**Consultation: UK Government Internal Market White Paper**

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**INTRODUCTION:**

Scottish Chambers of Commerce intends to submit a Network-wide response to the UK Government's Internal Market White Paper consultation.

**WHAT IS THE UK INTERNAL MARKET:**

The UK internal market refers to the rules that underpin free trade across England, Scotland, Wales and Northern Ireland. While the UK was a member of the EU, some of these rules were set by the EU. But at the end of the Brexit transition period, powers over key areas of market regulation will return to the UK government and devolved administrations.

The UK government believes that new rules are needed to prevent the emergence of new barriers to trade between England, Wales, Scotland and Northern Ireland within the UK and to enable the UK to agree trade deals with other countries. The UK government is consulting on proposals for how to manage the UK internal market after the Brexit transition ends, with the intention of bringing forward legislation in the autumn. It published a white paper on 16 July 2020.

**KEY PRINCIPLES UNDERPINNING SCC NETWORK RESPONSE:**

1. Trade between UK nations, the EU and the world must be accessible with as few barriers as possible;
2. Common standards and policies across the UK must be devised and developed with collaboration between all administrations;
3. An integrated approach to the access and movement of products and services;
4. Reduction of regulatory burdens which add costs to doing business.

***What are your views on the above principles? What other principles would you like to see added or removed?***

**COMMON FRAMEWORKS:**

In October 2017, the four governments agreed to work together to establish a common approach in key policy areas of returned EU law – referred to as common frameworks. Frameworks could consist of “*common goals, minimum or maximum standards, harmonisation, limits on action, or mutual recognition, depending on the policy area and the objectives being pursued*”.

It was agreed that frameworks would be established where necessary to “*enable the functioning of the UK internal market*”, to ensure compliance with the UK’s international obligations, allow the UK government to sign and implement new trade deals, to manage common resources and, ensure cross-border justice can operate and safeguard the security of the UK.

UK government analysis identified 160 policy areas where EU and devolved competence intersect. Of these, 78 were considered to require non-legislative frameworks, 21 required legislative frameworks, and 63 required no further action. Work on the development of frameworks is taking place between officials in each policy area. While there has been good progress, no final frameworks have been agreed by the four governments.

Over the last three years, the context has changed. The Johnson government has highlighted the importance of being able to diverge from EU regulation on goods in order to meet the UK government’s objectives and sign new trade agreements with non-EU countries, whereas Theresa May had proposed that the UK would stay aligned with EU rules through a common rulebook.

***What are your views on the UK’s ability to diverge from EU regulation on goods to pursue new trade agreements with non-EU countries?***

The [Scottish Government has argued that Common Frameworks are sufficient](https://www.parliament.scot/S5_Finance/General%20Documents/2020.07.14_Binder_1.pdf) to ensure the smooth functioning of the UK domestic market and do not need to be supplemented by legislation. However, the UK Government argues in its [White Paper](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901225/uk-internal-market-white-paper.pdf) that Common Frameworks alone are not enough.

***To what extent do you agree or disagree with these views?***

**WHAT ARE THE UK GOVERNMENT’S LATEST PROPOSALS?**

Alongside work on common frameworks, the UK government chose to develop proposals for a cross-cutting approach to the UK internal market, rather than relying on individual frameworks in specific policy areas. The Scottish government has refused to participate in this programme of work.

The government published a white paper in July 2020. It proposes to bring forward legislation that will enshrine two principles:

* **Mutual recognition** – Anything that can lawfully be sold in one part of the UK can be lawfully sold in another part of the UK. However, there will be exceptions as a result of the Northern Ireland protocol: if goods produced in Great Britain do not meet EU standards, they will not be able to be sold in Northern Ireland. Mutual recognition would also cover services trade and professional qualifications across the whole UK. (*see explainer section on page 6 for more detail)*
* **Non-discrimination** – It would be unlawful for any government of the UK to introduce rules or regulations that would favour goods or services produced in one part of the UK over another. This will apply to both direct discrimination (for example, a ban on milk from England being given to Scottish schoolchildren) and “indirect discrimination”, where a rule had the effect of discriminating by for example, a ban on milk in Wales being transported more than a certain distance. (*see explainer section on page 6 for more detail)*

1. ***Do you agree that the government should seek to mitigate against both ‘direct’ and ‘indirect’ discrimination in areas which affect the provision of goods and services?***
2. ***Could you provide examples of indirect discrimination that would affect the functioning of the Internal Market?***
3. ***What areas do you think should be covered by non-discrimination but not mutual recognition?***
4. ***What would be the most effective way of implementing the two functions outlined above?***

**INDEPENDENT MONITORING BODY**

The white paper also proposes that there should be an independent body to monitor the functioning of the UK internal market. It would oversee the implementation of these principles, monitor any potential barriers to trade, and consult with businesses, consumers and other interested professionals to gather evidence.

However, the white paper states that these functions “will not lead to third-party determinations that directly overturn the actions of elected administrations”. Instead, the white paper states that governance arrangements “will seek to build on the existing collaboration between the UK government and devolved administrations, ensuring a strong basis for political decision-making, oversight, and dialogue in relation to the internal market”. However, the white paper is not clear how such arrangements will work in practice. A review into intergovernmental relations began in March 2018. But no proposals for reform have been agreed yet.

***What are your views on the “independent body to monitor the functioning of the UK internal market?” Do you have any particular views on its composition, remit or authority?***

**BACKGROUND INFORMATION:**

**Why does this consultation matter?**

International trade is a reserved power, which means the UK government has exclusive responsibility for signing new trade deals and that any new trade deals will bind the whole of the UK. Many aspects of trade deals can also be implemented by the UK government – including, perhaps most notably, cuts to tariffs.

The UK government may, however, wish to make commitments in trade deals to change domestic regulation to remove barriers to imports. But responsibility for setting many of these sorts of regulations is devolved, for example food standards. The UK’s trading partners will want to know that they will have access to the entire UK market (more accurately the GB market), so they will want to know that the devolved administrations will implement the agreements in areas where they are responsible.

**SCOTTISH GOVERNMENT POSITION:**

The Scottish government has said that it will continue to refuse to accept or cooperate with the UK government’s proposals. In a letter to the Chancellor of the Duchy of Lancaster, Michael Gove, Scottish government constitution minister Mike Russell argued that the introduction of ‘mutual recognition’ could force one part of the UK to accept lower standards, in areas like food standards, than were deemed acceptable by local politicians and stakeholders. He argued that common frameworks were sufficient to manage divergence within the UK, and that additional proposals were unnecessary.

*“While ‘mutual recognition’ of standards and ‘regime across all areas of non-discrimination’ may sound innocent, what they disguise is a mechanism that will enable the UK Government to impose lower standards on Scotland – for example in food safety and environmental protections – as it seeks to achieve trade deals with countries outside the EU.*

*“The system would require regulatory standards in one part of the UK to be automatically accepted in the others, regardless of whether those standards are lower than those the Scottish Parliament might find acceptable. Our world class reputation for high quality food and drink would suffer from these proposals as the UK Government embarks on a race to the bottom – to the huge detriment of people and businesses across Scotland.”*

**BREXIT:**

Membership of the EU – and the EU single market – set a framework within which businesses traded across the UK and the whole of the EU’s single market. The devolution of powers to Scotland, Wales and Northern Ireland in the late 1990s took place within the context of EU membership, meaning that although powers in certain policy areas – such as agriculture, food standards, environmental policy and procurement – were devolved, there were EU policy frameworks that applied to the whole UK. The devolution statutes prevented the legislatures from contravening EU law.

Once the transition period ends, the relevant clauses in the devolution statutes will be repealed. This means that – unless action is taken – there will be no constraints on the devolved legislatures using the powers they already possess to set their own rules on things like food or environmental standards. If standards vary across the UK, then this risks the creation of barriers in the UK internal market. Without common rules that apply across the entire UK, it could become more difficult for producers or service providers in one part of the UK to sell their products in the other parts of the UK andit could involve additional costs to do so. There is also a risk that divergence could create market distortion. With different standards come different levels of compliance costs; if one part of the UK has higher standards, businesses may have to spend more money to ensure they adhere to them. These could interfere with market competition, as the same goods could become more expensive to produce in one part of the UK than another.

The management of the powers that will return from Brussels has been the subject of a long-running dispute between the UK government and the devolved administrations. It first surfaced during the passage of the EU Withdrawal Act 2018, when the UK government initially proposed that it would retain returned powers and devolve them as appropriate. A compromise with the Welsh government gave the powers to the devolved legislatures – but UK ministers retained a power to ‘freeze’ these powers from going to the devolved legislatures if they deemed it necessary. The legislation was passed against the wishes of the Scottish government and without the consent of the Scottish parliament.

**MUTUAL RECOGNITION:**

**Mutual recognition** is the principle of EU law under which goods that are legally sold in one [EEA country](https://www.gov.uk/eu-eea) can be marketed and sold in any other.

For the exporter, this means that a product legally on sale in one country should not have to meet a second set of requirements in the country to which they are exporting.

An importing country can only impose a technical rule, prohibit a product or withdraw it from sale if there is a legitimate public interest ground, such as a risk to:

* public health
* consumer safety
* the environment

Mutual recognition applies to ‘[non-harmonised goods](https://ec.europa.eu/growth/single-market/goods/free-movement-sectors/mutual-recognition/products-list_en)’, such as foodstuffs, furniture, vehicles or precious metals. These are goods that are not already covered by EU-wide legislation setting common requirements that all products of that type must meet before being placed on the market.

**THE NON-DISCRIMINATION PRINCIPLE**

Thiswill be a requirement not to discriminate between individuals or businesses based on residence or origin within the UK. Direct discrimination is where an individual or business is treated differently and unfavourably by another administration, in an explicit manner, compared with local operators when operating in another part of the UK, expressly on the grounds of residence or geographical origin. The non-discrimination principle will allow scope for such differential treatment where this is necessary, for example, to address a public, plant or animal health emergency.