



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Constitution, Europe, External Affairs and Culture Committee

Thursday 3 April 2025

Session 6



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CONSTITUTION, EUROPE, EXTERNAL AFFAIRS AND CULTURE COMMITTEE
12th Meeting 2025, Session 6

CONVENER

*Clare Adamson (Motherwell and Wishaw) (SNP)

DEPUTY CONVENER

Alexander Stewart (Mid Scotland and Fife) (Con)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)

*Neil Bibby (West Scotland) (Lab)

Keith Brown (Clackmannanshire and Dunblane) (SNP)

*Patrick Harvie (Glasgow) (Green)

*Stephen Kerr (Central Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Angus Robertson (Cabinet Secretary for Constitution, External Affairs and Culture)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Constitution, Europe, External Affairs and Culture Committee

Thursday 3 April 2025

[The Convener opened the meeting at 08:32]

United Kingdom Internal Market Act 2020 (Consultation and Review)

The Convener (Clare Adamson): Good morning, and a warm welcome to the 12th meeting in 2025 of the Constitution, Europe, External Affairs and Culture Committee. We have received apologies from Keith Brown and Alexander Stewart.

The only item on this week's agenda is to take evidence for the final time as part of our inquiry to feed into the consultation for the UK Government's review of the United Kingdom Internal Market Act 2020.

Before we begin, I should state that there is an active court case that is relevant to the committee's inquiry—Biffa Waste Services Ltd v the Scottish ministers. Given that the case is active, we have sought the Presiding Officer's permission to be able to refer to the deposit return scheme exclusion process today. The Presiding Officer has permitted discussion of the policy issues in order to enable scrutiny, while indicating that we should avoid direct comment on the specifics of the case. Any reference to the matter should be made within those parameters, and direct discussion of the court case is to be avoided.

I welcome Angus Robertson, the Cabinet Secretary for Constitution, External Affairs and Culture, and Euan Page, head of UK frameworks, Scottish Government. I thank the cabinet secretary for his letter earlier this week and for sight of the Scottish Government's response to the UK Government's review.

I invite the cabinet secretary to make a short opening statement.

The Cabinet Secretary for Constitution, External Affairs and Culture (Angus Robertson): Thank you for the opportunity to speak to the committee on the UK Government's statutory review of the internal market act.

Before I turn to that, given that we will undoubtedly touch on the needs of Scottish businesses, I should start by noting developments

that happened overnight. We are all aware that the United States Administration will impose additional tariffs on imports. That will clearly have an impact on many Scottish businesses for which the United States is an important export market.

We do not believe that unilateral measures by the United States are the answer, and we are concerned about the negative impact of trade barriers on the Scottish economy. We urge the United States and all parties to come together and work towards mutually beneficial resolutions. We greatly value the strong social, cultural and economic ties that Scotland shares with the United States, and we will work to ensure that those continue to flourish.

I turn to the issue that is before us. Today, the Scottish Government publishes its position paper on the internal market act, and a copy has been provided to the committee in advance of today's session.

The Scottish Government's central proposition in the paper is simple: the act should be repealed and replaced with an equitable co-design system around the common frameworks approach. That is also the view of this Parliament, which has voted twice in favour of repeal.

As you know, convener, this committee concluded unanimously in February 2022 that the act "can automatically disapply" devolved legislation. That is an extraordinary state of affairs. Laws that have been passed in areas of devolved competence by a democratically accountable legislature can, indeed, be effectively nullified at the whim of a UK minister who is completely unaccountable to this Parliament.

The new UK Government was elected last year on a manifesto commitment to reset relations with the devolved Governments. In that context, it is regrettable that there was a failure even to consider repeal within the terms of the statutory review.

I remain hopeful that the UK Government will acknowledge the position of the Scottish Government and, indeed, that of our colleagues in Wales, and work with us to deliver an agreed and workable alternative to the internal market act.

One of the founding purposes of devolution was to support our ability to diverge on policy in a way that makes sense for the different needs and objectives in different parts of the United Kingdom.

The internal market act has created a system that erodes the Scottish Parliament's ability to make devolved policy that addresses Scotland's needs. Its effect has been to diminish the powers and autonomy of this place in favour of unilateral decision making on the part of the UK Government.

Given the significant problems with the act, addressing the damage that it has caused will require more than just procedural change. It requires a fundamental rethink and the development of a new model of regulatory co-operation that, while respecting devolution, supports the economic growth that we all want to see.

The internal market act is an international outlier because the way that it operates is very different from how well-designed internal market regimes operate elsewhere. It has no proportionality or subsidiarity principles, which are standard features of properly functioning internal market regimes elsewhere.

As we prepare to respond to the UK Government's review, my colleagues and I have been considering the views of a wide variety of interests in Scotland. From those discussions, the Scottish Government remains in no doubt of the importance of ensuring that businesses in Scotland face no unnecessary barriers to trade with the rest of the United Kingdom.

It is equally clear that the internal market act is not a necessary or proportionate means of achieving that outcome. Indeed, as we have seen, 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.

In our view, common frameworks continue to offer a viable model for a better, more collaborative way of managing some of the regulatory challenges that Brexit has thrown up. However, the system is under strain, as the work of the frameworks can be undermined by the internal market act.

The UK Government's consultation document proposes making frameworks the key mechanism for managing regulatory co-operation. The Scottish Government agrees. However, the UK Government has provided no information on how that is to be achieved or how the threat that the act poses to the operation of the common frameworks system is to be addressed.

The internal market act was imposed on this Parliament—against its will and without its consent—by the previous UK Government. It must be repealed in line with the wishes of the Scottish Parliament. That should be followed by substantive engagement on progress towards a sustainable, agreed alternative.

I look forward to discussing those issues and other areas that are of interest to the committee, and I welcome your questions.

The Convener: Thank you very much, cabinet secretary. The UK internal market white paper stated that the principles constitute

“a legislative framework that will preserve the fundamental market access rights of business and citizens across the UK Internal Market”,

and that the system

“will replace the effect of the rules and mechanisms of the EU Single Market ... within the UK.”

What is your assessment of the extent to which UKIMA has replaced the rules and mechanisms of the European Union single market?

Angus Robertson: A properly functioning internal market regime looks very different from the internal market act. The way that the act operates is different from the way that a well-designed internal market regime operates, and it is very different from the regime that operates within the European Union.

The internal market act replaces broad legal principles of mutual recognition and non-discrimination with rigid statutory requirements that apply in almost every case.

It is really important to understand, as I said in my introductory statement, that the internal market act has no proportionality or subsidiarity principles. Those are common features in other internal market regimes, and that was the case in the European single market. That lack of proportionality and balance is a recipe for confusion and uncertainty and does not ensure a functioning domestic market. Therefore, when stakeholders say that they want certainty, one has to understand that the internal market act does not provide that.

The feature that I have drawn attention to is not a bug and it is not hidden away. The act is a crude, clumsy and undemocratic attempt to constrain devolution, and it is one that masquerades as an internal market regime. That is not just the position of the Scottish Government or the Scottish Parliament. I am sure that, among your deliberations, you have had a close look at what one of our country's most pre-eminent legal minds, Lord Hope, has had to say on that subject and others. We are of exactly the same mind about what the internal market act is and how it does not replicate what the European single market did. Among many other things, it is missing the key principles of proportionality and subsidiarity.

The Convener: I have one more question. You mentioned our 2022 report on the UK internal market, in which we recognised that

“Common Frameworks ... have the potential to resolve the tensions within the devolved settlement through managing

regulatory divergence on a consensual basis while facilitating open trade”.

Is there any evidence that that potential can be realised? Is there really an opportunity to improve how the act works in relation to common frameworks as part of that review?

Angus Robertson: As we have already discussed at committee and in debates in the chamber, it is important to understand that common frameworks were created as the solution to the challenge in the first instance but were never allowed to become the primary working vehicle to deal with the challenge. Instead, the internal market act—the Trojan horse that has been driven into the devolution settlement—was introduced. It eclipsed what the common frameworks were designed to do and held back their development as the agreed, preferred way of managing the single market in the United Kingdom.

Members of the committee—although perhaps not all of them—have previously heard me give an example of that situation. I told colleagues about what happened shortly after I took up office, when I was having discussions with the UK Cabinet Office. The then Cabinet Office minister was Chloe Smith, and there was an encouragement that we should speak with one another about common frameworks because things were not progressing. We all know the role that the Scotland Office played at that time—it was all about the internal market act and muzzling devolution. Chloe Smith and I agreed on a number of points: common frameworks were there to serve a purpose; we were both committed to making them work; we did not understand why they had not progressed as they might; we committed that they should; and we would come back within a matter of weeks to identify whether our officials had been able to make progress. The answer to that was yes, and that is exactly what happened.

Therefore, I reflect on my personal experience in office that, where good will exists, the common frameworks are able to work if they are understood and treated in the way and spirit in which they were created.

08:45

The UK Government's consultation document proposes making frameworks the key mechanism for managing regulatory co-operation. That is fine in so far as it goes, except for the fact that the internal market act will remain in place and can be used in ways that will undermine that. If one is saying that one wishes to have a reset with devolved Governments and Parliaments, and the legislatures in Scotland and Wales have agreed a position on that, I find it utterly extraordinary that the UK Government would not even consult on the

position that its colleagues in those Parliaments had voted for. I do not understand it.

That is why we have provided the paper to outline our position. I wish the common frameworks well, and we will try to make them work, but that does not resolve the issue of the internal market act remaining in place, and the excuses for its doing so are fatuous. There is absolutely no requirement for the act to remain. I encourage the UK Government to embrace the common frameworks and repeal the internal market act in line with the position of this Government, this Parliament, the Welsh Government and the Senedd.

The Convener: Thank you, cabinet secretary. We move to questions from committee members, and the first question is from Stephen Kerr.

Stephen Kerr (Central Scotland) (Con): Cabinet secretary, you spoke about good will. Having received the document last night and listened to you this morning, I find your position incredibly dogmatic. There is absolutely no compromise—it is dogmatic; it is straight down the line. That is not good will on your part, is it? It is bullying—it is about what you want and your insistence that you must have it.

Your position is inconsistent with the evidence that this committee has received. Your grandiose, extraordinary claim is that the internal market act is the greatest threat to devolution that has ever existed, but you are using it simply as the latest weapon in your constitutional warfare with the United Kingdom.

In this committee, we have heard business leaders, farmers and legal experts testify that the act brings stability, legal certainty and confidence for investment.

I ask you outright—is the Scottish Government's opposition to UKIMA really about the outcomes, or is it all about posturing and optics?

Angus Robertson: I regularly listen to Mr Kerr speaking in the chamber in defence of the Parliament. In many of those contexts, I do not agree with the point that he is making. However, when it comes to defending the position of the Parliament in relation to this question, apparently that is dogmatic. I reject that.

The position that we have set out has been the position of this Government and this Parliament and of our Welsh colleagues and the Welsh Senedd. It is a mainstream opinion and concern that, as I already mentioned, was directly addressed by Lord Hope, who is not a member of this Government or any governing party. In fact, as far as I am aware, he is a member of no party. I also draw the committee's attention, if members have not seen them, to the late Donald Dewar's

contributions on the question of the devolution settlement that was passed.

I have listened closely to the evidence that business organisations have provided to this committee. They have made it clear that they want a regulatory environment that fosters clarity and certainty, and they have made it equally clear that they do not want a confused and uncertain regulatory environment. The Scottish Government wants those outcomes for businesses, too.

However, I would make this point: other countries manage to ensure a properly functioning internal market while recognising and protecting local powers and responsibilities, and the defenders of the internal market act will have to explain why that is somehow impossible in the UK. That is the point on which there is unhappiness on the part of both the Scottish Government and the Welsh Government: the UK Government has overlooked—that would be the most charitable way of putting it—the position of both the Scottish and Welsh Governments and Parliaments, which voted for the repeal of the internal market act, in having a review of the options and choosing to exclude that particular one. Theoretically, one could have considered it and then concluded that that was not the route to take, but to exclude the option from the off is, I think, more a reflection of the UK Government's position than that of anybody else.

I am doing my job in defending the position of this Parliament and of this Government by recognising that common frameworks are a constructive way of working together; indeed, I have given an example of investing in that process myself. What I will not do is accept the continuation of something that is damaging to the devolution settlement, is damaging to this Parliament and is absolutely and totally unnecessary.

Stephen Kerr: I am going on the evidence that was presented to the committee. I am going on the words of businessmen—businesspeople—business organisations and companies, which actually want the legal certainty that UKIMA gives them. Let me take the Scottish Retail Consortium as an example. It has talked about how

“Scottish Consumers benefit enormously from open and frictionless trade within the United Kingdom”.

There is NFU Scotland, which describes England as by far the most important market for Scottish agriculture and has stressed the importance of having certainty and legal underpinnings for that marketplace. The Confederation of British Industry Scotland said that

“the UK internal market underpins economic growth and investment stability.”—[*Official Report, Constitution,*

Europe, External Affairs and Culture Committee, 27 March 2025; c 13.]

None of those witnesses advocated for the repeal of UKIMA.

I will not try to pretend that UKIMA is the perfect piece of legislation, nor am I someone who does not think that there is vast room for improvement in the way that Governments work together on our little island. However, I have to say that the evidence that we have had as a committee is not as dogmatic or as unilateral as your document is. Are you not just speaking for nationalism when you say that you are sticking up for one thing or another, instead of sticking up for Scottish businesses and Scottish jobs?

Angus Robertson: No. Unsurprisingly, I do not agree with Mr Kerr, who I think is confusing the outcomes that, I think, we both share in wanting to ensure that detrimental approaches are not taken to managing the single market in general, with support for the internal market act. I am unaware of evidence having been presented by the organisations that he quotes that they require the internal market act to stay in place. I would be very grateful to see that—

Stephen Kerr: They do not want it repealed.

Angus Robertson: My officials have not provided me with that evidence, if it was indeed provided to this committee. I am unaware of that evidence being given to this committee—

Stephen Kerr: It was.

Angus Robertson: Those organisations have not, in terms, said that they wish the retention of the internal market act.

I think that what everybody is agreed on is that one wants certainty about how one manages the internal market. As I have said to this committee, and as the position paper makes clear—it is the position that we share with the Welsh Government—common frameworks are the way to do that, and the internal market act is not required to provide certainty.

The internal market act is creating uncertainty in concerning ways, due to a long list of potential interventions, which are leading businesses to be uncertain about what the outcomes will be. It is the obverse of what Mr Kerr presented to the committee in his question; the uncertainty is caused by the internal market act rather than by common frameworks, which most mainstream commentators would agree are the best way to proceed.

Stephen Kerr: Well, that is—

Angus Robertson: Sorry, just to update the record for the committee, I am reading that

“it is the clear view of NFU Scotland that the principles now embedded in the UK Internal Market Act (IMA) 2020 pose a significant threat to the development of Common Frameworks and to devolved policy.”

That evidence was provided by NFU Scotland, and I agree with it. I rest my case that there is a way of approaching the single market—we are all agreed that we want it to work as well as possible and to provide certainty for business—but the internal market act should not play a part in that.

Stephen Kerr: I explicitly asked the witnesses who have come before the committee whether they want UKIMA to be repealed. You can look at the official record; it is very clear. We can swap quotes from the *Official Report* if you want. I can tell you, having sat through all those meetings, that businesspeople in Scotland appreciate the legal certainty that UKIMA has given to them.

I will move on to a different issue, which is the effect of UKIMA on the ability of devolution to work and there being an opportunity to create innovation. To consider what the academic experts told us, I will share a couple of quotes from Professor Chris McCorkindale, who is an adviser to the committee, which the cabinet secretary would perhaps like to comment on. Professor McCorkindale said that UKIMA

“does not impose new legal limits on devolved competence”

and that it simply ensures that devolved laws do not create barriers to trade. Angus Robertson just said that we agree that there ought not to be new barriers and that we want to have frictionless trade across these islands, and that is what Professor Chris McCorkindale of the University of Strathclyde said.

Professor McCorkindale went on to say that the effect of the act is “practical” and that Scottish legislation is

“enforceable only against goods and services in Scotland”,

rather than those coming from elsewhere in the United Kingdom. There is nothing unreasonable about that—that is what the effect of UKIMA is.

I have another quote somewhere from David Thomson of the Food and Drink Federation, who said:

“we do not necessarily observe that the internal market act has had a chilling effect”.—[*Official Report, Constitution, Europe, External Affairs and Culture Committee*, 27 March 2025; c 4.]

He was referring to devolved policy making and innovation in policy at the Scottish level.

The problem with Angus Robertson’s position is that he does not accept the nature of the unitary state of the United Kingdom. His position—that the United Kingdom Parliament should not be able to create legislation that gives legal underpinnings to

the internal market—is the fundamental stumbling block. I have presented academic and legal opinion that clearly defies everything that he has said this morning.

Angus Robertson: I have looked very closely at the evidence that has been presented to the committee, and I will highlight a few quotes that are relevant to my considerations. One of the most pre-eminent public policy experts in the country, Professor Nicola McEwen, wrote that the act

“has already had a constraining impact”

on the devolved Governments’ policy ambitions. She noted:

“The UK Government should recognise and address that if it is to achieve a meaningful reset in its relationships with the devolved governments”.

Alcohol Focus Scotland said that the act

“substantially undermines devolved regulatory autonomy, limiting the ability of devolved governments to implement measures to improve public health.”

NFU Scotland has warned that the act

“drives a coach and horses through the principles of common frameworks and almost renders them redundant”.—[*Official Report, Constitution, Europe, External Affairs and Culture Committee*, 16 December 2021; c 4.]

NFU Scotland has also said that the act has the potential

“to undermine the devolved nature of agricultural policy”.—[*Official Report, Rural Affairs and Islands Committee*, 22 March 2023; c 4.]

09:00

Scottish Environment LINK called the act “entirely unfit for purpose” and said:

“It works directly against the principles of devolution”.

It warned of

“years of inertia, delay and uncertainty”

if the act’s impact on devolution is not addressed.

The Scottish Crofting Federation said that it feared that

“the proposed legislation will lead to a race to the bottom, threatening our high standards in food, environment and animal welfare, thus damaging the image of Scottish produce ... our Parliament needs to retain control over agricultural support, as enshrined in the current devolution settlement.”

The evidence that has been provided on the subject is very clear. I have said it before and will say it again: the Scottish Government supports the efficient, effective working of a single market in the United Kingdom that involves proportionality, and it supports the other measures that I outlined in my opening statement. The good news is that we have a way to do that and we agree, in principle,

that using common frameworks is the best way to do it. That is the position of this Government and this Parliament, and the Welsh Senedd has the same position.

As a cabinet secretary who is answerable to this Parliament, it is my job to stand up for its position, which is that the internal market act should be repealed, and the evidence that we have from external stakeholders is absolutely clear on the issue. Let us concentrate on making common frameworks work. That is the way to do it because, apart from anything else, devolution, at its heart, is about being able to innovate and make different policy choices. If we have legislation in place that drives

“a coach and horses through the principles of common frameworks”

and, by extension, devolution, that is not acceptable.

That is why our position is that the UK Government should respect the views of this Parliament and the Welsh Senedd and consider repealing the internal market act, and we must invest all our efforts into making the common frameworks work to the ends that we all—including Mr Kerr—agree should be the case across the United Kingdom.

Stephen Kerr: I just believe that you have created—

The Convener: Mr Kerr, we have now covered half an hour of our allotted time, and the cabinet secretary is short of time. I will bring you back in if time allows but will bring in some other members.

Stephen Kerr: Oh, I cannot continue?

The Convener: To be fair to them, I will give other members an opportunity to come in and we will come back to you, Mr Kerr, if time allows, but we all know what the time constraints are this morning.

Patrick Harvie (Glasgow) (Green): I put on record my apologies for being a few minutes late and missing the cabinet secretary’s initial remarks.

It is probably not unknown for committee members to hear only the evidence that they want to hear. I am bracing myself for the sessions in which we agree a committee report, but I am confident that the majority of the committee will reflect the balance of the evidence that we have heard. I have heard people give evidence that supports the Scottish Government’s position and evidence that departs from it. We have heard a range of evidence, and I want to reflect on it all.

I want to ask two things: first, about the Scottish Government’s position, and then about your understanding of the UK Government’s position. I might regret saying this, but the latter is more

likely to direct where we get to with the issue. You not only suggest that the internal market act itself is unnecessary—I am comfortable with that proposition—but that the common frameworks arrangements and architecture are adequate and that we should rest on those in order to ensure market access and so on.

I recognise that the internal market act constrains the Scottish Parliament and Scottish Government’s power, but is it not equally arguable that common frameworks constrain the Scottish Parliament’s power, because they are subject to agreement between Governments? The internal market act might have offered a tolerable way forward if it had been co-legislated—if this Parliament had had an opportunity to debate and amend the bill and to decide whether it agreed to it. If that had been a joint piece of work between two jurisdictions, it might have been an agreeable way forward.

That has not happened with common frameworks, either. Do common frameworks not constrain the power of Parliament and give a little bit of unaccountable power to Governments? Is there a way in which you could see common frameworks evolving to ensure that the bulk of the authority and power rests with the Parliament, which is the body that the Scottish people ultimately gave that authority to when they created this place?

Angus Robertson: With your indulgence, convener, this is my first opportunity to say to Mr Harvie how sorry I am to hear his announcement that he is to stand down.

Patrick Harvie: That is very kind.

Angus Robertson: He has led his party with distinction over some years now—I cannot remember exactly how many.

Patrick Harvie: A ridiculous number.

Angus Robertson: However, it is important to recognise Mr Harvie’s service.

Patrick Harvie: Thank you.

Angus Robertson: Mr Harvie asks a very interesting question, about how one reconciles the operation of intergovernmental agreement—whether in the form of treaties or in the form of rolling, on-going arrangements of intergovernmental relations—and how one involves Parliaments in that process. It is a good question.

I have lost count of how many times I have come to the committee. Committee members know that I am perfectly happy to come here as often as you would wish to hold me and the Government to account in the area for which I have responsibility. I have no objection to coming

back here for detailed sessions about how common frameworks are working in this area or other areas. It is not for me to answer as to how others would allow themselves to be held to account in their Parliaments but, especially given that it is the position of this Parliament that one wishes the common frameworks to work, I am very keen to be answerable to you about the extent to which we are able to ensure that and about the progress of all of that. I have no objection to that whatsoever.

Patrick Harvie: The point that I am making, though, is that Parliament needs to be able to do more than ask questions, and even more than get answers to questions. Although there is an agreement across the Parliament that the common frameworks architecture should be made to work, individual common frameworks are not put to Parliament for debate, scrutiny and amendment. Once common frameworks have been agreed between the Governments, that effectively constrains the ability of Parliament to legislate. Is there not a similar question to be asked about the common frameworks architecture and where parliamentary authority and the right to decide lie?

That is a little bit in the same sense that there is a massive unanswered question about the right of the devolved jurisdictions to decide in the context of the IMA.

Angus Robertson: I want to rest where I answered before, in signalling to the committee that I want to be as forward leaning as I can be about making common frameworks and their development something that involves Parliament as part of the process in holding the Government to account. It is not for me to restrain parliamentarians in their use of the chamber and in their ability to debate and decide on issues. I am signalling to Mr Harvie that I want Parliament to be involved in processes around common frameworks. As for the question that Mr Harvie highlighted, the timing of it is good, because we are beginning to see common frameworks getting up and running effectively across the policy areas.

Some of this is exceptionally dry. This committee might have a very busy programme and might not want to discuss every meeting of every committee that is dealing with issues under common frameworks, but occasionally there will be such discussions, and occasionally issues will come along. We know, because we have had them in the past, that there will be issues relating to the single market. As I have said before, the introduction of minimum unit pricing would be a good example of that. I am sorry—I should say for the uninitiated that that happened while Scotland and the United Kingdom were in the European Union. One had the ability to introduce policy divergence on a public health measure, and I fear

that, had the minimum unit pricing proposal been made now, it would have been blocked by application of the internal market act.

Can I foresee issues of such importance coming along in the future? Absolutely, and it follows that parliamentarians, the committees of the Parliament and the chamber as a whole will wish to be seized of that, given their significant importance. Therefore, I am signalling to Mr Harvie, and to the committee, that I agree that the Parliament needs to be involved, and I am happy to work with the committee, as I have been on the likes of Scotland's continuing alignment with the European Union, to ensure that that works.

Patrick Harvie: Thank you.

The minimum unit pricing example leads on quite well to my final question, which is on the UK Government's position—or at least, cabinet secretary, your understanding of the UK Government's position.

As a Green politician, I am well used to having to hold fast to the true vision of what I believe in, while at the same time recognising that there will not be a majority for it and that I will have to compromise and figure out how close I can get to it. I am not going to suggest that you should not advocate for what is in your paper—in fact, I would probably advocate for a lot of what is in it with regard to the architecture that ought to be in place. However, we know that, in reality, the current UK Government seems unlikely to scrap the IMA and might not even make major changes to it.

Therefore, I would like to ask you about your attitude to some of the specific propositions for change that some of our witnesses have talked about. One proposition was for an explicit list of criteria for exemptions. Indeed, if we had had such a list, and if minimum unit pricing had been taking place under the IMA, we would have been able to argue that it aligned with a specific exemption criterion. Another proposition was for a shift in the burden of proof, so that the default expectation would be that devolved legislatures had the right to act, and the UK Government would have to come forward with a sufficient burden of proof if it wanted to constrain that. Those kinds of more modest changes do not go as far as I want—and they will not go as far as you want, either, cabinet secretary—but if they are achievable, what will be the Scottish Government's attitude to them? Do you think that, politically, they are achievable, given the discussions that you have had so far with UK colleagues?

Angus Robertson: Thank you for the question, Mr Harvie. Perhaps it would help colleagues if I highlighted the annex to the Scottish Government's position paper on this question. I most certainly would not want to read all of it into

the record, as it would take far too long, but it goes into considerable detail about the regulatory systems in, among other countries, Switzerland, Australia and Canada, and explains how one manages systems there. Mr Harvie is alluding, I think, to my previous point about ensuring that the system that is in place must surely reflect proportionality and balance.

Mr Harvie also asked me about the UK Government's position and whether I have an understanding of it. It seems to be saying two things at the same time. First, it is saying that it would wish common frameworks to succeed, which I agree with. Secondly, however, it is saying that the internal market act should be retained, specifically for reasons relating to the Windsor framework. That is the reason that it has given. Frankly, that is spurious—that is not the reason. There are plenty of other ways of doing whatever one needs to do in relation to the Windsor framework; one does not require the internal market act to be retained in toto for that.

09:15

Why, then, does one wish to retain the internal market act? I can only conclude that it is because UK Government ministers can imagine circumstances where they would wish to use the power to drive a coach and horses through devolution in order to stop something. They will work, in the first instance, to try to make common frameworks satisfy the processes in order to be able to say that they are respecting the devolution framework, that they have reset relations and that they are working in good faith, but somewhere in SW1, there is a fear that issues will come along where they would wish to override the devolution settlement using the internal market act.

That is the only rational explanation that I have for the act's retention. If it is an agreed position that common frameworks are the appropriate way of dealing with things, and if everybody has agreed that the IMA is not required for anything to do with the Windsor framework and is not the only way of satisfying that criterion, that is the only logical conclusion that I can come to for its retention.

Patrick Harvie: Thank you.

The Convener: Mr Adam, did you want to come in?

George Adam (Paisley) (SNP): Thank you, convener.

Good morning, cabinet secretary. It is funny; no matter how long I have been here, it never ceases to amaze me how we can all sit through the same evidence sessions and have vastly different views on what the actual evidence said.

At the very first meeting that we had on this subject—which was on 6 March, with the academics—Professor Thomas Horsley said that the UK internal market act framework was imposed without consensus from all the constituent parts. That backs up a lot of what you have said today. He also said that the UK Government has a problematic role as both regulator and central gatekeeper, which is another key issue that a lot of people have brought up in evidence. Professor Jo Hunt said that, with the UK internal market act, there was hasty implementation without proper stakeholder consultation, and that the top-down control undermines the devolution principle—and the evidence goes on.

The point that I am making is that it is amazing how we can sit through all this evidence and all come up with different things—but that is politics for you; people will do that.

What I got from businesses, particularly at last week's meeting, was that they just want politicians to get on with it and tell them the rules and regulations. They see some problems with the UK internal market act, and they see the UK as a massive market and as part of their business, but they just want us to get on with it. I asked whether they believed that politicians should just get on with working together to create common frameworks, do exactly as Mr Harvie has said, and negotiate—a word that seems to be foreign throughout the world these days—and come to some kind of compromise. Surely that is the sensible way to go about business—the sensible way to do this—and the evidence that we have received backs that up.

Angus Robertson: Indeed it does, and there are very few people out there—there might be one on this committee—who do not agree that common frameworks are the best way of proceeding. It is the commonly held view of the UK Government, the Scottish Government, the Welsh Government, the Scottish Parliament, the Welsh Senedd and, I imagine, the majority of parliamentarians in the House of Commons. Common frameworks are where it is at.

The issue, though, is the retention of the internal market act, given all the reasons and concerns that were expressed to the committee, the evidence that the committee has been provided with and the absence of recognition by the UK Government that it should do what Labour promised in the run-up to the previous UK general election, which was that it would repeal the act.

Will the Scottish Government continue to invest its efforts in working collegially to ensure the effective workings of the single market, while at the same time understanding that devolution is about different policy making, and potentially

different policy outcomes and priorities? It is a balance, and because of that divergence, it is necessary to work out how one makes sure that one can do that with proportionality and balance, not with the ultimate muzzle and restraint that the internal market seeks to impose on elected democratic Governments and Parliaments in the UK. That is not what the devolved settlement was about. I point again to the evidence from the then Secretary of State for Scotland, Donald Dewar, in a debate in July 1987, on that very question: it is “germane”, it is not theoretical and it matters.

We are, increasingly, seeing a list of policy areas in which the uncertainty that the internal market act imposes is growing and growing. It is very disappointing that the UK Government has not taken the opportunity to consider that while reviewing—it is a good thing to review, of course—how single market arrangements operate, and that it has chosen to exclude the agreed position of the Governments and Parliaments of Scotland and Wales on the question.

George Adam: On that point, we have received evidence that the act itself

“positions the devolved governments as junior partners”.

Mr Kerr seems to think that it is a good idea for us to be the junior partners, but—as you rightly said, cabinet secretary—that is not the way in which the devolved Assembly in Wales and the Parliament in Scotland were set up. That is not the way that it was meant to be. We were told of the idea that we were meant to be equals in the whole process. I do not know whether Mr Kerr is saying that Scotland should go back in its box. Surely we should look to the history of this place and say that the internal market act is an attack against our Parliament, in particular by the previous Government, although who knows what the Labour UK Government is going to do? I do not think that it knows.

Angus Robertson: Of course, Mr Adam is correct, and that is the position of this Parliament, which has voted twice for the repeal of the internal market act. I would prefer to invest my time and effort in making the common frameworks work, with the internal market act being taken off the statute book, and—to paraphrase Mr Adam—getting on with it. We need to work together on the questions that are brought up by legislation in the rest of the UK and by legislation in Scotland, Wales and Northern Ireland, and on making the common frameworks the only route for doing so.

Apart from anything else, if the common frameworks are, ultimately, going to work, they have to be understood as the sole route for dealing with these internal market questions. That would be a good thing, and I hope—even at this late stage—that the UK Government will reflect on

its error, because it certainly does not reflect a reset of relations, if that was the intention. It has been pointed out that, by excluding the position that is supported by the Scottish Government, the Scottish Parliament, the Welsh Government and the Welsh Senedd, that would most certainly not be a reset, but a continuation of the previous UK Government’s approach to devolution.

George Adam: Finally, one thing that kept coming up was the exclusion process. We heard from Dr Brown Swan, who highlighted the fact that the exclusion process lacks transparency and proper procedures, creating “uncertainty and confusion” for both legislators and business. Even those involved in business, such as Marc Strathie, raised concerns, highlighting that businesses face “uncertainty”, particularly around the exclusion process.

Is it not the case that the internal market act has created uncertainty for business, instead of the certainty that it claims to bring?

Angus Robertson: Absolutely—just so. That is part of the problem, and it should outrage democratically elected parliamentarians in this place that people who are not elected to deal with these matters can make such opaque decisions and run roughshod over the democratically elected representatives of this country. The issue is actually not that complicated. We have in place a system that we have agreed that we wish to make work. Why do we not just get on and do that, and bin that which we have commonly agreed is not fit for purpose?

Neil Bibby (West Scotland) (Lab): Good morning, cabinet secretary. Obviously, we know about the importance of the UK internal market to Scotland and the whole UK. There may have been different views about the internal market act in the evidence that we took, but the strength of opinion on the UK internal market was pretty unanimous, I think.

For example, in written evidence, the Scottish Retail Consortium said that

“Scottish Consumers benefit enormously from open and frictionless trade”,

and NFU Scotland said:

“The UK Internal Market is critical to the interests of Scottish agriculture and the vitally important food and drinks sector it underpins.”

In oral evidence, Mags Simpson from the CBI said:

“Our biggest customer is England, so anything that creates barriers to that trade is not going to be helpful.”—*[Official Report, Constitution, Europe, External Affairs and Culture Committee, 27 March 2025; c 9.]*

We know that, in 2021, exports to the rest of the UK were estimated to be more than £48.6 billion.

Obviously, there is a balance to be struck between potential regulatory divergence and protecting the internal market. It always has been, and always will be, a difficult balance to strike.

However, I am interested in the wording. The SRC referred to “open and frictionless trade”, and the CBI referred to

“anything that creates barriers to trade”.

The Scottish Government’s position is that there should be

“no unnecessary barriers to trade”.

It would be helpful to outline more about the Scottish Government’s decision to use that terminology, and what is meant by that. The word “unnecessary” suggests that there could be necessary barriers to trade. There may be issues with things such as rodent glue traps, but those have such a small economic impact that it does not make much difference. Nonetheless, I want to hear a bit more from the Scottish Government’s perspective about necessary versus unnecessary barriers to trade.

Angus Robertson: Well, that opens up a very long conversation for the committee and for the academics in this area.

Let us go back, for a moment, to the example of minimum unit pricing on alcohol. At that time, the decision to introduce minimum unit pricing was opposed by the Scotch Whisky Association. It argued that the introduction of minimum unit pricing on alcohol was unnecessary and ran counter to the interests of the industry. I speak as a great supporter of the Scotch whisky industry; on that question, however, I think that the association was wrong. Why? Because there was a view at the time—and I agree—that there was a public health necessity to find a range of interventions, including minimum unit pricing, to deal with excessive, or harmful, alcohol consumption.

It was argued then that one person’s necessary public health intervention is another person’s unnecessary intervention in the free and unfettered working of the market. I say that to illustrate that there will always be a tension between those who wish for no intervention and those who can understand that there are reasons why there should, for different policy outcomes, be interventions. One person’s safeguard is another person’s red tape—the argument will go on forever.

We are always trying to find the balance. That is why I am suggesting to Mr Bibby that it is not a simple issue that I can give a simple answer to.

09:30

As custodians of how devolution should operate in its current guise, we have been charged with responsibility for a range of devolved policy areas. It may well be that this Government or future Governments will seek to make decisions on the grounds of public health or the environment—among other things—that some people in the private sector might see as being disadvantageous to them. Should we always try to strike a balance? Yes—of course there has to be a balance. That is the point that I keep making about maintaining proportionality and balance while recognising that the point of devolution is being able to make policy that is different.

Neil Bibby: I appreciate that this is not a simple issue to deal with and that there are no simple answers.

I would be interested to get your thoughts on some of the other evidence that we have received. The Scottish Retail Consortium said:

“Our experience in the devolved nations indicates the Act has an effect on regulatory policy in those nations, eventually encouraging a more considered approach.”

Do you agree with that?

Angus Robertson: That reflects the answer that I gave to Mr Harvie. Going forward, I am in favour of as much reflection and having as much of an informed understanding of this issue as possible. It is in all our interests to do that. I will come back to that point if Mr Bibby has any follow-up questions.

I have a supplementary point in response to the previous question that he asked me. I omitted to point out that the internal market act is unique in not allowing for any consideration of non-economic policy outcomes. Herein lies the challenge. Policy divergence in devolution relates to the full range of responsibilities of this Parliament—unfettered. Yet, this is an act that will only allow decisions to be made that relate to economic consequences. For example, if one looks at the operation of the internal market, one can see that the entire focus is economic—it is not focused on public health, the environment or any other devolved matter. That is the point that I have been trying to make consistently about the understanding of proportionality and balance. Incidentally, that is something that happened when we were in the European Union but does not happen in the United Kingdom under the internal market act.

We have a responsibility to think about all those other policy areas when we vote on proposals in the Scottish Parliament. We have to work our way through the consequences of trying to make that work in relation to the common market in Great Britain—and we have not even touched on the

consequences of a part of the United Kingdom being part of the single European market as well as the United Kingdom single market. That is something that we will all have to reflect on after yesterday's announcement by the US President. Will one part of the United Kingdom be facing tariffs that other parts of the United Kingdom do not?

Having a system in place with commonly agreed intentions is where we should be investing our efforts to try to find our way through the challenge that Mr Bibby has identified. That challenge is about getting the right balance—this is the point about proportionality and balance—when it comes to policy innovation, rather than having a simple, economically driven assessment, which many people fear will tend towards the lowest common denominator as opposed to having innovative policy that might lead to better outcomes in different places.

The bottom line of all this is to understand a simple point: 85 per cent of the population and electorate of this state live in one constituent part of it. Unfortunately, many decision makers in that part of the United Kingdom think that they should reserve for themselves the ultimate right to determine what policies should impact on us all. That is not what devolution is about.

Neil Bibby: In line with the guidance that the convener gave earlier, and in the context of the review of the UK internal market act, what lessons does the Scottish Government draw from its role and how it conducted itself in relation to the deposit return scheme, and from the reasons why an exclusion was not applied to that scheme?

Angus Robertson: I would say that the biggest lesson is to ensure that there is the greatest possible public understanding of proposals that are being made, and an understanding that, if they wish, people can apply legislation that overrides the democratic wishes of this country's Parliament. That is the biggest lesson that I would take.

The Scottish Government worked throughout that process in a way that tried to get the UK Government to operate in a respectful way. Unfortunately, it did not. That is always going to be the challenge in a state where the central Government views devolved Parliaments and Governments as being subordinate. There is no hierarchy of Governments in the UK. There are devolved and reserved powers, but there is no hierarchy of Governments. If one Government decides that it simply wants to overrule another because it does not like what that Government is doing, that is not the operation of devolution as it was proposed. I will resist the temptation to read into the record Mr Dewar's position on that in the House of Commons, which was absolutely clear; I am referring to the governor-general quote.

That is notwithstanding whether we wish Scotland to proceed to become a normal independent country, where we will be deciding on such things ourselves, together with colleagues in the European Union—and this is where I am so disappointed about what the UK Government has done here. Mr Bibby and indeed everybody—all political practitioners—will understand that, if one wishes to review options, there is no reason why one would seek to exclude some things. That is what absolutely mystifies me about the UK Government's approach. It would have cost it no political capital whatsoever to consider the positions of the Scottish Government and Parliament and the Welsh Government and Senedd, and to conclude something different—although I would have hoped that it would not. I hold out a hand to UK ministers today to say, "Please, think about this again." I just do not understand why one chose to send a signal that one was not even prepared to consider other positions. That is not reset; that is not collegial; that is not having a proper working relationship and it is totally avoidable.

We went through the frankly appalling approach of the previous UK Government's dealings with devolved Governments and Parliaments. I know that to be so, because I sat in the meetings with my colleagues from the Welsh Labour Party, the Democratic Unionist Party in Northern Ireland and Sinn Féin. My goodness, those are four parties with significant differences between them, but all of them were on the same page when it came to how the previous UK Government operated devolution: in a way that was confrontational, non-collegial and in bad faith.

We have an opportunity. I am not giving up on resets and the better atmospherics of things, but I am very disappointed. I try to find mild expressions to say so, but I am disappointed that the UK Government has chosen to ignore the position of this Parliament, the Scottish Government and, incidentally, Mr Bibby and his party, too.

Neil Bibby: After the change of Government last July, the first visit that the Prime Minister made outside of London was to Scotland to meet with the First Minister. Since then, UK Government ministerial colleagues have met with Scottish Government ministers, including you, on a number of occasions. There is also regular and good dialogue between officials. Do you not accept that there has been a reset in relations, and that that bodes well for common frameworks?

Angus Robertson: I hope so, Mr Bibby. However, I do not want to fall out about the fact that the UK Government has chosen to introduce a review and exclude from it the position that both the member and I commonly represented in the Scottish Parliament. I have made the point already

that it would have cost it nothing to consider that as part of its review.

Neil Bibby is right, though, that much has happened since the last UK general election that suggests a change in direction. There is no doubt about the atmospherics—absolutely none—but we are now getting to the pointy end of seeing what decisions are being made. I am not hugely optimistic about what excluding the repeal of the IMA means in this particular area. We are yet to see what will happen during the reset discussions with the rest of the European Union. We have worked very hard, in good faith, and I am pleased that the UK Government has taken on board the priorities of the Scottish Government in relation to those discussions. However, we will have to wait and see with what political weight the UK Government represents the priorities of the Scottish Government in negotiations with the European Union.

I hope that a reset means something more than meetings, atmospherics and the formal presentation that things are different. At some stage, the reset has to reflect decisions that are made and the spending of political capital. I will continue to work to try to make that possible. Even under the last Government, some individual ministers were prepared to work in good faith while others were not, and where that was possible, I was prepared to do that. Here, we have a Government that is saying that it wants common frameworks to work. Good. Let us try to do that, but please be under no illusion that the Internal Market Act is being kept on the statute book for a reason. The only reason that I can foresee for the IMA being kept on the statute books is for it to be used, at some stage, to overrule the workings of the devolution settlement, and that should concern us all.

Stephen Kerr: I am glad that Angus Robertson qualified his caricature of the previous UK Government, because on the whole, working relationships between ministers and officials was on par with what it is now. *[Interruption.]* Are you denying that?

Angus Robertson: That is not the case.

Stephen Kerr: You are disputing that?

Angus Robertson: I am disputing that, yes.

Stephen Kerr: I see, fair enough.

There is a necessary element of goodwill. You talked about goodwill at the beginning of the meeting. You expect the Labour Government to do your bidding. You want it to repeal the act, but the act is not going to be repealed. It is acknowledged in evidence that legal underpinnings for the single market are essential. Common frameworks are not

a choice. You can have legal underpinnings and you can definitely have common frameworks.

We have not talked about intergovernmental relations, but given the written evidence that we have and what we have heard from the cabinet secretary this morning, I really do not have any more questions.

The Convener: I have a couple more questions. The theme of a lot of the evidence that we have heard from business is that it wants to know what the pathway is, what the regulations will be and to have certainty, which is good for all business. Until very recently—that is, until Brexit—the conventions of devolution were, by and large, respected by both Governments.

09:45

I go back to the evidence that we have taken on the Sewel convention and the strain that it has been under since that time. Given that we have moved from that way forward to the internal market act and that the position of “not normally legislate” has changed over the course of devolution, do we need to rely on more than just the convention and the relationships between the two Governments to ensure a way forward? How would you achieve such an aim?

Angus Robertson: International examples are very illustrative, because most other Governments that operate a devolved or federal Government model have very clear processes in place—some of them are constitutionally ordered. One would have guardrails for intergovernmental relations to ensure that a Government cannot take office then act in bad faith. That is what the previous UK Government did and working relations were, in general terms, appalling by any metric, whether overrides of the Sewel convention, the records that show how difficult it was to make intergovernmental relations work, how many meetings were cancelled or how many meetings did not even take place. It is probably even worth looking at the common frameworks’ different elements that were set up and how long processes take.

Such metrics reflect whether the processes are working optimally. Other countries manage it. I counsel against hoping that good faith is enough of a guarantee of good governance. Having systems that have guardrails in place would serve us all well, domestically and internationally.

The Convener: From my experience of dealing with the Scottish people, the devolved issues that they are interested in are health issues, environmental issues, animal welfare issues and so on. However, we have heard evidence of a “chilling effect”. In the current system, do you see a way to ensure that the lowest common

denominator of regulation will not trump all the options that the devolution settlement has given Scotland, Wales and Northern Ireland?

Angus Robertson: In some respects, we are in the foothills of post-European Union membership changes and the operation of a UK internal market. It started out as a focus on a very small number of issues that many people might see as distant from their lives or priorities—things such as single-use plastics, the deposit return scheme and glue traps. However, it is true that there is an ever-growing list of areas in which the internal market's potential imposition, or the non-delivery of common frameworks in those areas, will have an impact. That situation is continuing. That is all the more reason to get the certainty and agreement that stakeholders have suggested to the committee that they wish to see. I agree. The uncertainty is the result of not knowing whether the internal market act will be applied in those areas. That is undermining certainty.

The Convener: We have also taken evidence from the office for the internal market, which was necessarily set up as a result of UKIMA. In the evidence, we heard that the office is able to offer advice to businesses and to Governments when that is requested, although it cannot compel parties to take such advice on board. Is there space for an arbitrator with more powers to intervene when a deadlock situation happens, in order to fairly represent each Government's position?

Angus Robertson: The Scottish Government meets with the office for the internal market, our officials meet with one another and I have met with the office. The officials have great expertise and are scrupulous in meeting their duties in an even-handed way, which is important. However, I am sure that they would be the first to concede that the office's role is limited to considering the economic and trade implications of any policy. I go back to the point that I made to Mr Harvie about the very real example that we had of minimum unit pricing. If the OIM looked at the issue today, it would be able to consider it only in economic and trade terms, even though it was a policy innovation that was introduced for a public health purpose. That answers the question in that, yes, the office plays a role, but its limitations underline the point that it reflects a system that is not fit for purpose, because it has to consider things in the round, if anybody is to consider anything in the round.

On the point about an arbitrator, we already have one and it is called the UK Government. It makes decisions regardless of the position of this country's Parliament and Government—the examples show that to be the case. To me, the UK Government cannot be the ultimate arbitrator, because it is a party to the process and has shown

in its actions that it is prepared to override democratic consent. I do not know how an arbitration process would operate.

I go back to the positive ground where I have planted my flag, which is to say that common frameworks are commonly agreed to be the way in which we should make things work. Let us end the bad faith that there has been from the UK Government by getting the internal market act off the statute books. That is the position of this Government, this Parliament—having voted on the issue on a number of occasions—and our Welsh colleagues.

I end by reiterating a quite simple point: we have a system, so let us make it work. Let us get what is not helpful to intergovernmental relations and the operation of devolution off the statute books.

The Convener: No one wants the opportunity to ask a final question, so that concludes our session, cabinet secretary. I thank you for your attendance.

Meeting closed at 09:53.

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Room T2.20
Scottish Parliament
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Email: official.report@parliament.scot
Telephone: 0131 348 5447

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