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Llywodraeth Cymru
Welsh Government

Mike Hedges MS
Chair, Legislation, Justice and Constitution Committee

5 January 2026

Dear Mike,

Thank you for your letter of 11 November regarding the United Kingdom Internal Market Act 2020 ('the Act') and the associated review process. I appreciate your continued engagement on this important matter. You asked for further information in specific areas which I will take in turn.

How the UK Government's commitments are being translated

Officials are working with the UK Government and other devolved governments to develop additional guidance and agree clearer processes for discussing and agreeing exclusions. We want to see more detailed guidance under each of the three approaches set out by the UK Government in their response to the review. Our aim is to increase transparency and provide a clear framework for all parts of the UK to work with. The Interministerial Standing Committee continues to discuss and oversee these issues. This work is ongoing, and we want to see this conclude before the end of the spring term.

Further detail on actions on financial assistance powers and broader reforms

Our position remains that decisions on funding in devolved areas should be made by the Welsh Ministers and the Senedd. The financial assistance powers should be revoked, or as a minimum there should be no further direct spending in devolved areas of responsibility without the Welsh Government's consent. We continue to raise these concerns consistently during meetings and in correspondence with senior UK Government Ministers. We will continue to press for changes to the use of financial assistance powers by the UK Government to respect devolution and ensure effective use of public funds.

Our written contribution to the UK Government's review sets out further detail on our longstanding position the Act should be repealed, as well as options for broader reforms which would improve the balance of the Act to both support market access and respect devolution. I have attached a copy of our response for your information and highlight to the Committee. The UK Government has published wider responses on their website. Our immediate priorities are to help make the current changes work, but we will continue to press for legislative changes to the Act including at the Interministerial Standing Committee.

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Further clarification of the Welsh Government position of the impact of the UK Internal Market Act 2020 on Welsh primary and secondary legislation

In my last letter I set out our position following the outcome of the review that when developing all relevant legislative proposals – which includes both Welsh primary and secondary legislation – the Welsh Government recognises the Act may have an impact. In such cases we will engage on a four nations basis through the relevant Common Frameworks to explore whether any exclusions from requirements of the Act are necessary. For clarity this means the Welsh Government recognises the Act could apply to secondary legislation made under Senedd Acts or Senedd Acts themselves, given alternatives have not been tested in court.

Despite our opposition to the Act, we welcome the commitments from the UK Government and their intent to foreground the Common Frameworks to manage the UK internal market. We hope this translates into a real change in approach and the Act is no longer the primary mechanism to manage differences in approach.

I hope you find this response helpful.

Yours sincerely,

Julie James

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Review of the UK Internal Market Act 2020: the Welsh Government's response

April 2025

Review of the UK Internal Market Act 2020: the Welsh Government's response

Introduction

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

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

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

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

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

[1] Microsoft Word - Joint Ministerial Committee communique.docx

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

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

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

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

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

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

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

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

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

Unilateral imposition of UKIMA without consent

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

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

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

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

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[2] Which also included reference to the UK internal market. Agreement available here: European Union (Withdrawal) Bill - Agreement between the UK and Welsh governments - GOV.UK

[3] Recognised as a key benefit of regulation in the recent UK Government Action plan: A new approach to ensure regulators and regulation support growth - GOV.UK

[4] As just one example LSE found environmental policy and regulation have positive effects on productivity growth and capital accumulation: https://www.lse.ac.uk/european-institute/Assets/Documents/LEQS-Discussion-Papers/LEQSPaper158.pdf

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

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

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

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

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

[5] UKIMA's Explanatory Notes identifies it "*affects legislation in areas of devolved competence made by the…Welsh Government or passed by the…Senedd Cymru. In this way, the Act's provisions create a new limit on the effect of legislation made in exercise of devolved legislative or executive competence.*" United Kingdom Internal Market Act 2020
[6] https://business.senedd.wales/documents/s103942/Correspondence%20from%20the%20Coun
[7] Written Statement: Welsh Government amendments to the United Kingdom Internal Market Bill (15 October 2020) | GOV.WALES

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

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

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

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

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

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

The protections for Northern Ireland are not being challenged

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

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

PART 2: UKIMA goes way too far

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

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

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

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

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

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

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

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

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

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

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

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

no detriment to common market.

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

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

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

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

Unless amended UKIMA will always be foregrounded above Common Frameworks

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

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

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

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

PART 3: A better way forward

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

Repeal of UKIMA

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

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

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

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

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

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

[13] Written Statement: Welsh Government amendments to the United Kingdom Internal Market Bill (15 October 2020) | GOV.WALES
[14] For example: C.B. Swan, T Horsely, N McEwen, and L. C. Whitten, *Westminster rules? The United Kingdom Internal Market Act and Devolution* (3 October 2024). Published by the Centre for Public Policy at the University of Glasgow.
[15] In particular for goods, with a starting point being codifying the exceptions set out in EU law

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

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

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

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

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

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

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

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

Principles of proportionality and subsidiarity

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

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

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

The process for new exclusions to the Market Access Principles to apply in the interim

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

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

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

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

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

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

Case studies to illustrate the impact of UKIMA on Welsh policy making

Example A - Horticultural Peat

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

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

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

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

Example B

Precision Bred Plants

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

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

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

Example C

Deposit Return Scheme (DRS)

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

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

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

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

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

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