole of the UK. A robust market not only helps keep businesses viable but also protects the food and drink supply chain and ensures that consumers continue to enjoy a wide choice of affordable, high-quality products.

Regulatory Uniformity Coupled with Respect for Devolution

Regulatory uniformity across the four nations is preferable for reducing operational complexities, lowering costs, and minimising legal risks. However, we insist that any approach must fully respect the devolution settlement.

Weighing the Benefits and Challenges of Policy Divergence

Policy divergence can offer vast local benefits with targeted action and open up innovative practice across the UK. Our view is that divergence can be balanced with open trade and overall market certainty given the right structure and intergovernmental approach.

Clarity, Transparency, and Meaningful Engagement

We would like to see an infrastructure and process that is clear, transparent, and easy for businesses to understand and navigate. Meaningful intergovernmental engagement at the earliest opportunity should be encouraged, coupled with transparent and timely communication with all stakeholders. By taking these steps, the government can provide businesses with the clarity they need to anticipate changes, adapt effectively, and plan with confidence.

Enhancing the Role of Common Frameworks

We advocate for greater understanding of the effective role of Common Frameworks as a mechanism for managing policy differences while maintaining UK-wide regulatory coherence. [redacted] can see the benefits of a stronger role for Common Frameworks in managing divergence more collaboratively.

Learning from Our Past Experiences

Our experience with UKIMA - particularly as seen through the Scottish Deposit Return Scheme (DRS) - has left us, as a representative body, and our sector, deeply frustrated by its failure to deliver the promised business certainty. We believe lessons learned through this must drive improvements in both the structure and processes of future approaches, ensuring that decision-making is clear, transparent, and truly supportive of the needs of businesses, rather than vulnerable to politicisation.

[redacted]

Introduction

[redacted] represents a broad spectrum of wholesalers - from large businesses operating across the UK to small, family-run enterprises based solely in Scotland. For the Scottish food and drink wholesale sector, a functioning internal market is more than just a regulatory framework; it is essential for keeping businesses viable, protecting food supply and the quality of Scottish produce, and maintaining both affordability and consumer choice.

[redacted] consistently advocates for regulatory uniformity, as a four-nation approach minimises operational complexity, delivers cost savings, and reduces legal compliance risks.

However, this uniformity must be balanced with respect for the devolution settlement. UKIMA was introduced in a few short months, with the then UK Government unilaterally implementing the Act. This rapid approach strained intergovernmental relations, raising significant concerns for businesses. Robust intergovernmental relations are essential to maintaining a stable, predictable regulatory environment that supports smooth business operations and fair competition. We welcome the stated reset from the UK Government regarding the importance of constructive and collaborative intergovernmental relations between the four nations.

Prior to the UKIMA, [redacted] are aware, the Common Frameworks and the collaborative approach to policy divergence were functioning effectively, even if they had not yet fully established their potential. The previous UK Government deemed that these frameworks did not provide businesses with sufficient certainty, which led to the passage of the UKIMA 2020.

UKIMA, as experienced through the lens of DRS, [redacted] and our members frustrated, raising serious questions about its viability as a safeguard for the internal market. It fell far short of its founding aim of providing business certainty. With this experience in mind, we are approaching the consultation with a focus on identifying learnings that can drive meaningful improvements and amendments to the framework and approach.

Ensuring a Level Playing Field for Trade

The UK internal market is critical for the food and drinks sector. For the [redacted], ensuring that the free movement of goods and services is maintained is essential. The emphasis on aligning regulations (from production to animal welfare and environmental standards) to avoid competitive distortions resonates with wholesale interests. It ensures that no part of the UK gains an unfair advantage that could disrupt supply chains or pricing structures. However, we also recognise that devolution presents an opportunity to innovate and improve. When done effectively, this can lead to better outcomes, with best practices shared across the UK to drive overall progress.

Devolved Innovation

Local innovations enable devolved administrations to address specific challenges, reflect unique environmental or economic priorities, and experiment with new approaches. For instance, Scotland might introduce innovative consumer protections that exceed the national baseline, serving as a testing ground for best practices that could eventually inform wider policy.

[redacted]

However, our experience shows that such innovative or divergent approaches can be stymied. We believe that to harness the benefits of local innovation, mechanisms should allow for the necessary flexibility to accommodate tailored solutions that respond to devolved nation needs, while still preserving the coherence and stability of the UK internal market.

Clear understanding, communication and timely engagement

We would like to see an infrastructure and process that is clear, transparent, and easy for businesses to understand and navigate, acknowledging the varying levels of knowledge regarding UKIMA and Market Access Principles across [redacted] The uncertainty the exclusion process causes for business through its lack of transparency, timelines and predictability should not be underestimated.

Meaningful intergovernmental engagement at the earliest opportunity should be encouraged, along with transparent and timely communication with all stakeholders, so that businesses and trade organisations such as [redacted] have the clarity they need to anticipate changes and adapt effectively.

[redacted] fully supports point 13 of the OIM response to consultation on UKIMA, which reinforces our call for timely government guidance on proposed regulatory changes and highlights the important role of associations in supporting SMEs through the process.

Common Frameworks

Common Frameworks work on the basis of collaborative exploration, mutual agreement and consistency of standards across the UK. For [redacted], this is a crucial point: mutual agreements that preserve high and uniform standards help maintain consumer confidence and streamline cross-border trade. They also underpin international compliance, which is vital for market access and the reputation of Scottish produce. Agreements reached through respectful intergovernmental discourse provide more confidence in lasting outcomes and ensure that regulatory approaches are both effective and sustainable.

That said, the process around common frameworks needs improvement to enhance transparency, accessibility, and business understanding. While common frameworks are policy neutral, we would like to see identified opportunities for business involvement at a timely juncture in the process, ensuring that practical, operational perspectives are integrated from the outset – embracing engagement and consultation.

While we welcome the UK Government's renewed focus on the Common Frameworks programme, it is important to clarify how UKIMA - given its automatic application and precedence - will interact with these frameworks going forward.

Proportionality

UKIMA's approach to market access, with its narrower exclusions from mutual recognition on public interest grounds compared to the EU Single Market, continues to raise concerns about proportionality - especially in a diverse sector such as wholesale that includes both large enterprises and small niche entities.

[redacted]

This spans businesses operating solely in Scotland to those trading across all UK borders and beyond, as well as those offering anywhere from two thousand to fifteen thousand different products. The rigidity of the current framework may impose uniform regulatory burdens that large businesses can manage but could disproportionately challenge smaller firms.

Office of the Internal Market

While [redacted] has engaged with the Office of the Internal Market (OIM), this has primarily been after regulations have been implemented - mainly to provide feedback on sector impacts, such as those following the introduction of single-use plastics regulations.

We welcome the opportunity to better understand how organisations like ours can engage with the OIM at the right stage of the policy cycle to contribute more effectively. The recent publication of the IM regulatory developments dashboard is a helpful tool and one which will no doubt assist.

Additionally, we encourage governments to engage with the OIM earlier in the process, allowing for better coordination and timetabling of business engagement.

It may be worth reconsidering the role of the OIM, as there appears to be a clear gap it could fill by expanding its remit beyond its current advisory function to serve as a more impartial arbitrator. Strengthening its role in facilitating dialogue and negotiated settlements could help prevent regulatory disputes from being perceived as a power imbalance between the four nations. Encouraging proactive engagement and resolution mechanisms would foster greater trust and cooperation across the UK's internal market without having to invoke the hard legal backstop as the UKIMA is often referred to as.

Experience in relation to DRS and Single Use Plastics

[redacted]

Countless hours were spent on operational planning, and significant investments were made - only for these efforts to be undermined by protracted uncertainty (while the UK Government considered the exclusion) and the eventual collapse of DRS in Scotland.

The manner in which the process unfolded - culminating in the refusal of a full exclusion from the Internal Market Act after a lengthy and opaque decision-making process - exposed major shortcomings in clarity, proportionality, and fairness. As a result, businesses were left to absorb wasted costs, rusting infrastructure and contend with operational disruption.

In our view, UKIMA, in this instance, became politically weaponised - something [redacted] would not want to see repeated. This experience underscored the necessity for a clear, transparent, predictable process that instils confidence in businesses, ensuring they are not left exposed to last-minute political shifts. It also reaffirmed that negotiation, collaboration, and mutual respect yield far better outcomes than the rigid application of legislative mechanisms.

[redacted]

Given our current involvement within the Deposit Management Organisation (DMO) application to run the UK DRS, due for go live in October 2027, there is a huge question mark around the implication of UKIMA, in relation to Wales pulling out of the UK four nation DRS.

Originally, Wales intended to include glass in the scheme and did not plan to seek any exemptions under UKIMA - unlike Scotland. However, their complete removal of glass from the scheme now puts the remainder of the DRS at risk.

There is uncertainty as to whether UKIMA affects their decision, and whether any measures could compel Wales to conform to the scheme. This creates a perverse situation: while UKIMA might have prevented Scotland from independently implementing its own DRS, it appears unable to push Wales into compliance when the broader market depends on their participation.

Similarly, the prolonged timeline and lack of clarity around the Single Use Plastics exemption frustrated businesses, disrupted planning, and created unnecessary uncertainty. Clearer guidance and more timely decision-making would help businesses adapt more effectively while ensuring compliance with regulatory changes.

Conclusion

Our experience of UKIMA through DRS and Single Use Plastics has highlighted the urgent need for a more transparent, predictable, and fair decision-making process. Uncertainty, delays, and last-minute political shifts have real consequences for businesses, leading to wasted investment, operational disruption, and diminished confidence.

Moving forward, we advocate for a more constructive framework - one that ensures clear timelines, transparent communication, and an impartial mechanism for resolving disputes. We would welcome a co-designed, intergovernmental approach which utilises collaborative decision making providing the certainty businesses need while respecting devolved decision-making and maintaining regulatory consistency.

[redacted]

[redacted]

UK INTERNAL MARKET ACT 2020: REVIEW AND CONSULTATION – [redacted]

1. [redacted]

1.1 [redacted]

1. [redacted] is the UK's principal competition and consumer authority. It is an independent non-ministerial government department, and its responsibilities include carrying out investigations into mergers and markets and enforcing competition and consumer law. The [redacted] also has a role in providing information and advice to government and public authorities.[1] The [redacted] helps people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour.

2. The [redacted] functions and powers under Part 4 of the UK Internal Market Act 2022 (UKIMA) are undertaken by the [redacted] which sits within the [redacted]. The remainder of this document uses the term [redacted] when referring to the [redacted] discharging its UK internal market functions.

1.2 The [redacted]

3. The [redacted] works to assist the four governments of the UK in identifying the internal market effects of regulatory developments that could lead to different approaches between nations, including the impacts these may have on competition, consumer choice, investment and the ability of people to work in different parts of the UK.

4. The [redacted] does this by helping governments to understand how effectively businesses and professionally qualified and regulated people can sell their goods

[redacted]

and services under conditions of regulatory difference across the four nations of the UK and the impact of differing regulations on this.

5. The [redacted] remit is set by the UKIMA in a number of ways, including:

   (a) The [redacted] has an advisory, not a decision-making, role. The [redacted] reports and advice to governments are non-binding.

   (b) The [redacted] remit as regards reviewing regulatory requirements is limited to reviewing those which have come into force after the UKIMA and are within scope of the legislation.[2] Regulatory requirements in force before UKIMA are outside its remit.

   (c) The [redacted] monitoring and reporting function has two strands: it encompasses reviews and reports that the [redacted] may undertake at its own discretion; and it comprises two mandatory reporting cycles, annual and five-yearly.[3]

   (d) The [redacted] must have regard to the need to act even-handedly in relation to the four national authorities.

   (e) The [redacted] applies economic and other technical expertise to analyse the impact of regulations on the operation of the UK internal market. It does not provide analysis of broader public policy considerations in areas like health, environmental protection, product safety for example.

   (f) The [redacted] has powers to gather evidence to enable it to advise on matters within its remit.[4]

6. The Windsor Framework[5] and regulations required to give effect to the Framework are outside of the [redacted] remit. The [redacted] therefore cannot produce reports on regulatory provisions which are necessary to give effect to these pieces of legislation, nor does the [redacted] collect data specifically about their effects.

[redacted]

7. In the preparation of this consultation response, the [redacted] has drawn upon its expertise, experience and evidence it has gathered associated with administering its functions under the UKIMA.

8. See Appendix A for a summary of the [redacted] publications to date.

2. RESPONSE TO CONSULTATION QUESTIONS

2.1 The market access principles for goods

9. In the three years that the [redacted] has been tracking regulatory developments, it has observed the greatest number of proposed or enacted regulatory differences between nations in the regulation of goods, affecting 26 regulatory areas in total. The [redacted] two in-depth reports to date – Peat[6] and Single Use Plastic (SUP)[7] – both featured markets for goods, as did the four case studies featured in the [redacted] 2024 annual report.[8]

Question 1: What are your views on how the UK internal market for goods is best supported using the UK Internal Market Act?

10. The [redacted] is currently tracking regulatory differences in 30 policy areas, with 19 of these relating to the regulation of goods.

11. To cite one sector where the [redacted] has analysed regulatory differences in detail, in its SUP report the [redacted] engaged extensively with UK businesses and representatives at different stages of the supply chain. A key message arising from this engagement, in relation to the UKIMA, was about the importance of effective cooperation between governments in minimising the potential costs to business from regulatory differences.[9]

12. To support policymakers across the UK to manage regulatory difference or alignment between nations, the [redacted] developed the following practical recommendations, drawing on the insights and stakeholder engagement obtained through this SUP study.[10] While these were specific to the findings on this particular matter, the following two scenarios might have wider application for other UK internal markets for the sale of goods.

[redacted]

(a) Where governments in all UK nations have broadly the same policy goal and intend to introduce bans or restrictions for the same (SUP) products, the [redacted] recommended close collaboration between the governments via relevant Common Frameworks and other mechanisms to develop the specific SUP regulations, including (where possible) in respect of any exemptions from the regulations, reporting requirements, and related guidance. Such inter-governmental collaboration could include discussions on carrying out joint consultations to reduce the risk of 'stakeholder fatigue' (including when stakeholders are asked to answer multiple duplicative and repetitive questions) and for governments to endeavour to achieve common implementation dates, as has been the case with the proposed bans on the sale of single-use vapes and wet wipes containing plastic

(b) Where governments may have different aims regarding (SUP) regulations, the [redacted] recommended that governments work together to consider the potential impacts of these differences for businesses that trade across national borders, as such businesses are at risk from incurring additional costs from having to comply with different national requirements. In this scenario, the [redacted] further recommended that governments collaborate to explore options for designing regulations in a way that enables businesses, should they wish to, to adopt a single business model which is able to comply with any differences in national regulations.[11]

13. In both scenarios, the [redacted] further recommended that governments provide relevant trade associations and businesses with clear guidance on (SUP) regulatory changes, and how to comply with them, at the earliest opportunity to help these businesses to plan for their transition to alternative products. Engagement with trade associations can be particularly important for small and medium size enterprises (SMEs) who rely significantly on them for information and advice.

Question 2: What are your views on whether differing regulations that have effect later in the supply process are more straightforward for businesses to address?

14. The [redacted] has observed in its work to date that differing regulations that have effects later in the supply chain (such as restrictions on the retail promotion of products high in fat, salt, or sugar (HFSS) and SUP) appear to be more straightforward for businesses to address than differing regulations that have their effects earlier in the process.[12]

15. Notwithstanding this, a regulation that takes effect later in the supply chain might still result in changes earlier in the supply chain. For example, the HFSS case

[redacted]

study found that some manufacturers covered by the regulation (but not all) chose to change the formulation of their products in order to ensure that their products could still be offered on promotion by retailers. The regulation did not mandate these changes, but producers chose to respond in this manner. A similar causal chain could apply in other sectors in relation to other regulations.

16. These observations may be useful for policy makers who have some flexibility in how they intend to achieve a particular policy goal: the way in which regulatory differences are specified or implemented may reduce the impact on businesses, even if the policy goals are broadly similar.

Question 4: What are your views on the operation of the market access principles for goods to date?

17. While the regime is still at an early stage, it is possible to make some initial observations, building on the [redacted] engagement with businesses and other stakeholders to date - particularly in relation to horticultural peat, SUP, HFSS, deposit return schemes (DRS) and precision breeding.[13]

There appears to be limited appetite among businesses for using the MAPs

18. Feedback from businesses active in the sectors the [redacted] has studied to date has indicated that the use of the MAPs would not be their preferred approach to navigating proposed or actual regulatory differences.[14] Consequently, there appears to be a less widespread use of the MAPs than was originally envisaged when UKIMA was enacted.

19. The businesses with whom the [redacted] has engaged to date told us that they preferred other approaches including:

(a) adopting a single standard that is compliant across all nations, where possible;

(b) having two supply chains (and perhaps reducing the number of product lines to manage the costs of this); or

(c) withdrawing (some or all) products from a particular nation.[15]

[redacted]

20. The [redacted] notes, however, that the choices businesses make are context-specific and that what it has seen may vary in different future contexts. The following sub-sections describe some of the potential contextual factors that the [redacted] has identified in its work to date.

Supply chain simplicity underlies business responses

21. Businesses with whom the [redacted] has engaged have reported how they aim for the greatest level of simplicity in their supply chains that they can achieve. Businesses spoke of adopting a single standard that is compliant in every nation, often moving ahead of anticipated regulatory change. While this was partly in response to consumer expectations, it was also to ensure that any changes to products or distribution could be made on a timescale and in a way that worked with supply chain requirements. In this way, businesses could be said to take an active role in establishing regulatory norms.[16]

22. However, adopting this approach is only possible in conditions where regulatory design makes it possible. In the [redacted] case study of DRS schemes, it found that unless DRS schemes were interoperable with each other a single approach across the whole UK would not be possible. That required businesses in turn to think about other approaches, and different businesses appeared to prefer different responses.[17] It is possible that, where businesses are unable adopt a single UK-wide response, the [redacted] will see more diversity as between businesses in how they navigate regulatory difference.

Businesses' relationships with governments may affect their use of the MAPs

23. Some businesses told the [redacted] that they have chosen not to use the MAPs, even where they could do so, because they are concerned that this might damage their relationship with one or more of the governments. The [redacted] has also found that many large commercial consumers of SUP were reluctant to rely upon the MAPs, in part because they perceived the MAPs to be a 'loophole' rather than a clear legislative intention.[18]

Regulations in one nation may affect the product range in another nation

24. Some businesses with whom the [redacted] has engaged identified reducing the range of goods they sell as a possible response to regulatory difference. In some cases, the reduction in range might occur in a nation not directly affected by the

[redacted]

regulations in question. For example, in the DRS case study the [redacted] found that some Scotland-based businesses, exporting to the rest of the UK, were considering focusing on complying with just one nation's regulation. This might involve, for example, focusing on the domestic market and withdrawing from the rest of the UK. However, none of the businesses the [redacted] spoke to in that case study had yet made firm decisions.[19] Similarly, some businesses told us that products had been withdrawn from the market in Northern Ireland, due to complexities associated with managing differing regulations.

The degree of integration with international markets may influence businesses' use of the MAPs

25. The [redacted] has observed that integration of the UK internal market within global supply chains may have a bearing on business decisions arising from regulatory difference/s. Suppliers within the UK might need to adapt to international changes and/or accept the cost implications of diverging from international norms. For example, in the SUP report, the [redacted] was told that some businesses with European supply chains were taking steps to comply with EU legislation – for example, selling plastic bottles in the UK with tethered plastic bottle caps.[20]

Question 5: What are your views on the use that has been made of the Part 1 amendment powers – for example the exclusion for single-use plastics?

26. The [redacted] views on the use that has made of the Part 1 amendment powers are limited to what has been published in its reports to date.

27. Although not the primary focus of the [redacted] published SUP report described above,[21] the [redacted] briefly considered the exclusion for SUP. This [redacted] report highlighted a number of findings that are relevant to the review's consideration of the Part 1 amendment powers. In particular:

(a) SMEs told the [redacted] that they have often not heard of UKIMA or the MAPs and generally do not have knowledge of the exclusions position from the MAPs for many SUP items.[22]

(b) Larger businesses generally have some knowledge of UKIMA, though some are less clear about the MAPs and how the exclusions for SUP items from the MAPs have affected the legality of sales.[23]

[redacted]

(c) When the [redacted] introduced restrictions on SUP items such as on plates and cutlery and some items made of expanded polystyrene on 1 June 2022, there was a period of around two months when sales of these items were legal in England and Wales, but sales were banned in Scotland. The existence of the MAPs meant that firms transferring the items into Scotland from other UK nations and selling them in Scotland were able to do so legally, despite the ban.

(d) This position lasted until the UK Government granted the Scottish Government an exclusion for a list of specific SUP items from the MAPs on 11 August 2022. This exclusion had the effect that it became illegal to transfer these SUP items from elsewhere in the UK for sale in Scotland, where they were banned.[24]

(e) In relation to this two-month period prior to introduction of the exclusion, the [redacted] did not see direct evidence to suggest that the MAPs were knowingly used to transfer SUP items which had been banned in Scotland from other UK nations to sell them legally in Scotland using the MAPs. Stakeholders told the [redacted] that the sale of these banned SUP items in Scotland (and other parts of the UK) has continued after the exclusion from the MAPs was granted.[25]

2.2 The market access principles for services

28. In the three years that the [redacted] has been tracking regulatory developments, it has observed a smaller number of proposed or enacted regulatory differences between nations in the regulation of services than of either goods or professional qualifications, affecting six regulatory areas in total.[26] To date the [redacted] has not carried out an in-depth examination of a specific regulatory difference directly affecting the service sector. We note, however, that regulatory differences that principally affect goods will often also have secondary effects in service sectors. For example, the proposed regulatory differences in relation to horticultural peat had implications for garden centre retailing and the regulations in relation to SUP have had effects on food retailing and catering. More generally, any regulation might have effects that go beyond the immediate good, service or profession being regulated. The degree to which these secondary effects are significant will vary from case to case.

[redacted]

2.3 The recognition of professional qualifications

29. Part 3 of the UKIMA sets out the MAPs in relation to access to the professions on grounds of professional qualifications or experience. As this is part of the [redacted] remit to monitor and advise on, it is currently monitoring nine relevant proposed and enacted regulations that could result in regulatory difference.[27]

30. The 2023-24 Annual Report noted that at least 3.5 million people are actively registered with a professional regulator (approximately 10% of the UK workforce) and so regulatory change in relation to these areas could potentially affect a substantial proportion of the economy. However, the [redacted] estimated that approximately three quarters of these professional registrations are excluded from the MAPs either because regulation of the profession is a reserved matter or because the profession is excluded from the UKIMA.[28]

31. Recent regulatory changes in relation to professional qualifications are mostly intended to newly regulate certain activities that were previously unregulated. Many of these new professions have modest numbers of practitioners compared with more established professions in, for example, healthcare, law and accountancy. Many of the newly regulated professions typically also provide their services locally with limited cross-border trade (examples of newly regulated or proposed regulated professions, where cross-border trade is expected to be limited relate to taxi drivers, electricians, pharmacy technicians, building inspectors and dog walkers). Consequently, the impact to date on the internal market of the current landscape of post-UKIMA regulatory differences is likely to be small.[29]

32. In part because of the modest effects on the internal market to date, the [redacted] has not carried out an in-depth examination of specific regulatory differences that are within the scope of Part 3 of the UKIMA. However, this is an evolving picture and the [redacted] is interested in stakeholders' views of the relationship between UKIMA and the regulated professions.

2.4 Independent advice on and monitoring of the UK internal market and the role of [redacted]

33. [redacted] is a source of expertise on the operation of the internal market and is open to engaging with stakeholders to understand how to best to use its expertise to support stakeholders and the internal market framework. Through the [redacted] work into specific regulatory differences (see paragraph 9) and its monitoring and

[redacted]

data strategy work, the [redacted] has identified a number of factors that have an effect on its internal market monitoring and advice.

Question 13: How can the Office for the Internal Market best support the UK internal market through its role in providing independent monitoring and advice?

34. Part 1 and Appendix A have set out the remit and publications to date of the [redacted], to provide factual context about the [redacted] operations to date. Drawing on the [redacted] experience to date, there are three matters that it considers directly relevant to question 13. Although each issue is distinct, they interrelate in that they each affect how the [redacted] gathers information, the principal sources being engagement with business, requests from governments and the available trade data series. The three issues are:

(a) Engagement with business stakeholders and the timing of [redacted] engagement

(b) The four governments' appetite for using their powers under s.34-s.36 UKIMA

(c) The importance of good quality intra-UK trade data

Engagement with business stakeholders and the timing of [redacted] engagement

35. A key element of the [redacted] support for the UK internal market is to engage directly with businesses and business groups to understand the practical impact of regulatory differences, and the strategies businesses adopt to mitigate associated costs and risks.

36. In the [redacted] experience to date, it has found that businesses respond more readily to policy detail than to policy objectives. The [redacted] has found that, when talking to businesses about the impact of policy on internal market trade and investment, businesses can find it difficult (and / or impractical) to work with hypothetical scenarios. Typically, it has been told that the detailed planning associated with ensuring day-to-day operations are compliant only begins once the detailed policy design has become clear.[30]

37. This suggests that [redacted] reviews of prospective regulations need to be timed to coincide with a particular point in the policy development cycle. If it examines regulations too early, businesses are unlikely to have developed a strategy in response to the differing regulations. If it examines a matter too late, there is the risk that the [redacted] might be less effective in influencing policy design in a helpful and timely manner.

[redacted]

38. The timing of an [redacted] study can also affect how businesses want their information to be used. The [redacted] has found that businesses' planned response to regulatory difference (ie before it is implemented) can, in some cases, be a matter of commercial sensitivity that must be kept confidential. Nevertheless, broadly speaking, if information is anonymised and aggregated businesses are often content for their information to be shared with governments. In our experience, information anonymised in this way still illuminates the key issues relevant for considering the impacts on trade and policy making.

39. The [redacted] recognises that to be useful to policy makers, [redacted] findings in relation to proposed regulations need to be available at about the same time the consultation period closes, or sooner. This can be difficult to provide, in particular where the consultation period is only a few weeks. There are also practical challenges for the [redacted] in seeking to engage with businesses at the same time that those businesses are responding to a government consultation: businesses tend to have limited capacity for governmental engagement.

40. One possible response to this issue is early engagement with the governments bringing forward the regulations. Where this is not possible it may be more efficient to conduct a retrospective review of the legislation a short period after the regulation has taken effect. At this point, businesses strategies will have crystalised and market impacts can be more clearly identified and measured. Retrospective reviews may be suitable for studying a bundle of related regulations to consider the effects of regulatory difference in its wider context. The [redacted] adopted this approach in the in-depth SUP study which considered a range of regulations pertaining to these products that had been introduced at different points in time.[31] While such a review could not impact on the shape of existing regulations, this project has enabled the [redacted] to frame recommendations for future regulations in this sector and better understand how to conduct this type of retrospective analysis (see response to Question 1).

41. In the [redacted] view there is merit in both ex-post and ex-ante reviews; a well-balanced regime will likely do some of both. The [redacted] work on horticultural peat products (ex-ante) and SUP (ex post) provide examples of what can be achieved with the two different approaches. Whether working on an ex ante or ex post basis, the [redacted] is open to exploring with the governments more flexible and aligned ways of working that can reduce the burdens on business and improve data collection.

[redacted]

Governments are not using their powers under s34-s.36 UKIMA

42. To date, governments have made very limited use of their powers under s.34-s.36 UKIMA to request the [redacted] to provide advice on a proposed or enacted regulation. The single exception is Defra's proposed horticultural peat regulations, the request for which was made shortly after Defra's consultation on the proposed regulation had closed. More broadly, this lack of referrals suggests that the UK internal market regime may not have operated in practice in the way originally envisaged.

43. One effect of the regime having evolved somewhat differently to what had been originally envisaged is that the [redacted] has focused its information gathering about specific regulations towards direct engagement with businesses and publicly available information. Information received from those sources has, in turn, influenced the four regulatory areas it has studied without a formal request.[32]

44. The [redacted] notes that the interaction between UKIMA and the decisions made by governments is complex and may not yet have fully matured. For example, it is not clear to what extent policymakers may be shaping policy to take it outside of the scope of the MAPs or not bringing forward legislation that would be within the scope of the MAPs. This situation may evolve further with potential implications for both the nature and the volume of regulatory differences.

The importance of good quality intra-UK trade data

45. The [redacted] statutory reporting functions depend on the availability of good quality data. The [redacted] has found developing a clear picture of how the UK internal market is evolving in the aggregate to be challenging. This is principally because of the paucity of high-quality data sets in relation to trade, investment and the movement of qualified professionals.

46. In [redacted] experience, understanding the economy-wide situation serves a different purpose for policy makers to understanding the impact of specific regulations. The latter is principally useful in helping policy makers with fine-tuning policy design and/or anticipating the effects of a particular regulation. The former is more useful for considering the UK internal market regime as a whole and asking more strategic questions about its effect on trade.

47. There is an ecosystem of governmental and non-governmental organisations that generate the data that is necessary for the [redacted] to carry out its statutory functions. At the aggregate level, DBT tracks regulatory differences across the UK (as does the [redacted]), statistical agencies across the four governments in the UK produce valuable aggregate level data (which the [redacted] encourages and uses) and various academic institutions have contributed to this work or built upon it. Notwithstanding

[redacted]

these efforts and recent improvements, the data is still subject to weaknesses which the [redacted] data strategy (see paragraph A.6 for further details of the strategy and associated publications) is designed to help address in conjunction with its data partners.[33]

48. The [redacted] welcomed the production of experimental estimates for interregional trade covering all four UK nations published this year by the [redacted] for 2019 and 2020. It is important that production of these estimates should continue and preferably be developed in a way that allows more up-to-date reporting of trade between the four nations of the UK (for example through a single trade survey covering the whole UK, rather than separate surveys for each nation).

49. The [redacted] has acquired insights from international experts and initiatives on how to improve trade data: for example, in 2024 the [redacted] engaged with experts in Canada and the US, as well as within the OECD, to gather insights from their experience. The [redacted] is collaborating with UK-based statisticians, economists and others in the public and private sectors. In addition to building upon these fruitful collaborations, the [redacted] is keen to explore new ways to improve the nation's collective understanding of how the UK internal market is operating and welcomes engagement with interested stakeholders.

Question 14: What are your views on whether the current arrangements in Part 4 relating to the use of the Office for the Internal Market task groups are appropriate for securing the most effective and efficient performance of the CMA's Part 4 functions?

50. [redacted]

51. [redacted]

52. Since its appointment, the Panel has contributed widely across the [redacted]. Panel Members' expertise has helped with the [redacted] technical analysis, including its recent [report into single-use plastic]() and both its [2023-24]() and [2024-25]() Annual Reports. The Panel has also helped shape the [redacted] forward work programme for

[redacted]

regulation / sector specific research and played a role in developing its data strategy.

53. The Panel has added impetus to the [redacted] outreach work across the four nations including through the Panel Members' ability to drawn upon their experience and professional networks - to help support the [redacted] staff's engagement at a more senior level. This has included meetings with UK and devolved government officials and political representatives (for example, in representing the [redacted] before committees of the Scottish and Welsh legislatures); meetings with business representatives; and engagement with academics.

54. Overall, this gives the [redacted] a richer set of perspectives and the broad set of views and experience across the Panel helps the [redacted] act even-handedly with respect to the four governments.

2.5 Questions on the management of the UK internal market and operation of the UK Internal Market Act

55. The [redacted] experience provides some evidence of relevance to questions, 15, 16 and 19.

Question 15: What improvements could be introduced to facilitate more pragmatic management of the UK Internal Market Act's exclusions process?

56. Some of the practical considerations discussed already in this response may have a bearing on the pragmatic management of exclusions.

57. At paragraphs 36-42 we discuss the importance of engagement with businesses. In the [redacted] experience, insights from business into the likely impacts of a regulation on supply chains (as distinguished from the important policy benefits) are central to any assessment of the impact of a regulation on the internal market.

58. To ensure that these insights are available in a timely manner, similar considerations to the timing issues discussed at paragraphs 37 and 38 will present themselves. Early engagement with industry will likely require some flexibility from all parties to function effectively.

Question 16: How should we ensure proportionate engagement with interested parties in relation to potential exclusions?

59. The discussion at paragraphs 12 and 13 is relevant to this question. Exclusions will only be necessary in circumstances where governments, collaborating through the Common Frameworks process, have identified areas where prospective regulations will differ. Efficiently completing this process and identifying the differences will be an important precursor to any subsequent proportionate engagement with interested parties.

Question 19: What do you think constitutes a potentially significant economic impact?

60. The UKIMA does not create a threshold or set out criteria for assessing a potentially significant economic impact, so the [redacted] has developed its own approach to thinking about economic significance.

61. The [redacted] latest annual report sets out in Annex 1 an update on the analytical framework applied by the [redacted] in evaluating the operation of the UK internal market. This built on the indicators that the [redacted] had initially identified as being useful for assessing internal market effects.[34] The following list details the indicators that the [redacted] considers are particularly relevant to an assessment of the internal market and which could be used to assess the significance of an economic impact:

    (a) Volumes of trade (or of trade in any direction) between participants in different parts of the United Kingdom.

    (b) Access to goods or services. One metric is to examine the extent to which goods and services available in one nation are available in other nations.

    (c) Effects on competition. The functioning of the internal market can potentially affect competition through the number and type of businesses able to offer goods and services in each of the nations.

    (d) Effects on prices. Differing regulations may have direct effects on prices or indirect effects on prices that arise from changes in the strength of competition.

    (e) Effects on investment. Over time businesses may make investment decisions in response to regulatory differences, for example, by seeking to move production facilities to the most favourable jurisdiction.

    (f) The range of goods that are available to consumers. Businesses have told us that one response to regulatory differences is to adjust the range of goods that are available in particular nations.

    (g) Quality of goods and services. Although quality can be hard to measure, substantial effects of regulatory difference on quality may be sufficiently apparent to be included in any analysis.

[redacted]

(h) Customer understanding and/or confusion. Differing product standards and/or product availability in different nations may lead to confusion, especially if the application of the MAPs leads to similar products meeting different standards being sold in the same retail environments (because the MAPs allow some producers to avoid local standards).

(i) Investment/location decisions. Regulatory differences may influence where production capacity is located, which in turn may influence the pattern of cross-border trade.

(j) Reliability/resilience of supplies. For products where there is a sudden increase in demand there could potentially be some effects on the reliability of supplies in situations.

(k) The costs of meeting more than one regulatory standard. In some cases, businesses will incur additional costs if they are required to meet differing regulatory standards across the UK.

Appendix A: [redacted]

A.1 [redacted]

A.2 [redacted]

A.3 [redacted]

A.4 [redacted]

A.5 [redacted]

[redacted].

A.6 [redacted]

A.7 [redacted]

A.8 [redacted]

A.9 [redacted]

[redacted]

[redacted]

Key points

- Review of UKIM Act will be more successful if it also addresses challenges and limitations of broader UKIM architecture (in particular Common Frameworks) and factors in specific circumstances of Northern Ireland.
- Original UKIM Act design, especially the expected role of the MAPs, rested on assumptions that have since been proven to be wrong (regarding business behaviour, impact of and on external trade, ability to measure intra-UK trade).
- Current and future difficulties (if not impossibility) to measure economic impact of internal divergence at sufficiently granular level undermines case for basing decisions on exclusions (and broader UKIM Act design) on sole economic factors. Relying on evidence from small number of impacted and outspoken economic actors open government up to regulatory capture. Instead other impacts (and objectives) should be considered – Stormont Brake (see response to Q19) criteria offer a possible template.
- Better balance between a) different public policy objectives and b) tolerance for internal divergence to pursue those is needed. We suggest a number of ways through which the operation of MAPs could be changed and the exclusion process improved in terms of parity, transparency and clarity. Changes to the exclusion process while necessary will not be sufficient to build consent across the four UK administrations for how UKIM operates.

Question 1: What are your views on how the UK internal market for goods is best supported using the UK Internal Market Act?

Conceiving of the framework for domestic economic regulation as a UK Internal Market (UKIM) is a policy choice. Even if this choice is, or has been, made, the UK Internal Market Act (UKIMA) is only one part of the Internal Market as an overall governance architecture. While the review focuses on UKIMA, developing a functioning UKIM will require also re-thinking and potentially re-developing the other instruments in the broader architecture, notably Common Frameworks (CFs).

If CFs are to become central to the management of UKIM, a previous decision to consider over 100 areas of policy in which EU competence intersected with devolved competence as ‘no framework required’[1] raises concerns. Additional CFs may need to be added, or the scope of existing ones revised so no relevant policy area is outside of the scope of CFs. Further, whether the internal market for goods is ‘best served’ by current arrangements requires taking into account the negative impact those arrangements have on broader mechanisms of devolution, democracy, transparency and UK intergovernmental relations. Only when considering both positive and negative impacts can a balanced assessment be achieved.

Successive UK governments have done little to articulate the scope and limits of their conception(s) of the Internal Market. The unclear relationship between UKIM legislation and Common Frameworks is the most obvious example of this lack of clarity. It is also reflected in the poor quality of data available on Internal Market patterns of goods-related economic activity within the UK.

It remains impossible to measure intra-UK, cross-regional economic patterns at the level of granularity needed to inform how best to use the UKIMA to support the UK internal market in goods. UKIMA decisions are, consequently, made under conditions of uncertainty. Without baseline evidence, if decision makers seek the views of industry actors, they become vulnerable to capture.

Question 2: What are your views on whether differing regulations that have effect later in the supply process are more straightforward for businesses to address?

n/a.

Question 3: What is the right balance between the potential for local regulatory innovations in sectors and UK-wide alignment?

The ‘right balance’ is primarily a political choice. Assessing whether the ‘right balance’ has been achieved may not simply involve economic growth metrics – other valid policy

[redacted]

objectives exist. Principles such as proportionality and subsidiarity could be adopted to better reflect a balance between different public policy objectives and parts of the UK.

Other countries across the world strike a different balance between sub-national regulatory autonomy and state-wide regulation e.g., Australia, Canada, the USA.

What is critical for the efficacy of any internal market is that this balance is: (a) struck jointly between the different component units of the market to build support and buy-in into operation of the market (b) flexible enough to be able to be amended, through clear processes, to respond to changes across the market, types of trading patterns, external pressure etc. Currently the UKIM Act does not satisfy either of these criteria and therefore undermines both the acceptability and resilience of the current balance (which prioritises UK-wide alignment).

Lack of sufficient data on intra-UK trade and regional trade severely limits the ability to determine the ‘right balance’ based on economic data. Challenges in collecting this data are fundamental such that it is likely not possible to monitor intra-UK trade in the way ideally required to ensure the operation of the UKIMA as it is current constructed. Incorporating non-economic criteria – such as consensus and flexibility – to determine the ‘right balance’ would therefore improve the efficacy of Act as well as its legitimacy.

Although sections of the UKIMA specifically dedicated to Northern Ireland are not included in the scope of the review, it is nonetheless important to underline that ‘UK-wide alignment’ in respect of goods is not possible due to the obligations of the Windsor Framework. Any decision to either increase the potential for local regulatory innovations regarding goods or to increase the requirement for UK-wide alignment regarding goods is very likely to result in further differentiation of Northern Ireland within the UK internal market. In line with section 46 of the Act, outcomes of this review ought to reflect the obligation for ‘special regard’ to be taken of Northern Ireland’s integral place in the UK internal market.

Question 4: What are your views on the operation of the market access principles for goods to date?

While similar to the principles of the EU internal market etc. the UKIMA market access principles (MAPs) are playing out very differently. One reason for this is that those principles in the EU internal market operated under, and were interpreted in light of, other guiding EU principles of proportionality and subsidiarity.

Evidence so far suggests that the MAPs are not the preferred approach of UK businesses to address regulatory differences; the Office for the Internal Market annual report stated:

- "Businesses preferred other approaches including: adopting a high standard that is compliant across all nations where possible; having two supply chains (and perhaps reducing the number of product lines to manage the costs of this); and withdrawing from a particular nation."[2]

As such MAPs are currently, together with a flawed exclusion process, fuelling regulatory chill in devolved administrations and among stakeholders, this raises concerns for the future.

Question 5: What are your views on the use that has been made of the Part 1 amendment powers – for example the exclusion for single-use plastics?

The fact that the single use plastics (SUP) exclusion is used as a good example is a stark illustration of the size of the issue when it comes to the UKIMA exclusion process.

There is a lack of clarity surrounding s10 of the UKIMA as evidenced in the disputes that arose between the UKG and Scottish Government regarding a deposit return scheme with the two governments disagreeing on when the exclusion was asked for and how.

Common Frameworks provide a useful collaborative forum for intergovernmental discussion on exclusions but relying on current CFs is also problematic.

CFs are not comprehensive. Of the 152 areas of policy previously governed by EU law that intersect with devolved competence only 32 were identified as requiring a CF with 28 (provisional or final) CFs subsequently published.[3] In the 120 'no framework required' areas, the rationale for not introducing a framework was either that: the risk of divergence was minimal; that existing intergovernmental arrangements would ensure coherence and manage the risk of divergence or that divergence has or would have minimal impact. These rationales are difficult to sustain given the UKIMA. It is unclear, for example, how intergovernmental arrangements can 'manage the risk of divergence' for these areas that are not in scope of a CF, but which are in scope of the MAPs. Moreover, in many cases the 'no framework required' assessment was based on the continued application of (then)

[redacted]

retained EU law which minimized intra-UK divergence; changes introduced by the REUL Act which make assimilated law more mutable call into question the validity of these earlier assessments.

CFs are not transparent. The practical operation of CFs is not public and there are no reporting requirements. This means that legislatures as well as external stakeholders do not have opportunity to input into the CF process or to scrutinize outcomes.

CFs are not legal binding. Decisions reached in the context of CFs are not enforceable. In the context of the UKIMA exclusions process this means that even where an intergovernmental process has resulted in a consensus outcome (either to align or diverge) implementation remains at the discretion of central UKG.

It is unclear whether the exceptions as asked/refused have actually been based on consideration of the operation of the market access principles, or on broader objective to 'avoiding barriers to trade wherever possible'[4] and whether and how that objective has been balanced – if at all - with allowing for regulatory innovation and for whom.

Thus, for example, the decision not to consider an exception to the market access principles for an English proposal to ban peat free compost, and for England to proceed without ban on the basis that Scotland and Wales have also signaled interest in ban; yet, for glue traps, similar approaches in England and Wales were not sufficient to a) exempt Scotland from requiring exception or b) get an exception.

Regarding the rejection of the Scotland's application for an exclusion on glue traps, the rationale to be that "The UK Government …does not believe that the case has been made that an exclusion under the UKIM Act is necessary to deliver the policy aims of restricting the use of these traps in Scotland." While a glue traps exclusion re-consideration was presented as forthcoming by UKG when the UKIMA review was announced this has apparently not yet been formalised.

In view of its current flaws, two sets of profound changes to the exclusion process are required. First, a broader list of 'legitimate aims' should be added to section 8 of the UKIMA. To determine the new expanded scope of legitimate aims, inspiration could be drawn from other internal markets such as Australia and the EU. In the EU context we can note that, in addition to exceptions in the TFEU, mandatory requirements in EU law were determined through CJEU Case Law (*Cassis de Dijon, 1979; ADBHU, 1985*); these include the effectiveness of fiscal supervision, the protection of public health, the fairness

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[redacted]

of commercial transactions and the protection of consumers. Alternatively, these (and other) additional aims could be added to section 10 of the UKIMA as part of the rationale through which devolved administrations may ask for policy-specific exclusions. Second, the process by which additional exclusions are made through section 10 should be made more transparent, with both the request for, and response to, the exclusion being made public. An agreed timeline by which decisions need to be made on exclusion requests could also usefully be integrated into section 10 of the UKIMA.

Question 6: What are your views on how the UK internal market for services is best supported using the UK Internal Market Act?

This review provides an opportunity to rethink the narrative of what the UKIMA's objective is and how/why it supports the UKIM. Currently it operates as a preventative tool. The UKIM would be best supported if the UKIMA was more enabling and gave devolved governments greater agency. UKIMA should be more neutral in its preference toward harmonisation. If there is a pragmatic logic to local regulatory innovations (and there are advantages to this) there should be more mechanisms which create a pathway toward at least a fair hearing. This applies to both thinking about goods and services. Similarly, a review of the common frameworks infrastructure to ensure fewer gaps (in areas previously deemed 'no framework required' see response to Q5) should extend to services which are currently barely covered.

Question 7: What is the right balance between the potential for local regulatory innovations in services and UK-wide alignment?

Determining the optimum balance between local regulatory innovation and UK-wide alignment depends to a large extent on the policy aims that are being pursued. We would refer back the comment in Question 3 with the added clarification that services are characterized by their regulatory diversity and intensity meaning that assessments have to be made on a sector specific basis.

It is also worth noting that there are certain questions relating to exclusions and justifications which could be clarified or amended to allow for greater devolved agency and autonomy. For example, with respect to the addition of exclusions, s18(8) only requires the Secretary of State to *seek* devolved consent, there is no obligation to *secure* devolved consent. Under the current regime, the SoS may proceed if consent is withheld for more than one month after such consent was first sought. This is something which could be amended to require further engagement with devolved governments.

For Northern Ireland, there are North-South considerations and dynamics to the provision of services – this is not often recognised in UKIMA discussions and is absent from the legislative framework. In this context it is worth noting that, since the UK's EU Exit, cross-border trade in services on the island of Ireland has increased from £1.4bn in 2020 to £2.5bn in 2023; within this, North to South trade accounts for the majority. For Northern Ireland, therefore, the effect of the UKIMA in relation to services ought to be understood alongside the continued growth in N-S services trade.

Question 8: What are your views on the operation of the market access principles for services to date?

Concerns expressed regarding the application of MAPs to goods (Q4) also apply to services.

Question 9: What are your views on the use that has been made of the Part 2 amendment powers – for example, removing exclusions for certain services?

We would welcome continued pragmatism in the use of amendment powers and adherence to s18(2) requiring SoS to keep Schedule 2 under review. The removal of exclusions in Annex A either (as it suggests) implies that the regime is "working well, both for regulators and for people and businesses" or, in all likelihood, that they are either reserved competences, or devolved legislatures that have not yet sought to regulate differently in these areas.

Question 10: What are your views on how the UK internal market for professions is best supported using the UK Internal Market Act?

Our concerns about the effect of MAPs in disincentivising local regulatory innovation ('regulatory chill') also extends to professions.

Question 11: What is the right balance between the potential for local regulatory innovations in professions and UK-wide alignment?

For professions, services and goods the right balance remains subjective. Please see our response to Question 3.

For Northern Ireland, there are North-South considerations and dynamics regarding the regulation of professions – this is not often recognised in UKIMA discussions and is absent from the legislative framework. Recognition of professional qualifications between Ireland and Northern Ireland now operate on a regulator-to-regulator basis. Mutual

Recognition Agreements have been concluded for many professions, but gaps remain. Read together with the UKIMA this has implications for Northern Ireland which faces labour market competition both from Ireland and from the rest of the UK.

Question 12: What are your views on the operation of the system for recognising professional qualifications to date?

A large portion of regulated professions are not in scope of the MAPs and remain centralised – of the approx. 23% that are in scope, the MAPs do not serve to make the operation of the UKIM better, only to prevent it becoming worse. The decision to grant automatic recognition by default means devolved governments have less agency. There is a strong disincentive for devolved regulators to implement further regulations or rule changes due to the risk of placing local professionals at a competitive disadvantage, or risk encouraging them to seek qualification further afield.

Question 13: How can the Office for the Internal Market best support the UK internal market through its role in providing independent monitoring and advice?

The Office for the Internal Market faces a number of challenges in carrying out its role in monitoring the internal market and measuring the impacts of regulatory divergence. In particular, there are significant challenges in the measurement of the movement of goods and services within the UK, and so the nature of the internal market and the linkages between parts of the UK is not well understood.

The OIM has drawn on research which has sought to improve this by the Economic Statistics of Excellence (ESCoE). This research has now led to ONS producing interregional trade estimates in January 2025. Whilst this is a welcome development, there remain (i) conceptual issues about allocating trade to different jurisdictions within the UK and (ii) challenges in the granularity of data available by product or industry that the OIM would require to opine on the effectiveness of the internal market.

The OIM should continue to support the wider research in this area, while recognising that they will have to go beyond statistical sources to understand the impacts of any regulatory divergence.

Question 14: What are your views on whether the current arrangements in Part 4 relating to the use of the Office for the Internal Market task groups are appropriate for securing the most effective and efficient performance of the CMA's Part 4 functions?

N/A.

Question 15: What improvements could be introduced to facilitate more pragmatic management of the UK Internal Market Act's exclusions process?

A first step would be the formal recognition that market integration is one of many relevant public policy objectives that need to be balanced (see response to Q5 above), and that different parts of the UK may legitimately be following different public policy objectives/priorities. This could take the form of a broader list of 'legitimate aims' added to section 8 of the UKIMA.

As for the exclusion process for section 10, it requires greater parity, transparency and clarity. In terms of parity, this means If the exclusion process is maintained, it should apply to each part of the UK – England should also have to make case for exclusions.

Finally, we would welcome improvement in the transparency of the process, clarification of the associated procedures and inclusion of binding timelines for submitting and responding to applications.

Question 16: How should we ensure proportionate engagement with interested parties in relation to potential exclusions?

Engagement with interested parties will be easier to manage if the exclusion process has clear criteria.

Transparency in the exclusion process would allow for consultation with relevant stakeholders regarding rationale etc. for granting or refusing exclusions.

Clarity of deadlines in process – when exclusion should be put forward, what evidence is required for/against, by when a response would be given etc. – would also help stakeholders understand the process and how to navigate it.

Question 17: What evidence should be provided in support of an exclusion proposal by the proposing government, so the proposal can be fully considered (for example, information on potential impacts on businesses' ability to trade within the UK and the policy implications of not having an exclusion)?

Recognising that sufficient and/or ideal regional trade data is not always available, criteria for considering an exclusion ought not rely entirely (or even primarily) on economic indicators; non-economic criteria such as: consensus, opportunities for regional benefit, ability to address legitimate regional difference or need.

Provision could be made for the OIM to review the economic effects of exclusions granted after a set period of time.

A requirement to consider the implications of any exclusions sought on the position of Northern Ireland in the UKIM (as relevant) could usefully be added; this would be in keeping with the requirements of s46 of the Act and could include consideration of GB–NI effects and NI–IRE effects according to relevance.

Question 18: Should there be a different process to consider exclusions proposals which could lead to potentially significant economic impact, compared to those likely to lead to smaller economic impact?

Yes. This would allow to a) remove most regulatory chill on the exercise of devolved competence and b) allow for prioritizing of areas which governments should attempt to work together in Common Frameworks and interministerial group settings. The OIM could be involved in reviewing classifications, proposed by the diverging government, of significance of economic impact. The OIM role in this would allow account to also be taken of the cumulative effect of multiple small exclusions which may, together, have significant economic impact.

Question 19: What do you think constitutes a potentially significant economic impact?

Lack of detailed intra-UK trade data makes this difficult if not impossible to determine objectively.

In pursuit of more robust and versatile criteria (not wholly reliant on intra-UK trade data which is not always available), the UKG could borrow from the recently introduced ‘Stormont Brake’ procedures developed to address divergence arising from Northern Ireland’s continued alignment with aspects of EU law.[5]

[redacted]

The ‘impact criteria’ could be particularly applicable, this requires those seeking to exclude Northern Ireland from a specific EU law update to demonstrate that the change would create an impact that is: ‘significant’, ‘specific to everyday life of communities in Northern Ireland’ and ‘in a way that is liable to persist’.

While these criteria are open to interpretation, in the context of the UKIMA exclusion process a similar format could be used whereby those seeking an exclusion would be required to demonstrate that not introducing it would have an impact that is: ‘significant’, ‘specific to everyday life in the relevant UK territory’ and ‘in a way that is liable to persist’. This would allow the assessment of exclusion applications to include economic and non-economic factors.

Question 20: Is there anything else you want to tell us about the operation of the UK Internal Market Act?

Greater clarity about the scope and limits of the UK Internal Market as a system of economic regulation and governance is required. The interconnections between UKIMA, Common Frameworks, IGR need to be addressed. The scope of this review is too small to address these links – it deals only with part of UKIMA. As such root problems will not be addressed although this does not mean that key processes identified in the review cannot be improved.

UKIMA is a constitutionally protected enactment. It sets a default for internal economic regulation within Great Britain (the position is more complex in relation to Northern Ireland). The UKIMA default is generally deregulatory and includes a presumption against different regulatory arrangements within the UK, which are generally viewed as creating barriers to economic activity and, hence, to efficiency and growth.

UKIMA embodied a choice made by the Johnson administration to give priority to default legal rules rather than Common Frameworks and intergovernmental relations. UKIMA was a change from the approach initially developed by the May administration which located Internal Market regulation as one element within the broad Common Frameworks approach.

The Johnson administration borrowed Internal Market language – and related terminology of market access principles (MAPs) – from the EU. The UKIMA’s MAPs are, however, much less flexible than those of the EU. They leave the UK’s devolved governments with much less regulatory autonomy and scope for innovation than EU MAPs allow for Member States.

Introduced into UK policy discourse and law in fits and starts, the character and scope of the UK's Internal Market has changed over time and remains poorly defined. Successive UK governments have done little to articulate the scope and limits of their conception(s) of the Internal Market. The muddled relationship between UKIM legislation and Common Frameworks is the most obvious example of this lack of clarity. It is also reflected in the poor quality of data available on Internal Market related patterns of economic activity within the UK. It is not clear that the UK government and agencies have a strategy for addressing problems with the data needed to inform UKIM policy, or have identified data problems as a central concern.

UKIMA decisions are based on several flawed assumptions:

- That strong limits on internal divergence are necessary to pursue external trade policy and negotiate FTAs – [redacted] research into the regulatory effects of UK trade agreements on devolution demonstrates however that the limits placed on devolved competences by post-Brexit UK trade agreements are minimal. Notably, the UK approach to constraining devolved competence for the pursuit of external trade is out of step with the approach of key trading partners with similar structures for multileveled governance (e.g., Australia, US, Canada).
- That we can measure regional trade flows in UK in general, and the specific impact of regulatory divergence on them.
- That businesses will generally adopt the 'lowest common denominator' regulatory requirement – based on the (lack of) use of the UKIMA market access principles so far this assumption is not supported by evidence.

UKIMA was enacted during a period of powerful disagreement between the UK and devolved governments. It was based more on implausibly extravagant rhetorical claims than carefully assembled up-to-date analysis or empirical evidence. For example, the UK Internal Market White Paper stated that 'the UK Internal Market' had existed for 'centuries' as 'the bedrock of our shared prosperity ever since 1707' (p 28 para 58), rooted in the Treaties of Union between Scotland and England. It offered picturesque descriptions of 'drovers guiding their livestock from the hills of Wales to market in London' (UK Internal Market White Paper 2020, p 28 para 61). These images are no substitute for technical analysis of the operation of UKIMA's MAPs rooted in evidence about patterns of intra-UK economic activity.

Getting on for five years after the UK Internal Market White Paper's publication, we still cannot easily (or indeed, at all) measure intra-UK, regional trade patterns, especially at a useful level of granularity. Consequently, decisions on intra-UK trade are made in situation of uncertainty. Lack of data appears to be a baseline, not a teething problem. This leaves decision makers particularly vulnerable to capture from specific industry actors (likely to listen to key players' concerns but not being able to put those concerns into broader perspective).

Lack of data means that not only are a lot of the questions in the review a matter of political choice (there is no right or wrong answer, it depends on what we prioritise) but there is a limited evidence base (at least in terms of economic impact) to support choices. This means other rationales for 'good' decisions are needed: transparency, consensus, democratic legitimacy etc.

It is helpful to distinguish explicitly between the 'internal market' as a description of patterns of economic activity within the UK (such as the 'internal market for goods') and the concept of the UK Internal Market as a system of economic regulation and governance. This consultation seems to use the lower case ('internal market') for the former while describing laws and regulations using upper case letters (Internal Market). Muddling these two concepts can generate a presumption that (domestic/internal) economic activity is 'naturally' frictionless. It treats economic activity as conceptually prior to regulation and governance. Distinguishing 'internal market' activities and behaviours from the Internal Market as (part of) a regulatory architecture helps to define each one clearly. A sharp distinction between the two can also help to identify how other aspects of governance and regulation impact on the 'internal market' and relate to – or even form part of the regulatory architecture of the Internal Market.

UK INTERNAL MARKET ACT: REVIEW AND CONSULTATION

[redacted]

[redacted]

[redacted] non-profit organisation and non-partisan grassroots campaign with a focus on local democracy and community regeneration. With an active supporter base in each of [redacted] areas, [redacted] advocates for a strong community voice in local decision-making.

Overview

This paper sets out [redacted] view on Part 6 (Financial Assistance) of the United Kingdom Internal Market Act 2020 ('the Act') following the announcement of the UK Government review and consultation into the operation of Parts 1, 2, 3 and 4 of the Act on 23 January 2025.

While Part 6 is not expressly within the scope of the review, we wished to set out a view given its important place within the legislation. We welcome the UK Government's statement that Part 6 "remains an important mechanism which enables the UK government to deliver for people across the UK and on shared priorities with the devolved governments" and that the review will "not consider whether to repeal the UK Internal Market Act or any part of it."

[redacted] recognises the wider significance of the Act as a whole to the regulation of the United Kingdom's internal market and welcomes the UK Government's commitment to ensure that the application of the Act and its processes are appropriate and transparent.

This response however seeks to highlight specific issues of the application of the Act in relation to Scotland's communities and the continued importance of the Part 6 powers.

Background

Part 6 of the Act consists of sections 50 and 51, which provides a broad power to UK Ministers to provide financial assistance for a range of purposes including promoting economic development, providing infrastructure, supporting cultural activities, sport, international education and training activities and educational exchanges. This part of the Act applies across the UK.

These sections build on existing statutory and common law powers to spend on local projects that have been inconsistent across the UK, providing a single, comprehensive statutory basis for providing financial assistance for these purposes.

The explanatory notes to the Act recognise that prior to enactment UK Ministers had “a number of existing statutory powers to provide financial assistance in various policy areas”, including in Scotland. The notes cite as an example the Industrial Development Act 1982 as amended, which provides concurrent powers to the UK Government across the UK and Ministers in the devolved administrations to provide financial assistance to industry. Section 8 powers of that Act have been utilised in the UK Government’s city deals programme – firstly in a Scottish context when Glasgow was included in the “second wave” of areas supported by the deals programme, with a deal agreement signed in 2014.

Ad hoc spending has also previously been a feature of fiscal events. The 2016 Budget included £5 million in grant provision towards the establishment of the V&A Dundee museum, while in 2018 support was offered following a major fire in Belfast city centre.

In a devolved context, the National Audit Office has referenced this spend as “non-Barnett allocations”. In practice, however, many of the programmes utilising Part 6 powers have published headline spending figures in Scotland, England, Wales and Northern Ireland with reference to their proportionality. The NAO has also noted that the treatment of non-Barnett allocations has provided a fiscal advantage to the devolved administrations, observing:

> *“because of the way the Barnett formula works, the devolved administrations will have benefited from consequential amounts of funding from UK government spending on city deals in England. But England does not receive consequential amounts of funding from the UK government as a result of direct funding allocated to the devolved administrations”*

Existing use of Part 6 powers in Scotland and across the UK

Following the Act coming into effect, the Part 6 powers have been utilised in a variety of ways. While these are often seen in the scope of the devolution settlements in Scotland, Wales and Northern Ireland, the Part 6 powers have been utilised as a statutory basis for a number of UK-wide programmes, supporting UK-wide policy initiatives in all parts of the United Kingdom or in specific areas.

Some of the functions with relevance to Scotland include:

- **UK Shared Prosperity Fund** and its short-term predecessor, the Community Renewal Fund. This funding was largely seen as a replacement for EU structural funds – with the UKSPF evolving into providing multi-year support for local authorities' priorities that would "enable truly local decision making and better target the priorities of places within the UK". A one-year transitional arrangement is in place for 2025-26 following the 2024 Autumn Budget.
- The **Levelling Up Fund**. The previous government arranged three rounds of the fund as part of its wider "levelling up" policy agenda. The first two rounds were based on a competitive bidding process among local authorities across the UK seeking funding for local projects. The third round was allocated, largely based on proposals submitted in previous rounds.
- The **Plan for Neighbourhoods,** replacing the Long-term Plan for Towns. A ten-year funding arrangement providing support to ten towns in Scotland, accompanied by "endowment-style" funding of £20 million each. Under the predecessor programme, selected towns have formed Town Boards, which have worked towards the creation of a town plan, setting out local priorities – the new Plan for Neighbourhoods has taken an approach of building on this existing work.
- The **Community Ownership Fund**. Local community and voluntary groups could bid for support from the COF over four rounds with the aim of protecting and improving important community assets. This generally provided smaller grants, with the largest award in Scotland being £2 million towards the regeneration of the King's Theatre in Edinburgh.
- **Community Regeneration Partnerships,** replacing Levelling Up Partnerships. The LUP programme applied to four local authorities in Scotland, providing £20 million of funding to each area to build place-based regeneration and providing a basis for the UK Government to work with the local authority, Scottish Government and other local partners to address specific local challenges and opportunities.

- **Homes for Ukraine** programme. Funding has been provided to local authorities to make 'thank you payments' to households under the Homes for Ukraine programme. This allows people with a spare room or other form of available housing to host people fleeing the conflict in Ukraine.[1]
- The **Turing scheme**. Named after Alan Turing, this programme provides funding to UK education providers to support pupils and students to take part in study and work placements. Its role as a 'replacement' for UK access to the Erasmus+ scheme has been discussed, however in Northern Ireland the Turing scheme operates alongside Erasmus+.
- The **Future Support Offer** operates in Great Britain, providing funding to organisations which provide practical support to help claimants access Universal Credit.
- **New Burdens Funding**. Providing support to local authorities in Scotland for additional costs in delivering elections and election registration activity under the Elections Act 2022. In England and Wales, the funding was delivered through grants under Section 31 of the Local Government Act 2003.

Impact of Part 6 programmes on communities in Scotland

The provision of support under Part 6 of the Act has been a welcome addition to the community funding landscape in Scotland. Many of the funds have provided considerable support while local government budgets in Scotland have been strained and Scottish Government programmes such as the Regeneration Capital Grant Fund have been scaled back.

The Levelling Up Fund has funded 24 significant projects to a total value of £471 million. Each of Scotland's 32 local authorities were active in the bidding process for the fund, with a majority – 22 councils - being successful in at least one of their bids.

[redacted]

On a smaller scale, the Community Ownership Fund has provided grant funding to 61 projects across 21 local authority areas in Scotland over four rounds, totalling £27.8 million in support.

Projects under two emergent programmes announced under the previous government have been continued by the current government following the Autumn Budget 2024. These include ten towns in Scotland to receive funding as part of the Long-term Plan for Towns, each to benefit from £20 million, and four local authorities to create Levelling Up Partnerships, also benefiting from £20 million each. These programmes are being modified and replaced with the Plan for Neighbourhoods and Community Regeneration Partnerships respectively.

Around £288 million has been committed in spend through the UK Shared Prosperity Fund in Scotland, including ring-fenced sums for the Multiply adult numeracy programme and the transitional funding arrangements announced in the 2024 Autumn Budget.

A number of other smaller programmes have also been utilised the Part 6 powers, including the Multi-Sport Grassroots Facilities programme, investing £18.3 million in 86 projects supporting grassroots sport facilities across Scotland.

Future objectives

[redacted] has welcomed the partnerships built between the UK Government, devolved administrations and local authorities that have resulted from a number of the programmes utilising Part 6 powers and the opportunities for dialogue between government at all levels.

The focus on development in communities, combined with the intent of reflecting local and community priorities, is an extremely positive element of these programmes. In many cases, such as through the UKSPF, the UK Government’s role has been one of facilitation, taking a “light-touch” approach to overseeing spend and providing appropriate space for local and community involvement.

The active participation of local residents, voluntary and community groups and the third sector, alongside public bodies, business and other key local stakeholders in decision-making and prioritisation of local projects has been an important element of early success in these programmes. This has largely allayed concerns of a “top-down” approach being taken – and must remain a core part of any future work in the communities space and place-based investment more generally. However increasingly there are calls for greater transparency and accessibility in these processes.

The Part 6 programmes have provided vital support for local projects that is unlikely to be available from alternative sources. Some of the competitive bidding processes like the former Levelling Up Fund have seen considerable interest from across Scotland. Local authorities have, however, emphasised the high cost of preparing bids as well, in some authorities, the lack of in-house expertise in bid-preparation. Successful projects have had a considerable local impact and interest.

We have welcomed the UK Government's continued commitment to support for the ten towns in Scotland that were part of the previous government's *Long-term Plan for Towns*, and for the four local authorities that were covered by the former Levelling Up Partnerships programme. These programmes were designed to provide long-term funding support - but also to break down siloed approaches in government, with local leadership. Following the general election, the UK Government has yet to fully outline the changes it envisages to these programmes, but we strongly urge that a continued focus on the programmes is maintained and that the active involvement of the UK Government is continued throughout.

In advance of the general election, the Labour Party gave indications of a greater role for the Scotland Office in Part 6 spending. [redacted] would welcome further consideration of the role of the three Territorial Offices in the administration of programmes and the additional value that these departments could add.

Neighbourhood boards and area partnerships should be seen not as standalone transient projects, but the first step in more active engagement at a local level by central government based on a relationship of mutual understanding and led by the needs of diverse local communities. [redacted] would welcome, in due course, consideration of the positive learning from the partnership and neighbourhood or town board approach in creating more permanent models to directly support the aspirations of local communities.

Following the Autumn Budget 2024, the UK Government announced a last round of successful bids for the Community Ownership Fund before the fund would be closed with no further bidding windows.

The Ministry of Housing, Communities and Local Government noted that this was a “difficult” decision, but that the Government “remains committed to the communities’ sector and community empowerment”. While referencing the significant work that the UK Government is undertaking on the Devolution White Paper and local community rights to buy in England, there has as yet been no clarity on future work with communities in other parts of the United Kingdom.

[redacted] has previously advocated for a more permanent UK Communities Fund, bringing together resources for community and voluntary organisations, as well as providing a single point of access for biddable funds and support. This would assist in reducing the cluttered landscape of programmes that have emerged and improve visibility of UK Government support.

March 2025

[redacted]

UK Internal Market Review

[redacted] is the voice of Welsh farming, championing, and representing farmers throughout Wales and across all agricultural sectors. Our vision is for a productive, profitable, and progressive Welsh agricultural industry, capitalising on global opportunities, contributing to the national economy and supporting thriving rural communities.

We very much welcome the opportunity to comment on the UK Government's review in relation to the UK's Internal Market. Our comments were made at a face to face with officials at the Cardiff Roundtable on 6th March and our response here is based on the main questions you asked at that meeting.

What are your views on how the UK internal market for goods is best supported using the UK Internal Market Act?

[redacted] fully accepts that since our departure from the European Union's single market, and the regulatory convergence it imposes, there is genuine potential for new barriers to intra-UK trade to arise as a result of diverging regulation in each of the UK's home nations, as areas previously occupied by Community law revert to the competence of London, Cardiff, Edinburgh and Belfast.

[redacted] ([redacted] meet regularly to ensure that farms in all parts of the UK have a common voice as the UK leaves the EU's single market and forges its own agriculture and trade policies. The Unions have agreed the following principles, mindful of the Northern Ireland protocol, that should guide policy development and implementation following the UK's departure from the single market:

[redacted]

1. The current devolution settlement of policy and regulation to the constituent parts of the United Kingdom should be respected and maintained.

2. The UK's various Governments, Parliaments and regulators should take every step to retain and protect a well-functioning single market for food, agricultural commodities, part/processed agricultural products, live animals and breeding material, and plant and plant products throughout the UK.

3. In developing distinct agricultural policies to replace the Common Agricultural Policy, Farming Ministers across the UK should ensure that the funding, design, and application of their agricultural policy should not adversely impact the functioning of the UK single market.

4. The impact of future trade policy, which is a reserved matter for the UK government, should be considered by UK farming ministers in determining these future agriculture policies.

5. Farming Ministers and agricultural departments across the UK must establish and maintain regular, formal, and cooperative arrangements to manage policy, legislation, and delivery of regulation across the UK economic area. A guiding principle should be that no single country determines or curtails UK policy in the rest of the UK.

6. No part of the UK should be able to act, or avoid action, that threatens to curtail access for other parts of the UK to third country markets, or that question the UK's adherence to its international agreements.

7. The UK Government should retain its commitment to provide in the long term at least the same level of public investment and distribution in agriculture across the UK.

It is very important to Wales's farmers that the same basic regulatory requirements are in place in each of the home nations so that we have a level playing field and fair competition for the agricultural sector across the UK, and to ensure that what we continue to be able to access vital markets in England, Scotland and Northern Ireland.

There are around 575 farm businesses operating across GB's internal borders and many more which straddles the international border between Northern Ireland and the Republic of Ireland, for whom regulatory divergence would pose a particular and unique challenge.

Faced with following different regulatory standards, every farm and food business that depends on trade within the UK internal market would be affected should different standards for production methods, labelling or product standard become barriers to trade.

We would for example point to the fact that around 60 per cent of Welsh red meat is sold on the UK market, with only 5% of Welsh red meat sold within Wales. When it comes to dairy,

[redacted]

in Wales was estimated annual production is 2000 million litres of milk but has a current processing capacity estimated at 956m litres per year. As a small country which produces

far more milk than it consumes, we are very dependent on being able to send this to other parts of the UK for processing and consumption.

Devolution represents a major, comparatively recent development in the UK's constitutional landscape. That landscape is different to the one which existed when the UK joined the EEC. We have moved from an arrangement in the 1970s in which power was concentrated in London, to one in which devolved institutions have law making responsibility in relation to several subject areas and have become permanent features of the UK's constitutional architecture.

On 1st January 2021 a range of powers previously exercised at EU level reverted to the competence of the UK and devolved governments. [redacted] is also very much aware of the interconnectedness that exists between a well-functioning internal market and the implementation and oversight of obligations which may arise from future trade deals, as well as the taking forward of the UK's exporting ambitions.

We cannot however overlook the sheer size of the English economy and population relative to those of the other home nations, which makes it the dominant force within the UK. This dominant position means that the views of English businesses, consumers, and indeed the UK government in legislating on behalf of England, will exert an incredibly strong influence on regulatory standards across the UK.

In practice, and owing to its comparative size, Wales, although notionally able to 'do its own thing' within its borders may well have to align itself with English rules. It is therefore likely that rules set in Westminster for England, will very probably ripple out from the centre to the rest of the UK, and mean to a greater or lesser extent, the foreclosing of devolved policy choices.

The reality is that where the review talks about divergence, it is perhaps not really about the concept of the home nations diverging from one common ***UK norm***, rather what is probably anticipated is one or more of the devolved nations departing from the ***UK(England) norm***.

The Union's concern over production methods used elsewhere in the world, such the use of chemical washes for chickens as a means of compensating for poor standards of production, the hormone treatment of beef cattle, or the use of plant protection products which are not available to our own producers are of course well known.

We note the government's assurances that it will not lower standards in trade deals and its commitment to a Trade and Agriculture Commission but following the announcements this week about the offensive trade objectives of the Trump administration in the USA and its desire to open markets for its Agri food products including the UK market this is now causing us a worrying added concern.

In theory decisions on matters such as animal health and welfare or hormone treatment of beef rest with devolved governments. Were the UK government to decide to allow products

[redacted]

produced to standards which would be illegal in Wales, onto the market in England as third country imports, or indeed if farmers in England were ever permitted to use such production methods, then the principle of mutual recognition would mean that they would be in free

circulation across the UK, with devolved governments powerless to exclude such products from their territories.

We would be deeply concerned about the damaging effect that the arrival of inferior agri-food products in the Welsh marketplace could have on Wales's farmers who adhere to world-leading standards.

Therefore, although regulatory freedoms for the home nations in areas previously occupied by EU law, when we consider how the exercise of these powers will of course be subject to the obligations of mutual recognition and non-discrimination, as well as wider economic considerations, then it is arguable, that in practical terms at least, the transfer of these powers can prove somewhat nugatory.

Looking to the future we need to consider the distinct possibility of the UK and the EU reaching a Sanitary and phytosanitary (SPS) agreement and the effect this would have on the workings of an Internal Market. We cannot ignore this possibility particularly given that the Labour Government declared its intention to seek such an agreement with talks expected in May 2025.

How can the OIM best support the internal market through its role in providing independent monitoring and advice?

[redacted] believe that the OIM through detailed investigations and reports will play a vital role in ascertaining what is working and what is not and more importantly the effect of the actions on individual countries. In effect they are carrying out an independent impact assessment.

[redacted]

UK INTERNAL MARKET ACT 2020: REVIEW AND CONSULTATION RELATING TO PARTS 1, 2, 3 AND 4

Summary

The UK Internal Market Act 2020 (UKIMA) continues to have significant potential implications for Scottish agriculture, both politically and practically. As yet, there is no clear evidence that the UKIMA has had an adverse impact on Scottish farming and crofting, or the wider agri-food sector. However, [redacted] remains concerned that the market access principles of the UKIMA have the potential to undermine devolved policy making in relation to agricultural, rural development, environmental and agri-food issues.

Background and General Comments

The UKIMA was introduced post-Brexit to ensure seamless trade between England, Scotland, Wales, and Northern Ireland. It enshrines two key market principles:

- Mutual recognition: goods and services lawfully sold in one part of the UK can be sold in another without additional barriers.
- Non-discrimination: rules from one UK nation cannot discriminate against goods or services from another.

[redacted] considers that there remains significant potential impacts for Scottish agriculture because of the 'back stop' of the UKIMA and because 'Common Frameworks' have failed to enable consensus decision making on devolved matters that would ensure the integrity and fair operation of the UK's own single market.

Agriculture, and other related environmental and agri-food interests, is devolved to Scotland. This means the Scottish Government and the Scottish Parliament have the autonomy to set agricultural and other related policies, such as agricultural support, environmental standards, and food labelling.

[redacted] is concerned because the UKIMA's mutual recognition principle means that Scotland may not be able to prevent goods entering from other parts of the UK if they do not meet the standards set in Scotland and to which Scottish farmers and crofters must adhere.

This limits the Scottish Government and Scottish Parliament's ability to set higher or different environmental or food standards without risking being undercut by producers in England (or other parts of the UK) with different rules. Instead of a 'race to the top', this may mean operating at the lowest common denominator to remain at all competitive. This would not be in the interests of Scotland's internationally renowned reputation for high quality, provenance-based food production – which is critical to the future economic prosperity of Scotland.

Scotland's agricultural and agri-food sectors must be able to operate to standards that are appropriate to the Scottish context, and which differentiate Scottish agri-food products. In blunt terms, that means they must not be undermined by cheaper products from the rest of the UK that may not have to meet the same or equivalent standards.

Post-Brexit, EU agricultural funding (CAP) has ended. As a result, Scotland's capacity to continue direct support payments, subject to conditions to attain policy objectives, remains critical to the viability of Scottish agriculture and all that it underpins – economically, environmentally and socially.

Therefore, it is vital that the continues to Scottish Government has the power to deliver appropriate direct support funding that meets Scottish agriculture's needs if it is to play its unique role in delivering on high-quality food production, tackling climate change, restoring nature and underpinning rural communities. The UKIMA must not erode Scotland's capacity to do this. Therefore, [redacted] firmly believes that Common Frameworks must be used as a vehicle to build consensus and enable devolved policy development that is not then undermined by the back stop of the UKIMA.

While some have labelled the UKIMA a 'power grab', arguing it imposes UK-wide rules that override devolved decision-making, [redacted] is seeking the effective operation of Common Frameworks.

The Common Frameworks approach was meant to replace EU-wide rules with UK-wide cooperation after Brexit, but when it comes to Scottish agriculture, their effectiveness is mixed at best and non-existent at worst.

As inter-governmental agreements to manage policy areas that were previously governed by the EU and which fall into devolved competence, NFU Scotland remains a steadfast advocate of the Common Frameworks approach.

Rather than one government (usually the UK Government) imposing rules, Common Frameworks are supposed to foster collaborative policy-making - with co-operation over conflict.

As such, Common Frameworks allow Scotland to shape UK-wide rules in areas like agricultural support, food safety, environmental standards, and animal health. In principle, rather than current practice, Scottish ministers are able participate in the development and agreement of Common Frameworks whereby decisions are made by consensus.

However, as has been well documented, the UKIMA can override the outcomes of Common Frameworks.

Even if Scotland agrees to certain standards through a Common Framework, the UKIMA's mutual recognition market access principle means Scotland cannot block imports of products that meet lower standards elsewhere in the UK. This weakens the effectiveness and authority of Common Frameworks in practice. As such, Common Frameworks have been marginalised to the point of redundancy.

Most Common Frameworks that were developed by the UK Government and the devolved administrations, including the Scottish Government, are non-binding and rely on goodwill and co-operation. There is no legal enforcement if the UK Government acts unilaterally or ignores Scottish concerns. This has led to frustration in Scotland, not least by [redacted].

While [redacted] entirely supports the principles of Common Frameworks, they have often been developed and operate with limited public scrutiny, making it hard for stakeholders in Scottish agriculture to engage or influence them.

While Common Frameworks can work as forums for negotiation and sometimes prevent direct clashes, they do not override the UKIMA, they lack legal power and can be by-passed by the UK Government. As a result, [redacted] remains both concerned and frustrated that the real influence of Common Frameworks on protecting distinct Scottish agricultural policy continues to be suffocated by the UKIMA.

Question 1: What are your views on how the UK internal market for goods is best supported using the UK Internal Market Act?

The UK Internal Market is critical to the interests of Scottish agriculture and the vitally important food and drinks sector it underpins. [redacted] stresses the need for agricultural support policies to diverge where necessary to reflect different needs and objectives. However, the free movement of goods and services and the regulations governing agricultural production, animal welfare, the environment, etc. must be aligned so there is no competitive (cost) advantage or disadvantage from farming in one part of the UK over another.

[redacted] supports Common Frameworks as they would ensure that the UK's internal market would effectively as it operated pre-Brexit and as it does now – providing a level playing field of minimum regulatory standards to enable the free movement of goods and services without unfair distortion. Common Frameworks should manage policy differences based on agreement and be founded on respect for devolution.

However, the UKIMA appears to limit the devolved administrations' ability to act if any standards were lowered and gives the UK Government a final say in areas of devolved policy.

Question 2: What are your views on whether differing regulations that have effect later in the supply process are more straightforward for businesses to address?

[redacted] is not able to answer this question.

Question 3: What is the right balance between the potential for local regulatory innovations in sectors and UK-wide alignment?

The regulatory fields of agriculture, environment and agri-food production, processing and retailing have a hugely important role in agricultural practice and trade within the UK. They also require close co-operation between the UK Government and devolved administrations.

[redacted] supports the principle of Common Frameworks as an important component of safeguarding the integrity of the UK Internal Market. This support has always been predicated on the Common Frameworks being 'commonly agreed' through mutual agreement between the UK Government and the devolved administrations and not by imposition from the centre.

Common Frameworks are integral to the functioning of the UK's internal market. They must operate effectively to preserve the UK's internal market and to ensure that the UK does not breach its international obligations and should respect the devolution settlements and democratic accountability of the devolved legislatures.

[redacted] believes that Common Frameworks should:

- enable the functioning of the UK's internal market, while acknowledging policy divergence
- ensure compliance with international obligations
- ensure the UK can negotiate, enter and implement new trade agreements and international treaties
- enable the management of common resources
- administer and provide access to justice in cases with a cross-border element
- safeguard the security of the UK

[redacted] remains concerned that the UKIMA could potentially override all Common Frameworks relating to agricultural support, environmental and animal welfare standards, and food. In addition, it does not include any proposals for how UK internal market disputes may be resolved or how Common Frameworks might operate and be governed. This is a major omission.

Question 4: What are your views on the operation of the market access principles for goods to date?

To date, the market access principles (mutual recognition and non-discrimination) of the UKIMA have had little or no direct impact on the interests of Scottish agriculture or the agri-food sector it underpins.

However, there is now significant regulatory and policy divergence beginning to emerge between Scotland and England. For example, the Genetic Technology (Precision Breeding) Act 2023 will facilitate the implementation of precision breeding in England to allow gene edited products (plat and animal) to be produced on a commercial basis and have access to the UK's internal market.

Given this legislation does not apply in Scotland, this means that under the UKIMA agri-food production using gene editing techniques must be allowed market access into Scotland. This has the significant potential to undermine the competitiveness of Scottish farmers and crofters who do not have access to equivalent production techniques. This is highly likely to create a market distortion in what is the UK's 'single market'.

As a consequence, [redacted] remains very concerned that the market access principles of mutual recognition and non-discrimination carry the distinct risk of undermining devolved policy making and the distorting the UK's internal market.

Question 5: What are your views on the use that has been made of the Part 1 amendment powers – for example the exclusion for single-use plastics?

[redacted] has no specific comments on Part 1 amendment powers. On single-use plastics, in an agricultural context these are often in the form of silage wrap, feed and fertiliser packaging, pesticides containers, etc. and these are currently exempt from new regulations due to their practical importance.

Question 6: What are your views on how the UK internal market for services is best supported using the UK Internal Market Act?

This question is not applicable to [redacted] primary interests.

Question 7: What is the right balance between the potential for local regulatory innovations in services and UK-wide alignment?

This question is not applicable to [redacted] primary interests.

Question 8: What are your views on the operation of the market access principles for services to date?

This question is not applicable to [redacted] primary interests.

Question 9: What are your views on the use that has been made of the Part 2 amendment powers – for example, removing exclusions for certain services?

This question is not applicable to [redacted] primary interests.

Question 10: What are your views on how the UK internal market for professions is best supported using the UK Internal Market Act?

This question is not applicable to [redacted] primary interests.

Question 11: What is the right balance between the potential for local regulatory innovations in professions and UK-wide alignment?

This question is not applicable to [redacted] primary interests.

Question 12: What are your views on the operation of the system for recognising professional qualifications to date?

This question is not applicable to [redacted] primary interests.

Question 13: How can the Office for the Internal Market best support the UK internal market through its role in providing independent monitoring and advice?

[redacted] believes the Office for the Internal Market (OIM) plays an important role in relation to Scottish agriculture, especially in how post-Brexit trade and regulation operate across the UK.

As part of the Competition and Markets Authority (CMA), the OIM clearly has the responsibility to monitor and report on the functioning of the UK internal market, including providing a non-binding mechanism to resolve disagreements (e.g. if one government claims another's regulations unfairly disrupt trade).

As agriculture is devolved, so Scotland can set different environmental, animal welfare, or food standards, it is vital that the OIM monitors whether regulatory or agricultural support differences create barriers to trade under UKIMA.

This might mean that if Scotland tries to introduce a higher standard for sound reasons, the OIM may flag it as disrupting market access. Equally, while not directly involved in the differing agricultural support measures that now operate across England, Scotland, Wales and Northern Ireland, the OIM could be drawn into disputes over how funds are used or if different support schemes distort the UK internal market's operation and/or competition.

As such, [redacted] has some concern that the OIM lacks devolved accountability - it reports to the UK Parliament, not to the Scottish Parliament. There is a risk it becomes a UK Government tool for centralising regulation, especially in sensitive sectors like agriculture.

Question 14: What are your views on whether the current arrangements in Part 4 relating to the use of the Office for the Internal Market task groups are appropriate for securing the most effective and efficient performance of the CMA's Part 4 functions?

This question is not applicable to [redacted] primary interests.

Question 15: What improvements could be introduced to facilitate more pragmatic management of the UK Internal Market Act's exclusions process?

The exclusions process under the UKIMA is a key mechanism that determines when devolved governments can legitimately diverge from the rules of the UK internal market, particularly mutual recognition and non-discrimination.

Under UKIMA, mutual recognition and non-discrimination rules normally apply across the UK. This means goods or services lawfully sold in one part of the UK must be accepted in all other parts and governments cannot impose rules that discriminate (directly or indirectly) against goods/services from another part of the UK. However, the exclusions process means that certain policy areas or regulations can be excluded from these rules.

[redacted] fully supports the exclusions process if agreed through Common Frameworks. In practice, this means exclusions are intended to arise from inter-governmental agreement so that the UK Government and the devolved administrations (Scotland, Wales and Northern Ireland) must negotiate and agree on exclusions jointly.

Question 16: How should we ensure proportionate engagement with interested parties in relation to potential exclusions?

As with all aspects of Common Frameworks, the exclusions process must involve direct consultation and engagement with the key and relevant stakeholders by the UK Government and the devolved administrations. It is vital that the issues and opinions of those directly affected by both policy/regulatory divergence and/or any exclusions are fully taken into account.

Question 17: What evidence should be provided in support of an exclusion proposal by the proposing government, so the proposal can be fully considered (for example, information on potential impacts on businesses' ability to trade within the UK and the policy implications of not having an exclusion)?

[redacted] is unable to provide any specific examples of the sort of evidence that should be provided to support an exclusion. This would have to be considered on a case-by-case situation or specific circumstances.

Question 18: Should there be a different process to consider exclusions proposals which could lead to potentially significant economic impact, compared to those likely to lead to smaller economic impact?

[redacted] considers this question to be too vague to provide a meaningful answer. Without definitions any answer would be very subjective and dependent on the nature and scale of impacts and who carries the costs (and/or benefits).

Question 19: What do you think constitutes a potentially significant economic impact?

See the response to Question 18, above.

Question 20: Is there anything else you want to tell us about the operation of the UK Internal Market Act?

It is the clear view of [redacted] that the principles embedded in the UKIMA pose a significant risk to the development of Common Frameworks and to devolved policy, and therefore to the integrity of the UK's internal market.

The UKIMA potentially undermines the Common Frameworks process both in principle, as they have moved from agreement to imposition, and in practice by removing the incentive for the UK Government and devolved administrations to agree ways to align and manage differences when mutual recognition and non-discrimination rules require acceptance of standards from other parts of the UK.