

LINK Written Evidence:

UK Internal Market – Culture, Europe and External Affairs Committee call for views

29 October 2021



Scottish
Environment
LINK

Q1. How is devolution being impacted by the new constitutional arrangements arising from the UK internal market?

The world is facing two interlinked, existential crises – climate change and biodiversity loss. The human drivers of these crises – including agriculture, urbanisation, resource extractions and energy use – are closely interconnected with our economic choices and the production, trade, use and disposal of goods on the market. With 80% of UK environmental law prior to 2021 being derived from EU law, the UK's departure from the EU makes many of these challenges more complex.

The UK has a high degree of market integration across each of the four nations. The choices that are made on how to produce and regulate goods in one part of the UK will have consequences for other parts of the UK. The UK Internal Market Act (UKIM Act) seeks to resolve problems of divergence arising across the four nations by introducing principles of mutual recognition and non-discrimination in intra-UK trade of goods. LINK members have previously argued that these principles must be qualified to permit essential regulation in public interest, including to protect and improve the environment.

In response to previous inquiries on the UK Internal Market Bill, LINK has highlighted how the previous arrangements under the EU created conditions that encouraged the raising of environmental standards. With minimum EU environmental standards being required of all member states, UK nations could participate in a 'race to the top' and innovate to set higher standards.

The new constitutional arrangements risk actions to go 'above and beyond' environmental standards in one part of the UK being stymied by legal challenge from another part. For example, given the urgent need to reduce our carbon footprint and protect precious peatlands, eNGOs have suggested a ban on the production and sale of peat in compost for horticulture. The UKIM Act could pose challenges for Scotland's ambition to implement a ban on the sale of peat for horticulture in this parliamentary session.

Q2. Scrutiny, transparency and accountability challenges – including how the Parliament can best address these challenges.

In terms of the challenges of scrutiny, transparency and accountability this poses to members of the Scottish Parliament, LINK members believe that country-level decision-making has improved opportunities for scrutiny by devolved parliaments with greater involvement of NGOs in the process of responding to consultations and giving evidence at committee.

LINK encourages the committee to consider the following issues:



- How will the Scottish Government, and subsequently parliament, be informed of any reviews of market access conducted by the Office for the Internal Market (OIM) in Scotland. What are the intergovernmental arrangements for this and what role might the committee have?
- What progress has been made on agreeing Common Frameworks? How can these be best used to ensure steps taken to raise standards in Scotland will not be undercut by goods and services of a lower standard from other parts of the UK?
- What will be the notification process to the Scottish Government, and subsequently parliament, when UK Ministers intend to use the powers under the UKIM Act to provide financial assistance in devolved areas in Scotland? What role would the committee have in such an event?
- In the event of a dispute arising from the UKIM Act or common frameworks, the joint ministerial committee structures are expected to be the primary forums to resolve issues. Can the UK or Scottish Government provide information as to how the dispute resolution process will work?

Q3. The challenges and opportunities in domestic policy divergence including the risks/rewards of policy divergence between the four parts of the UK and the EU.

Challenges:

- Allowing for policy innovation – a success of devolution has been the ability of each UK nation to choose to respond in different ways to shared issues. This has allowed countries to be innovative: for example, Scotland introducing the indoor smoking ban in 2006 and Wales introducing the successful 5p plastic bag charge to reduce waste in 2011. The principles of mutual recognition and non-discrimination could limit the opportunity for different parts of the UK to test out different approaches and, in the long term, stifle creativity.
- Effectiveness of policies – if one part of the UK did introduce new measures to tackle a problem, such as placing a ban on particular single-use plastic items, items made in the rest of the UK could continue to enter the country’s market and undermine the aims of the policy.
- ‘Race to the bottom’ – a key risk is that given these limitations on policy innovation and effectiveness, each part of the UK is incentivised to lower its regulatory standards in order to remain competitive within the internal market. This could pose risks to Scotland’s environment if, for example, regulations on water quality were relaxed.

Opportunities:

- If strong common frameworks are agreed collaboratively by the four governments of the UK, there is an opportunity to agree new minimum standards for the environment. Setting a new baseline for standards of air, water, soil quality amongst many others, would reduce the risk of deregulation as part of a race to the bottom.

Q4. The relationship between the Protocol on NI and the operation of the UK internal market – including whether this poses challenges for Scotland.

This is not an area LINK members can comment on.



Q5. What the establishment of the UK internal market and the increasingly interconnected nature of devolution means for intergovernmental and interparliamentary relations – including what opportunities and challenges they represent.

There is a need for good intergovernmental communication and a commitment to take a collaborative approach to the challenges and opportunities of the internal market. LINK believes developing strong common frameworks would contribute to this. Many of our previous [briefings](#) from Session 5 remain relevant, as there has been little to no stakeholder engagement on any environmental common frameworks in the months since.

As mentioned above, it would be helpful if government could set out the role, if any, for the Scottish Parliament in the event of a dispute over the operation of the UKIM.

Q.6 The impact of the EU-UK Trade and Cooperation Agreement and other bilateral trade agreements on the operation of the UKIM and devolution.

LINK has worked with UK-based Greener UK to provide comment on the Trade and Cooperation Agreement – for full details see [here](#).

The Agreement is broad and complex, providing a framework for the UK's relationship with the EU for years to come. The environment is a key aspect woven through several different parts of the Agreement. The UK Government has recently consulted on how it will engage with civil society and business groups on implementation issues through establishing a Domestic Advisory Group.

Greener UK and LINK have commented that the approach of a single advisory group, meeting 1-2 times per year, will not be effective to work through implementation issues. We have also been clear that the advisory group should not only ensure that a balance of civil society interests are represented, but that representation is balanced across the four nations of the UK. This will help to ensure the devolution aspects of TCA implementation are considered and the potential impacts on the internal market can be worked through jointly.

This submission is supported by the following LINK members:

Environmental Rights Centre for Scotland
National Trust for Scotland
RSPB Scotland
Scottish Wild Land Group

Scottish Environment LINK is the forum for Scotland's voluntary environment community, with 42 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

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