

Summary of report: The Internal Market Act – a challenge to devolution

February 2025

Key points:

- The Internal Market Act restricts the ability of devolved governments to act in areas of their responsibility, including in the environment.
- The UK Government review of the Act is an opportunity to establish a system which better allows for policy innovation and a race-to-the-top in environmental standards.
- A report commissioned by Scottish Environment LINK recommends:
 - **The four governments should consider how to improve the Common Frameworks process.**
 - **Regulations should be implemented to allow devolved governments to pursue legitimate policy aims within their powers.**
 - **Wider reform to the Act should be considered.**

Background: The Internal Market Act

The United Kingdom Internal Market Act (UKIMA) was introduced as part of the Brexit process, establishing new rules around the sale of goods and services in the four nations of the UK. The then UK Government envisaged this as a replacement for the European single market rules, though the scope and operation of was markedly different from its EU predecessor.

The Act effectively meant that powers previously held by devolved governments cannot be exercised without the consent of UK ministers. **This represents a significant shift in the balance of power between the UK institutions and the devolved institutions.**

Since introduction the Act has been central to one relatively high-profile intra-governmental drama - the debate about the scope of deposit return systems for drinks containers. It has also been part of discussions about policy issues as diverse as horticultural peat, glue traps, XL Bully dogs, the phasing out of gas boilers, and minimum unit pricing for alcohol.

In January 2025 the new UK Government launched a review of the Act.

Approach to LINK report

[The Internal Market Act: A Challenge to Devolution](#) was commissioned by Scottish Environment LINK and produced by James Mackenzie. The report is based on a wide range of interviews, with academics, elected officials, civil servants, and external stakeholders (specifically NGOs and business representatives).



Scottish Environment LINK the voice for Scotland's environment



Registered office: 5 Atholl Place, Perth, PH1 5NE. A Scottish Charity No. SC000296

Scottish Environment LINK is a Scottish Company Limited by Guarantee and without a share capital under Company no. SC250899

Recommendations for reform

Recommendation 1: the four governments should consider how to improve the Common Frameworks process.

The Common Frameworks should be - and often are - useful and practical fora for discussions between the four Governments around possible policy divergence within the UK. On many policy fronts, where the Governments start from positions not too far apart, coordinated and aligned action is likely to be more effective. This remains true, despite the politicisation of recent processes, and would be the case no matter what might replace the Act.

Where the Common Frameworks operate in areas which touch on the market access principles, though, greater clarity is needed. This could include agreement on:

- timescales: first, the point at which Scottish, Welsh or Northern Irish Ministers should first approach UK Ministers to discuss a possible exclusion; and second, how long a Common Framework process should be expected to take, to give legislative certainty to those inside and outside government.
- what types of information it is appropriate to require of a Minister seeking an exclusion, and at what point in the process it should be expected.
- a restatement of the commitment of increasing the powers of the devolved institutions.

Recommendation 2: devolved governments should be able to pursue legitimate policy aims within their powers.

Devolution was established on the principle that the four nations of the UK could pursue different approaches in areas within their responsibilities, such as the environment or public health, but that specific, well-defined issues would be reserved to the UK Government.

Under the EU single market, member states can implement trade-related policies where local regulations can be justified by wider public policy objectives. This principle has been lost to devolution since the introduction of the UKIMA but could easily be reestablished, although under this proposal the devolved administrations would still have less freedom of legislative movement than they had before Brexit.

The devolved administrations should be allowed to pursue measures which are proportionate and intended to support a legitimate public policy objective, within the limits of their powers. This could be achieved by introducing a broader systemic exclusion to Schedule 1 of the Internal Market Act by regulation. This power would be limited by the principles of proportionality and subsidiarity, which are well established principles with a long history in case law, and would not give the devolved administrations an arbitrary licence to act.

Recommendation 3: consider a package of wider changes to the Act via primary legislation.

Wider reform to the Act could be introduced through amendments when a suitable legislative opportunity arises. The urgency and necessity of wider reform would be lessened by the implementation of Recommendation 2. This could include:

- Restricting or eliminating the power of external parties to bring challenges under the Act
- Clarifying what level of changes to existing regulations count as “substantive” and are therefore subject to the Act
- Reconsidering the role of direct spend by UK Ministers in devolved areas

Scottish Environment LINK is the forum for Scotland's voluntary environment community, with over 40 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

For more information contact:

Dan Paris

Director of Policy and Engagement