



The Scottish Parliament  
Pàrlamaid na h-Alba

## Constitution, Europe, External Affairs and Culture Committee

The Rt Hon Douglas Alexander  
Minister of State (Minister for Trade Policy and Economic Security) at the  
Department for Business and Trade  
UK Government

**1 May 2025**

Dear Minister,

### UKIMA Consultation

The Constitution, Europe, External Affairs and Culture Committee 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.

The Committee 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.

Yours sincerely,

**Clare Adamson MSP**  
**Convener**

## Introduction

1. The Constitution, Europe, External Affairs and Culture Committee welcomes the opportunity to respond to the *UK Internal Market Act 2020: review and consultation relating to Parts 1,2,3, and 4*.<sup>1</sup> 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*<sup>2</sup>, *The Impact of Brexit on Devolution*<sup>3</sup> and *How Devolution is changing Post-EU*<sup>4</sup>, 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 During the current session of the Parliament there have been two further motions agreed calling for UKIMA to be repealed.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 3<sup>rd</sup> 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

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<sup>1</sup> [UK Internal Market Act 2020: review and consultation relating to Parts 1, 2, 3 and 4 - GOV.UK](#)

<sup>2</sup> [UK Internal Market Inquiry Report](#)

<sup>3</sup> [The Impact of Brexit on Devolution Report](#)

<sup>4</sup> [How Devolution is Changing Post-EU](#)

standards and safeguards across the UK that does not undermine devolution in any part of the UK.”<sup>5</sup>

5. More recently, on 19<sup>th</sup> 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.”<sup>6</sup>

6. The Scottish Government’s position is that “in line with two votes in the Scottish Parliament in October 2023 and February 2025: we must see the full restoration of the powers of the Scottish Parliament. The IMA should be repealed and replaced with an equitable, co-designed system built around the Common Frameworks approach.”<sup>7</sup>
7. The Scottish Government 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.”<sup>8</sup>
8. The Committee notes that, despite both the Scottish Government and the Scottish Parliament supporting repeal of UKIMA, the review will “not consider whether to repeal the UK Internal Market Act or any part of it.”<sup>9</sup> 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.”<sup>10</sup> 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.”<sup>11</sup>
9. **A majority of Members on the Committee remain of the view that UKIMA should be repealed.**

## UK Internal Market

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<sup>5</sup> [Meeting of the Parliament: 03/10/2023 | Scottish Parliament Website, S6M-10703 \[vote passed for 83; against 29\]](#)

<sup>6</sup> [S6M-16511 | Scottish Parliament Website \[vote passed for 73; against 47\]](#)

<sup>7</sup> [Scottish Government Position Paper on the Internal Market Act 2020, April 2025](#)

<sup>8</sup> [Scottish Government Position Paper on the Internal Market Act 2020, April 2025](#)

<sup>9</sup> [UK Internal Market Act 2020: review and consultation relating to Parts 1, 2, 3 and 4 - GOV.UK](#)

<sup>10</sup> [UK Internal Market Act 2020: review and consultation relating to Parts 1, 2, 3 and 4 - GOV.UK](#)

<sup>11</sup> [UK Government launches UK Internal Market Act consultation - GOV.UK](#)

10. The Committee 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.”<sup>12</sup> 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<sup>13</sup>
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<sup>14</sup>. We heard similar evidence as part of our current short inquiry.
13. For example, the National Farmers’ Union Scotland (NFUS) 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.”<sup>15</sup>
14. The Scottish Retail Consortium’s (SRC) 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.”<sup>16</sup>
- 15. As we stated in our previous report on the UK internal market, the Committee 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.”<sup>17</sup> The White Paper stated that –

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<sup>12</sup> [UK Internal Market Act 2020: review and consultation relating to Parts 1, 2, 3 and 4 - GOV.UK](#)

<sup>13</sup> [Annual report on the operation of the UK internal market 2023 to 2024 - GOV.UK](#)

<sup>14</sup> [The UK Internal Market Inquiry Report](#)

<sup>15</sup> [Official Report](#) Col. 40

<sup>16</sup> [UK Internal Market Act 2020 – Consultation and Review, SRC](#)

<sup>17</sup> [UK internal market](#)

“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.”<sup>18</sup>

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...”.<sup>19</sup> 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.”<sup>20</sup>

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.”<sup>21</sup>

20. The Committee 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.”<sup>22</sup>

21. The Committee has previously recognised that the market access principles do not introduce any new statutory limitations on the competence of the Scottish Parliament or Scottish Ministers. 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 Scottish Parliament’s 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 Scottish Government 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

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<sup>18</sup> [UK internal market](#)

<sup>19</sup> [UK Internal Market Act 2020: review and consultation relating to Parts 1, 2, 3 and 4 - GOV.UK](#)

<sup>20</sup> [UK Internal Market Act 2020: review and consultation relating to Parts 1, 2, 3 and 4 - GOV.UK](#)

<sup>21</sup> [UK internal market White Paper \(July 2020\)](#)

<sup>22</sup> [UK Government launches UK Internal Market Act consultation - GOV.UK](#)

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, Dr Chris McCorkindale, 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.<sup>23</sup>
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 Committee concluded that in resolving this tension it is essential that the fundamental principles which underpin devolution are not undermined.
26. NFUS 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.”<sup>24</sup>
27. Professor Horsley’s 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.).”<sup>25</sup> Professor Hunt suggests that UKIMA is “out of step with...how other decentralised or multi-level states manage”<sup>26</sup> internal markets.
- 28. The Committee 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 Committee recommends that the review should seek to resolve this tension in a way which promotes open trade without undermining devolution.**

## Policy Innovation

29. The Committee welcomes the acknowledgement in the consultation document that devolved “powers promote an environment in which new, innovative

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<sup>23</sup> [UK Internal Market Inquiry Report](#)

<sup>24</sup> [Official Report](#) Col.43

<sup>25</sup> [UKIMA Consultation and Review Professor Thomas Horsley](#)

<sup>26</sup> [Official Report](#) Col. 10

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.”<sup>27</sup>

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. Professor Hunt 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”<sup>28</sup> 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.”<sup>29</sup> This means that “policy innovation is being frustrated through the concerns about the legislation’s impact.”<sup>30</sup>
31. In the same vein Professor Horsley 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.”<sup>31</sup> Dr Brown Swan’s view is that “the threat of regulatory chill is really profound.”<sup>32</sup>
32. Examples of this chilling effect include, as highlighted by Professor Horsley, “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...”<sup>33</sup>
33. The Committee also notes that on 20 January 2022, in response to a parliamentary question asking whether the Scottish Government would introduce a ban on the sale of glue traps, the Minister for the Environment and Land Reform 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.”<sup>34</sup>
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 traps in Scotland. The [Policy Memorandum](#) for the Bill explained that the Scottish Government wished to ban the sale of glue traps, as well as their use or purchase, and that they were exploring the possibility an exclusion from UKIMA. No exclusion was granted prior to Stage 3 consideration, but a Scottish Government amendment to ban sale was agreed to<sup>35</sup>. On 26 March 2024, the then UK Government wrote to the Scottish Government indicating that it did not agree the case for an exclusion in relation to glue traps<sup>36</sup>. The current UK

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<sup>27</sup> [UK Internal Market Act 2020: review and consultation relating to Parts 1, 2, 3 and 4 - GOV.UK](#)

<sup>28</sup> [Official Report](#) Col. 3

<sup>29</sup> [Official Report](#) Col.10

<sup>30</sup> [Official Report](#) Col.5

<sup>31</sup> [Official Report](#) Col. 12-13

<sup>32</sup> [Official Report](#) Col.6

<sup>33</sup> [ukima-consultation-and-review-professor-thomas-horsley.pdf](#)

<sup>34</sup> [Official Report](#), Col 4 [Question S6O-00653]

<sup>35</sup> [Official Report](#), Col 20 [19 March 2024]

<sup>36</sup> [Scottish Government letter from Deputy First Minister to Secretary of State for Environment, Food and Rural Affairs](#) [31 March 2024]

Government subsequently indicated in a [Ministerial Statement on 12 December 2024](#) that it intends to grant the exclusion.

35. Scottish Environment Link 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.”<sup>37</sup>
36. NFUS 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.”<sup>38</sup> 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.”<sup>39</sup>
37. The Scottish Government’s 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.”<sup>40</sup>
- 38. The Committee 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.”<sup>41</sup>**
- 39. We, therefore, welcome that the current UK Government has recommitted to the principles for Common Frameworks agreed at the Joint Ministerial Committee (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.”<sup>42</sup>**
- 40. The Committee believes, therefore, that the review should address the chilling effect on devolved policy innovation arising from the operation of UKIMA.<sup>43</sup>**

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<sup>37</sup> [Official Report](#) Col.39

<sup>38</sup> [Official Report](#) Col.46

<sup>39</sup> [Official Report](#) Col.56

<sup>40</sup> [Scottish Government Position Paper on the Internal Market Act 2020](#)

<sup>41</sup> [The UK Internal Market Inquiry Report](#)

<sup>42</sup> [Microsoft Word - Joint Ministerial Committee communique.docx](#)

<sup>43</sup> This paragraph was agreed by division (For: Clare Adamson MSP, George Adam MSP, Keith Brown MSP, Patrick Harvey MSP; Against: Stephen Kerr MSP, Neil Bibby MSP, Alexander Stewart MSP).

## Impact of UKIMA on Business

41. The Food and Drink Federation's (FDF) 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."<sup>44</sup>
42. The British Retail Consortium's (BRC) view, highlighted in the report 'The Internal Market Act: A Challenge to Devolution' by Scottish Environment LINK, 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."<sup>45</sup>
43. The SRC's 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."<sup>46</sup>
44. CBI Scotland 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."<sup>47</sup>

## 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"<sup>48</sup>. It also stated that open "markets enable frictionless trade that supports efficiency and productivity, increases business certainty and facilitates better investment decisions."<sup>49</sup>
46. The Committee discussed the extent to which UKIMA provides certainty with our witnesses. CBI Scotland 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."<sup>50</sup>

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<sup>44</sup> [ukima-food-and-drink-federation.pdf](#)

<sup>45</sup> [The-Internal-Market-Act-a-challenge-to-devolution-report.pdf](#)

<sup>46</sup> [UK Internal Market Act 2020 – Consultation and Review, SRC](#)

<sup>47</sup> [Official Report Col.13](#)

<sup>48</sup> [UK internal market](#)

<sup>49</sup> [UK internal market](#)

<sup>50</sup> [Official Report Col.2](#)

47. The Institute of Directors Scotland (IoDS) told us that “We need a UKIMA. The cost of not having it would be uncertainty.”<sup>51</sup> 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.”<sup>52</sup>
48. Food and Drink Federation Scotland (FDFS) told us that “our members definitely crave certainty for businesses. We are supportive of the principle of the internal market act.”<sup>53</sup> 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.”<sup>54</sup>
49. CBI Scotland told us that businesses “have expressed the need for greater clarity and predictability, particularly in regulated sectors such as food standards...”<sup>55</sup>
50. The BRC 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.”<sup>56</sup> Similarly, the IoDS suggested there “has been a little bit of uncertainty around the exclusions process...”<sup>57</sup>.
51. The Committee 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. IoDS 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.”<sup>58</sup>
53. CBI Scotland responded that “In principle, my answer to what you said is yes, but let us keep it simple” while FDFS said that, having “criteria that are as

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<sup>51</sup> [Official Report](#) Col.12

<sup>52</sup> [Official Report](#) Col.12

<sup>53</sup> [Official Report](#) Col.4

<sup>54</sup> [Official Report](#)Col.7

<sup>55</sup> [Official Report](#) Col.5

<sup>56</sup> [The-Internal-Market-Act-a-challenge-to-devolution-report.pdf](#)

<sup>57</sup> [Official Report](#) Col.4

<sup>58</sup> [Official Report](#) Col.15

understandable and clear as possible would be an opportunity to provide businesses with a bit more certainty in the longer term.”<sup>59</sup>

54. Professor McHarg told us that “the way in which the processes surrounding the enforcement of UKIMA intersect with devolved competence...are problematic in their uncertainty.”<sup>60</sup> There “are different types of uncertainty that operate but, unfortunately, they are mutually reinforcing.”<sup>61</sup>

55. Professor McHarg’s 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.”<sup>62</sup>

56. Professor Horsley 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.”<sup>63</sup>

57. Dr Brown Swan’s 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.”<sup>64</sup>

58. The FDF’s submission states that “the way the Act has been used to date has created uncertainty for businesses on devolved lawmaking.”<sup>65</sup> The SRC agree that UKIMA has created some uncertainty in policymaking.

59. The Scottish Government’s 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 Scottish Parliament” and “acts as a source of regulatory uncertainty for businesses and consumers.”<sup>66</sup>

**60. The Committee 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**

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<sup>59</sup> [Official Report](#) Col. 16

<sup>60</sup> [Official Report](#) Col.22

<sup>61</sup> [Official Report](#) Col 30

<sup>62</sup> [Official Report](#) Col.31

<sup>63</sup> [Official Report](#) Col.34

<sup>64</sup> [Official Report](#) Col. 36

<sup>65</sup> [ukima-food-and-drink-federation.pdf](#)

<sup>66</sup> [Scottish Government Position Paper on the Internal Market Act 2020](#)

**lawmaking. The Committee 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.”<sup>67</sup>

63. Professor Armstrong previously explained to the Committee that the “most useful available comparison from which to make sense of the UK internal market is the EU internal market.”<sup>68</sup> 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.”<sup>69</sup>

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. Professor Horsley and Professor Hunt 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.”<sup>70</sup> As noted above, UKIMA in contrast was enacted without the consent of the Welsh Senedd or the Scottish Parliament.

66. Scottish Environment LINK’s 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).”<sup>71</sup>

67. The effect of the market access principles, according to Professor Hunt and Professor Horsley, “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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<sup>67</sup> [UK internal market](#)

<sup>68</sup> [United Kingdom Internal Market Act 2020 | Scottish Parliament Website](#)

<sup>69</sup> [United Kingdom Internal Market Act 2020 | Scottish Parliament Website](#)

<sup>70</sup> [ukima-joint-written-submission-prof-hunt--horsley.pdf](#)

<sup>71</sup> [The-Internal-Market-Act-a-challenge-to-devolution-report.pdf](#)

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.”<sup>72</sup> “In particular, the UKIMA defines exceptions to the principles of non-discrimination and mutual recognition considerably more narrowly than under the EU Treaties.”<sup>73</sup>

### *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.”<sup>74</sup> 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.”<sup>75</sup> Likewise, Professor Horsley’s 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*<sup>76</sup> -
- 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

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<sup>72</sup> [ukima-joint-written-submission-prof-hunt--horsley.pdf](#)

<sup>73</sup> [ukima-joint-written-submission-prof-hunt--horsley.pdf](#)

<sup>74</sup> [EUR-Lex - 12016E036 - EN - EUR-Lex](#)

<sup>75</sup> [337897.pdf](#)

<sup>76</sup> [EUR-Lex - 12012M/TXT - EN - EUR-Lex: “Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the member states, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level... Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties. The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality”.](#)

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.<sup>77</sup>

### 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.<sup>78</sup>

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."<sup>79</sup>

75. Scottish Environment LINK 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."<sup>80</sup>

76. Dr Brown Swan's 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."<sup>81</sup>

### Proportionality Test

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<sup>77</sup> [REPORT: Westminster Rules? The United Kingdom Internal Market Act and Devolution](#)

<sup>78</sup> [The principle of subsidiarity | Fact Sheets on the European Union | European Parliament](#)

<sup>79</sup> [The principle of subsidiarity | Fact Sheets on the European Union | European Parliament](#)

<sup>80</sup> [Official Report Col. 41](#)

<sup>81</sup> [ukima-dr-coree-brown-swan.pdf](#)

77. The Committee 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).<sup>82</sup>

78. Professor McHarg's 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."<sup>83</sup>

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. Scottish Environment LINK 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."<sup>84</sup> 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."<sup>85</sup>

81. Professor McHarg 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." Dr Brown Swan's 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. Professor Horsley 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

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<sup>82</sup> [Principle of proportionality - EUR-Lex](#)

<sup>83</sup> [ukima-cosultation-and-review-aileen-mcharg.pdf](#)

<sup>84</sup> [Official Report](#) Col. 34

<sup>85</sup> [Official Report](#) Col. 41

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.”<sup>86</sup>

83. Professor Hunt 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.”<sup>87</sup>

84. Our Adviser, Dr Chris McCorkindale, 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 Scottish Government’s proposal to ban the sale of glue traps would almost certainly have been permitted under a principle of subsidiarity.”

85. The Scottish Government’s 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.”<sup>88</sup>

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.”<sup>89</sup>

87. The Scottish Government’s 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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<sup>86</sup> [ukima-consultation-and-review-professor-thomas-horsley.pdf](#)

<sup>87</sup> [UK Internal Market Act 2020 – Consultation and Review - Professor Jo Hunt](#)

<sup>88</sup> [How Devolution is Changing Post-EU](#)

<sup>89</sup> [Review of the Balance of Competences between the United Kingdom and the European Union | Subsidiarity and Proportionality](#)

people as possible (the principle of subsidiarity). The Act has no such balance or protection.”<sup>90</sup>

- 88. The Committee 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.”<sup>91</sup>**
- 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 Committee recommends that the review should resolve this disagreement and uncertainty without undermining the legitimate legislative and scrutiny functions of the Scottish Parliament.**
- 91. The Committee’s 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 the potential impact of government policy changes. The Committee 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. Dr Brown Swan 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.”<sup>92</sup> Professor Horsley 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.”<sup>93</sup> For example, all states and territories were involved in the drafting and agreement of the Mutual Recognition Act 1992 in Australia.
94. Dr Brown Swan 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

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<sup>90</sup> [Scottish Government Position Paper on the Internal Market Act 2020](#)

<sup>91</sup> [How Devolution is Changing Post-EU](#)

<sup>92</sup> [Official Report](#) Col.32

<sup>93</sup> [Official Report](#) Col.32

that concentration or centralisation of power.”<sup>94</sup> Our Adviser, Dr McCorkindale, 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”<sup>95</sup> and a regulatory role as the government for one of those constituent parts.

95. The Scottish Government’s 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.”<sup>96</sup> The Scottish Government cite a number of academics who view UKIMA as a “global outlier” including Jan Zglinski who suggests that, in significant ways, UKIMA “departs from existing blueprints – not just that provided by the EU, but other countries across the world.”<sup>97</sup>

**96. The Committee 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’.”<sup>98</sup>

98. The Committee notes that one of the key areas of disagreement between the UK Government and the devolved governments is the operation of the exclusions process<sup>99</sup>. The Committee 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<sup>100</sup>

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<sup>94</sup> [Official Report](#) Col.10

<sup>95</sup> [337897.pdf](#)

<sup>96</sup> [Scottish Government Position Paper on the Internal Market Act 2020](#)

<sup>97</sup> [THE UK INTERNAL MARKET: A GLOBAL OUTLIER? | The Cambridge Law Journal | Cambridge Core](#)

<sup>98</sup> [UK Internal Market Act 2020: review and consultation relating to Parts 1, 2, 3 and 4 - GOV.UK](#)

<sup>99</sup> Only UK Ministers have the power to amend UKIMA to change the list of exclusions

<sup>100</sup> [ukima-consultation-and-review-professor-thomas-horsley.pdf](#)

- 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.”<sup>101</sup>
- 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”<sup>102</sup>
- “a role for stakeholder consultation and scrutiny by the UK and devolved legislatures before exclusions are agreed.”<sup>103</sup>
- “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.”<sup>104</sup>
- “an agreed evidence base required to evaluate exclusion decisions to grant or withhold an exclusion.”<sup>105</sup>
- 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. Professor Horsley proposes reversing the burden of proof for exclusions. He states –

“Under the current UKIMA framework, it falls to the Scottish Government to initiate the exclusions process to shield devolved legislation from the MAPs. The Committee should consider pressing for the reversal of this burden of proof. The Scottish Parliament 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.”<sup>106</sup>

102. Professor Horsley 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-

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<sup>101</sup> [UK Internal Market Act 2020 – Consultation and Review - Professor Jo Hunt](#)

<sup>102</sup> [UK Internal Market Act 2020 – Consultation and Review - Professor Jo Hunt](#)

(the Committee notes that the Office for the Internal Market launched its regulatory developments dashboard on 31 March 2025 [OIM regulatory developments dashboard - GOV.UK.](#))

<sup>103</sup> [ukima-cosultation-and-review-aileen-mcharg.pdf](#)

<sup>104</sup> [ukima-dr-coree-brown-swan.pdf](#)

<sup>105</sup> [ukima-dr-coree-brown-swan.pdf](#)

<sup>106</sup> [ukima-consultation-and-review-professor-thomas-horsley.pdf](#)

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 Scottish Parliament 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.”<sup>107</sup>

103. Professor McHarg 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.”<sup>108</sup>

104. Dr Brown Swan’s 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.”<sup>109</sup> 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.”<sup>110</sup>

## Timing

105. Some of our witnesses highlighted issues around the timing of the exclusions process. Dr Brown Swan’s 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.”<sup>111</sup>

106. FDF’s 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.”<sup>112</sup>

107. FDF “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).”<sup>113</sup>

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<sup>107</sup> [Official Report](#) Col.16

<sup>108</sup> [Official Report](#) Col. 18

<sup>109</sup> [Official Report](#) Col.18

<sup>110</sup> [Official Report](#) Col.18

<sup>111</sup> [ukima-dr-coree-brown-swan.pdf](#)

<sup>112</sup> [ukima-food-and-drink-federation.pdf](#)

<sup>113</sup> [ukima-food-and-drink-federation.pdf](#)

## Uncertainty

108. Professor McHarg suggests that the exclusions process creates uncertainty, “particularly as it intersects with agreements on policy divergence reached via the Common Frameworks process.”<sup>114</sup>
109. Professor McHarg’s 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.”<sup>115</sup>
110. Dr Brown Swan 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.”<sup>116</sup> For example, with “the single-use plastics ban, there was a regulatory gap because the exclusion came through quite late. That creates uncertainty.”<sup>117</sup>
111. SRC’s 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.”<sup>118</sup>
112. Scottish Environment LINK’s 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. Dr McCorkindale’s 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. The Scottish Government 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

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<sup>114</sup> [ukima-cosultation-and-review-aileen-mcharg.pdf](#)

<sup>115</sup> [ukima-cosultation-and-review-aileen-mcharg.pdf](#)

<sup>116</sup> [Official Report](#) Col.25

<sup>117</sup> [Official Report](#) Col.28

<sup>118</sup> [UK Internal Market Act 2020 – Consultation and Review, SRC](#)

exception, and with robust evidence as to disproportionate market impact, should an exclusion not be agreed.”<sup>119</sup>

**115. The Committee 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. The Committee 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. The Committee, 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.<sup>120</sup> The Committee believes that it is essential that the exclusions process does not undermine the Scottish Parliament’s legitimate legislative and scrutiny functions. The Committee also believes that if an exclusion is not granted by UK Ministers that this is communicated to the Scottish Parliament at the same time as it is communicated to the Scottish Government, 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.”<sup>121</sup>

119. The Committee previously recognised that Common Frameworks “have the potential to resolve the tensions within the devolved settlement through

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<sup>119</sup> [Scottish Government Position Paper on the Internal Market Act 2020](#)

<sup>120</sup> [How Devolution is Changing Post-EU](#)

<sup>121</sup> [UK Internal Market Act 2020: review and consultation relating to Parts 1, 2, 3 and 4 - GOV.UK](#)

managing regulatory divergence on a consensual basis while facilitating open trade within the UK internal market.”<sup>122</sup>

## 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.”<sup>123</sup>

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

122. NFU Scotland supports the principle of Common Frameworks “as an important component of safeguarding the integrity of the UK Internal Market.”<sup>124</sup> 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.”<sup>125</sup> In their view the market access principles “pose a significant threat to the development of Common Frameworks and to devolved policy.”<sup>126</sup>

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.”<sup>127</sup>

124. NFUS 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.”<sup>128</sup>

125. Professor Hunt’s 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.”<sup>129</sup>

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<sup>122</sup> [UK Internal Market Inquiry](#)

<sup>123</sup> [How Devolution is Changing Post-EU](#)

<sup>124</sup> [ukima-consultation-and-review-national-farmers-union-nfu-scotland.pdf](#)

<sup>125</sup> [Official Report](#) Col.38-39

<sup>126</sup> [ukima-consultation-and-review-national-farmers-union-nfu-scotland.pdf](#)

<sup>127</sup> [ukima-consultation-and-review-national-farmers-union-nfu-scotland.pdf](#)

<sup>128</sup> [ukima-consultation-and-review-national-farmers-union-nfu-scotland.pdf](#)

<sup>129</sup> [UK Internal Market Act 2020 – Consultation and Review - Professor Jo Hunt](#)

126. Professor Horsley’s 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.”<sup>130</sup> 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.”<sup>131</sup> Professor McHarg notes that there “is no obligation to turn a common framework agreement into a UKIMA exclusion, which needs to be looked at.”<sup>132</sup>

## **Policy Substance**

127. The Committee has previously heard evidence that the focus of Common Frameworks is on process and ways of working rather than policy substance<sup>133</sup>. 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.”<sup>134</sup>

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

129. Scottish Environment LINK 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.”<sup>135</sup>

130. Dr McCorkindale 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. Professor Horsley 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. Professor McHarg 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.”<sup>136</sup> Similarly, Professor Horsley notes that concerns remain

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<sup>130</sup> [ukima-consultation-and-review-professor-thomas-horsley.pdf](#)

<sup>131</sup> [ukima-consultation-and-review-professor-thomas-horsley.pdf](#)

<sup>132</sup> [Official Report](#) Col.17

<sup>133</sup> [How Devolution is Changing Post-EU](#)

<sup>134</sup> [OIM Periodic Report on the UK internal market regime 2023](#)

<sup>135</sup> [Official Report](#) Col.42

<sup>136</sup> [Official Report](#) Col.17

around the transparency of common frameworks, notably regarding stakeholder input.<sup>137</sup>

133. Scottish Environment LINK 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.”<sup>138</sup>

134. In a similar vein, FDFS 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.”<sup>139</sup>

135. SRC 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.”<sup>140</sup>

136. NFUS 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.”<sup>141</sup>

137. Scottish Environment LINK 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.”<sup>142</sup> Dr McCorkindale notes that with no formal mechanism of reporting to legislatures, the Scottish Parliament relies heavily on the discretionary publication or sharing of information by the relevant governments. In a similar vein, Professor Horsley states that it is “imperative that robust processes exist to ensure the Scottish Government remains fully accountable to the Scottish Parliament when acting within the Frameworks.”

138. The Committee 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.”<sup>143</sup> We remain “strongly of the view that it would be highly unfortunate if, having left the

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<sup>137</sup> [ukima-consultation-and-review-professor-thomas-horsley.pdf](#)

<sup>138</sup> [Official Report](#) Col.42

<sup>139</sup> [Official Report](#) Col. 5

<sup>140</sup> [UK Internal Market Act 2020 – Consultation and Review, SRC](#)

<sup>141</sup> [Official Report](#) Col.43

<sup>142</sup> [The-Internal-Market-Act-a-challenge-to-devolution-report.pdf](#)

<sup>143</sup> [UK Internal Market Inquiry Report](#)

EU, there was a decrease in public access for businesses and citizens to influence regulatory policy.”<sup>144</sup>

139. The Committee 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.”<sup>145</sup>

140. The Scottish Government’s 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.”<sup>146</sup>

**141. The Committee 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.”<sup>147</sup> 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 Committee 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. The Committee 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.**

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<sup>144</sup> [UK Internal Market Inquiry Report](#)

<sup>145</sup> [UK Internal Market Inquiry Report](#)

<sup>146</sup> [Scottish Government Position Paper on the Internal Market Act 2020](#)

<sup>147</sup> [UK Internal Market Act 2020: review and consultation relating to Parts 1, 2, 3 and 4 - GOV.UK](#)

**144. The Committee’s 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 Scottish Parliament.”<sup>148</sup>**

## **Conclusion**

**146. The Committee 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.**

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<sup>148</sup> [UK Internal Market Inquiry Report](#)

## **Appendix A – Record of divisions disagreed**

At paragraph 40, Neil Bibby proposed alternative wording as follows: “The Committee 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.” The proposal was disagreed by division (For: Stephen Kerr MSP, Neil Bibby MSP, Alexander Stewart MSP; Against: Clare Adamson MSP, George Adam MSP, Keith Brown MSP, Patrick Harvey MSP).

At paragraph 60, Stephen Kerr proposed replacing the word “can” with “does”. The proposal was disagreed by division (For: Stephen Kerr MSP, Alexander Stewart MSP; Against: Clare Adamson MSP, George Adam MSP, Neil Bibby MSP, Keith Brown MSP, Patrick Harvey MSP).