

CONSTITUTION, EUROPE, EXTERNAL AFFAIRS AND CULTURE COMMITTEE

14th Meeting 2021, Session 6

16 December 2021

The UK Internal Market

1. The Committee is currently conducting an inquiry on the UK Internal Market. The aim of this inquiry is to consider the implications of the UK internal market for Scotland including how devolution will work going forward.
2. This is the third evidence session on this topic and the Committee will take evidence from—
 - Jonnie Hall, Director of Policy, National Farmers Union Scotland
3. Members can find the written submission from Mr Hall in **Annexe A**.

Committee Clerks
December 2021

Written Submission from Jonnie Hall, Director of Policy, National Farmers Union
Scotland

Summary

1. The UK Internal Market is critical to the interests of Scottish agriculture and the vitally important food and drinks sector it underpins. It is of the utmost concern to NFU Scotland that the UK Internal Market is enabled to operate as it does now.
2. NFU Scotland is unequivocal in stressing the need for agricultural support policies to diverge where necessary to reflect different needs and objectives, while regulatory requirements converge to protect the integrity of the UK Internal Market.
3. NFU Scotland supports the intention to ensure that the UK Internal Market continues to operate as it does now – with free movement of goods and services produced to the same basic regulatory standards.
4. However, 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.
5. The principles of ‘mutual recognition’ and ‘non-discrimination’ raise the potential for Common Frameworks to be rendered meaningless.
6. NFU Scotland is clear that Common Frameworks could provide a more effective alternative to manage divergence, whilst respecting devolution, and so enable the UK Internal Market to operate without friction or distortion.
7. The Common Frameworks process has intended to specifically manage policy differences on the basis of agreement and is founded on respect for devolution. Common Frameworks can manage the practical regulatory and market implications of the UK leaving the EU and is the specific tool that was jointly designed by the UK Government and devolved administrations.
8. However, the UK IMA 2020 appears to limit the devolved administrations’ ability to act if any standards were lowered and give the UK Government a final say in areas of devolved policy, such as agriculture, the environment or animal health and welfare.

9. The UK IMA 2020 potentially undermines the Common Frameworks process both in principle, as they move from agreement to imposition, and in practice by removing the incentive for the UK Government and the devolved administrations to agree ways of aligning and managing differences when mutual recognition and non-discrimination rules require acceptance of standards from other parts of the UK.
10. The successful delivery of Common Frameworks, as intended, could ensure that the UK Internal Market effectively continues to operate as it does now – providing a level playing field of minimum regulatory standards to enable the free movement of goods and services without unfair distortion.

Commentary

11. It is self-evident that the UK Internal Market is by far the most significant market for Scottish agricultural produce.
12. According to the Scottish Government's 2018 export statistics, agricultural exports worth £855 million were destined for the UK market in 2018, of a total value for Scottish agricultural exports (to the rest of the UK, the EU and the rest of the world) of £1.5 billion. That equates to almost 60 per cent.
13. Expanding into the food and drink sectors, Scottish exports to the rest of the UK are dominated by exports of food which were worth £3.6 billion in 2017. This figure has remained relatively stable since 2013. Drink exports to the rest of the UK were worth £830 million in 2017 (www.gov.scot/publications/scotland-a-trading-nation/sectors/food-and-drink/).
14. Beyond agricultural products, the rest of the UK is also Scotland's biggest trading partner for goods and services. Four times as much trade in value terms goes to other parts of the UK than to the EU.
15. Over the past 15 years, Scottish trade with the UK has grown by 74 per cent from £28.6 billion to £49.8 billion, as trade with the EU has increased by 8 per cent from £11.4 billion to £12.3 billion (www.gov.scot/Resource/0051/00514198.pdf).
16. At the same time, the regulatory fields of agriculture, environment and food have a hugely important role in agricultural practice and trade within the UK.
17. As a result, they also require the closest co-operation between the UK Government and devolved administrations.

18. Maintaining the integrity and competitiveness of the UK Internal Market is therefore extremely important for Scottish agriculture and the producers which NFU Scotland represents.
19. Agricultural and food businesses continue to need clarity to have confidence that the UK Internal Market can operate effectively and with the full engagement of devolved administrations.
20. The UK Internal Market cannot operate in isolation and must work alongside the Trade and Co-operation Agreement negotiated by the UK and the EU and implemented from 1 January 2021, including the Northern Ireland Protocol as well as the current devolution settlement.
21. For the UK Internal Market to operate effectively, NFU Scotland believes three guiding principles must be upheld
 - No new barriers to trade – the UK IMA 2020 must work to ensure costs or barriers of doing business between different parts of the UK are not increased
 - Collaboration across the UK – strong and effective collaboration between the UK Government and devolved administrations
 - Fair, independent and trusted adjudication – ensuring a proportionate and independent approach to adjudication will be vital for business confidence
22. As areas previously occupied by EU law have now reverted to the competence of the UK Government and devolved administrations, NFU Scotland recognises the potential risks of new and significant barriers and distortions to the UK Internal Market a result of diverging regulation across the UK.
23. NFU Scotland has continually supported the development of Common Frameworks as an important component of safeguarding the integrity of the UK Internal Market from 1 January 2021 onwards.
24. This support has always been predicated on such frameworks being ‘commonly agreed’ through mutual agreement between the UK Government and the devolved administrations and not by imposition from the centre.
25. NFU Scotland is resolute in its view that the UK Internal Market must be safeguarded and maintained, but this must be by consent.
26. In parallel, agricultural support arrangements are currently, and must remain, devolved.

27. It is critical that Scotland develops and implements measures and schemes that reflect the profile of Scottish agriculture in its future agricultural policy that succeeds the EU's Common Agricultural Policy (CAP) in order to attain the policy objectives that Scotland seeks from farming and crofting and all that they underpin. Beyond the Agriculture (EU Retained Law and Data) (Scotland) Act 2020, further Scottish legislation will be required to replace the CAP.
28. However, the UK Internal Market must continue to operate as is does now – with free movement of goods and services – and the regulations governing agricultural production, animal welfare, the environment, etc. must be aligned such that there is no competitive (cost) advantage or disadvantage from farming in one part of the UK over another.
29. In order to establish the necessarily converged regulatory rule book, NFU Scotland maintains its unequivocal position that Common Frameworks must be established and effectively operate to preserve the UK Internal Market and to ensure that the UK does not breach its international obligations.
30. NFU Scotland remains significantly concerned that the UK IMA 2020 could potentially override all Common Frameworks relating to agricultural support, environmental and animal welfare standards, and food.
31. NFU Scotland believes that UK Internal Market legislation should have been introduced after the development and implementation, including effective governance, of Common Frameworks and where Common Frameworks were founded on inter-governmental agreements rather than legislation.
32. NFU Scotland remains concerned that the UK IMA 2020 does not include any proposals for how UK Internal Market disputes may be resolved or how Common Frameworks might operate and be governed. This is a major omission.
33. The mutual recognition and non-discrimination principles of the UK IMA 2020 could in fact have adverse impacts for the competitiveness of Scottish agricultural producers.
34. A potential example of this would be if the Scottish and UK governments adopted differing regulation of Plant Protection Products (PPPs).

35. In such circumstances, the mutual recognition proposal could potentially create the situation where producers elsewhere in the UK who have access to a particular PPP could sell product treated with the PPP in Scotland, to the competitive disadvantage of Scottish producers who were banned from using that PPP.
36. This is just one example of potentially many where, without effective Common Frameworks in place, UK Internal Market distortions could in fact be created by the UK IMA 2020.
37. While the mutual recognition and non-discrimination principles are intended in some part to overcome such potential issues, NFU Scotland seriously questions whether it would hinder Scottish Government from pursuing policies in the interests of the agricultural, rural and food and drinks sectors of Scotland.
38. It would be an error, if having left the EU's Single Market, the UK Government were to pass legislation which effectively made it impossible to differentiate products to any affect. For example, NFU Scotland contends that there must be exceptions in place that allow, say, Scottish public bodies looking to procure local produce to do so outside of the scope of the non-discrimination principle.
39. Moreover, the issues identified above come into much sharper focus when, as they must, also be considered in the context of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021, intended to ensure Scotland's environmental standards and laws can continue to "keep pace with" those in the EU – thereby providing Scotland with the ability to remain closely aligned to the EU in devolved law.
40. This point illustrates the potential difficulties of the mutual recognition and non-discrimination approach to preserving the UK Internal Market at the same time as Scotland has legislated to keep pace with and remain aligned to the EU.
41. Hence, Common Frameworks are integral to the functioning of the UK Internal Market and there is an urgent need for the UK Government and devolved administrations to ensure that Common Frameworks are effectively delivered.
42. NFU Scotland believes that Common Frameworks can and should be effectively delivered to
- enable the functioning of the UK internal market, while acknowledging policy divergence
 - ensure compliance with international obligations

- ensure the UK can negotiate, enter into and implement new trade agreements and international treaties
- enable the management of common resources
- administer and provide access to justice in cases with a cross-border element
- safeguard the security of the UK

43. In addition, Common Frameworks should respect the devolution settlements and the democratic accountability of the devolved legislatures.