

**CONSTITUTION, EUROPE, EXTERNAL AFFAIRS AND CULTURE COMMITTEE**

**1<sup>st</sup> Meeting 2022, Session 6**

**13 January 2022**

**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 fourth evidence session on this topic. This meeting will focus on the work of the Office for Internal Market and the Committee will take evidence from—
  - Rachel Merelie, Senior Director, Office for the Internal Market
  - Sheila Scobie, Director, Office for the Internal Market
  - Jonathan Scott, Non-Executive Director and Chair, Competition and Markets Authority
3. Members can find the written submission from the Office for the Internal Market in **Annexe A**.
4. Members can also find attached a SPICe briefing on the Office for the Internal Market in **Annexe B**.

Committee Clerks  
January 2022

Written submission from the Office for the Internal Market

**Introduction**

1. We welcome the opportunity to provide the Committee with a background briefing on the Office for the Internal Market (OIM), ahead of our session on 23 December. This note is intended to provide useful background to the role of the OIM, including our monitoring and advisory functions, as well as some of the key issues and challenges facing the OIM.
2. It first sets out some of the background to the OIM and explains our key role and functions including how we are governed. It then outlines how we have been engaging with stakeholders in Scotland as we operationalise the OIM, before setting out some of the key materials we will be producing over the coming months. Finally, the note explains some of the important wider contextual issues and how they interact with the OIM including common frameworks and the NI Protocol.

**Background**

3. The OIM launched on 21 September 2021. We accompanied this launch with the publication of operational guidance on how the OIM would discharge its internal market functions, and a statement of policy on how it would approach the enforcement of information gathering powers. The OIM also published alongside these documents a summary of responses to public consultation on the guidance and the statement, and our response to points made. Finally, the OIM has developed a brief video explaining our role aimed at a business audience. These are available on our website [here](#).
4. Our focus now is on raising awareness of the OIM, in particular through our new digital reporting service for businesses to report any internal market issues, and by preparing a report to be published in Spring 2022 on the state of the UK Internal Market. We look forward to telling the Committee more about these when we meet.

**The role, functions and statutory objective of the Office for the Internal Market**

5. As set out in our [operational guidance](#), the OIM's role is to assist governments and other key stakeholders in understanding how effectively companies are able to sell their products and services across the four nations of the UK, and the impact of regulatory provisions on this, including the impact on competition and consumer choice. The OIM's main functions fall into the following two categories:
  - monitoring and reporting on the operation of the UK internal market: this includes publishing annual and five-yearly reports, as well as undertaking discretionary reviews on any matter that the OIM considers relevant to assessing or promoting the effective operation of the internal market in the UK and/or provisions of Parts 1 to 3 of the UKIM Act.

- providing reports or advice on specific regulatory provisions upon the request of a relevant national authority, that is the UK Government, the Scottish Government, the Welsh Government and a Northern Ireland Department.
6. It is important to note at the outset that the advice and reports of the OIM are non-binding. The OIM is not the regulator of the internal market and has no enforcement role. When carrying out its functions, the OIM must have regard to the following objective: to support, through the application of economic and other technical expertise, the effective operation of the internal market in the UK with particular reference to the purposes of Parts 1 to 3 of the UKIM Act. When carrying out its functions, the OIM must have regard to the need to act even-handedly in relation to the relevant national authorities.
  7. In order to deliver reports and advice which are useful and relevant, the OIM will bring together information and data gathered across the four nations to become a centre of expertise on the internal market.

## **Governance**

8. An OIM Panel Chair and Panel members are being appointed to oversee delivery of OIM work. OIM Panel appointments are being taken forward by BEIS Secretary of State who is required to consult with governments in Scotland, Wales and Northern Ireland as part of the appointments process.
9. The OIM Panel Chair will be able to form task groups made up of a minimum of three OIM panel members and supported by OIM officials to carry out work, as appropriate.
10. The OIM Panel Chair will represent the OIM Panel on the CMA Board and in the public sphere, being a key spokesperson for its work across the UK. Panel members are expected to have an appropriate balance of knowledge, skills and experience relating to the operation of the UK internal market in different parts of the UK.

## **Engagement with stakeholders in Scotland**

11. In establishing the OIM and in developing the approach set out in our operational guidance, OIM officials have had constructive engagement with officials from across the Scottish Government as well as the other devolved administrations. Scottish Government analysts have also contributed to the OIM's work to assess the availability of UK trade data.
12. The OIM has also engaged widely with stakeholders from across the UK during our public consultations on the operational guidance and statement of policy. The responses to our formal consultation, including stakeholders in Scotland, can be read on our website [here](#).

13. We remain committed to engaging with stakeholders in Scotland and throughout the UK in developing the evidence-base which will underpin the OIM's functions and our advice and reports. We held several meetings with officials in each of the four governments in the run up to launch of the OIM on 21 September and we continue to meet regularly as we develop our function. Since our launch, we have undertaken a wide series of engagements across the UK, including in Scotland where we have met business representative organisations, trade bodies and consumer groups

### **State of the Internal Market Report**

14. The OIM is currently preparing a State of the UK Internal Market report which it intends to publish in Spring 2022 – a year ahead of its first statutory reports. The report will support and inform the OIM's monitoring and reporting role, by setting out the evidence on the UK internal market gathered to date and, crucially, identifying where there are knowledge gaps.

15. The report will:

- provide an economic overview of the UK internal market, including a summary of the available evidence and a description of the work that the OIM is doing in partnership with stakeholders to improve the evidence base on intra-UK trade;
- identify any relevant regulatory and UK internal market developments since the end of the transition period (31 December 2020); and
- identify possible developments and highlight sectors where UK internal market issues may arise.

16. In addition, the OIM is developing the evidence base underpinning its work including through, for example, commissioning bespoke business survey analysis, and working with analysts within each of the national authorities, academics and others as well as building on internal intelligence gathered through our online webform.

### **The role of the OIM in respect of Common Frameworks**

17. The UKIM Act sets out a requirement for the OIM to consider common frameworks as part of its five-yearly monitoring, including, among other things, to report on: a) any interaction between the operation of Parts 1 to 3 of the Act and common framework agreements and b) the impact of common framework agreements on the operation and development of the internal market in the UK. The first five-yearly report is due by March 2023 and must be laid before the legislatures in each of the UK nations.

18. As set out in our operational guidance, the scope of the analysis relating to common framework agreements may include: identifying the relevant respective regulatory and market conditions in each of the nations; the scope of permitted and actual regulatory divergence; the existence, extent and impact

of any related exclusions from the market access principles; and an assessment of impacts on trade and other economic variables. This is an illustrative, not an exhaustive list, and we will adapt our analytical approach as we learn from operational experience.

19. In addition to the specific statutory duties relating to common frameworks set out above, where OIM reports or reviews relate to sectors where a common framework has been agreed, the OIM may consider the effects of this framework and its interaction with regulatory provisions as part of its findings. Common frameworks may also feature in the CMA's annual reports to the extent that they impact on the health of the UK internal market.
20. We remain open, within the constraints of our functions under the UKIM Act, to exploring with governments how we can best support them in the operation of the common frameworks process. We would expect Committees in the Scottish Parliament to have an interest, for their role in scrutinising CFs, in the way in which the OIM will carry out its functions in respect of CFs. And would be glad to have your views on this.

### **Northern Ireland Protocol**

21. The Northern Ireland Protocol and legislative provisions which are necessary to give effect to the Protocol are outside the scope of the OIM's functions under the UKIM Act. The OIM therefore cannot produce reports, at the request of any relevant national authority, on regulatory provisions which are necessary to give effect to the Protocol. Nor can the OIM undertake a review of the Protocol (or legislation implementing it) under its broader monitoring functions.
22. The OIM can potentially provide advice in certain very specific circumstances, such as when regulations are made which go beyond what is necessary to give effect to the Protocol, or on the impacts of GB divergence with EU law, when NI is required by the Protocol to remain aligned to the EU.
23. On the latter point, this would need to be assessed on a case by case basis. However, if a regulatory provision made in Scotland, Wales and/or England moves away from an EU standard (which NI can't do by virtue of the NI Protocol) that regulation appears in principle to be in scope of the OIM's functions, at least to the extent that it would not be a regulatory provision necessary to give effect to the Protocol. Taking an example of such a regulatory provision made by Scotland, subject to any further scoping criteria, the OIM could in principle look at the economic impact of that regulatory provision on the operation of the UK internal market including its impact on trade across England, Wales and Scotland.

**SPICe**

**The Information Centre**  
An t-Ionad Fiosrachaidh

## **Constitution, Europe, External Affairs and Culture Committee**

**1<sup>st</sup> Meeting, 2022 (Session 6), Thursday, 13<sup>th</sup> January 2022**

### **Internal Market Inquiry – Office for the Internal Market (OIM)**

#### **Background**

The Office for the Internal Market (OIM) is part of the Competition and Markets Authority (CMA)<sup>1</sup>. OIM was, in effect, provided for by the UK Internal Market Act 2020.

OIM is tasked with supporting the effective operation of the UK internal market using economic and technical expertise. OIM opened in September 2021.

Today's evidence session provides an opportunity for the Committee to discuss OIM's role in more detail. This paper provides some background information and sets out some areas which the Committee may wish to explore with witnesses from OIM. It is intended to complement the paper received from the OIM and, as such, follows the same headings.

#### **The role, functions and statutory objective of OIM**

The UK Internal Market Act 2020 ("the Act") gives powers to the CMA to monitor, advise and report on the internal market. The Act also gives the CMA enforceable investigatory powers to support its work.

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<sup>1</sup> The CMA is a non-Ministerial department sponsored by the Department of Business Energy and Industrial Strategy (BEIS).

The Act provides that *“The objective is to support, through the application of economic and other technical expertise, the effective operation of the internal market in the United Kingdom”, including “supporting the operation of the internal market” in the “interests of all parts of the United Kingdom” and “in the interests of consumers of goods and services as well as other classes of person with an interest in its operation.”*

OIM *“assesses whether the Internal Market is operating effectively and provides expert and independent advice to UK government and devolved administrations.”<sup>2</sup>*

[Guidance on the Operation of OIM](#) explains that its role is advisory, not decision-making. OIM will provide reports or advice on specific regulatory provisions, including proposals relating to such regulatory provisions. Such reports or advice are provided upon the request of the UK Government, Scottish Government, Welsh Government or a Northern Ireland Department.

The Act defines ‘advice’ distinctly from ‘report’. OIM is required to publish reports (see section on state of the internal market report) but there is no such legislative requirement for advice. Advice given by OIM at the request of one government or Northern Ireland Department must be shared with the other governments/ Northern Ireland Department (i.e. those who did not request the advice).

Members may like to explore with witnesses:

- Whether OIM has the powers necessary to fulfil its role.
- The challenges for OIM in its advisory role across the UK, including balance between the UK Government and devolved administrations.
- Transparency around advice requests and advice given by OIM, including:
  - whether advice requests made of OIM will be brought to the attention of the non-requesting authorities prior to the advice being given by OIM
  - whether advice requests will be made public
  - if OIM will publish any advice it provides.

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<sup>2</sup> [Office for the Internal Market webpage](#)

## Governance

OIM will have a panel chair and members. The devolved administrations are consulted on as part of the appointments process. OIM task groups may be set up to undertake work. A minimum of three panel members require to be in each group.

Members may like to explore with witnesses:

- At what stage the appointments process is at.
- Whether the panel and any task groups established will be representative of the devolved nations.

## Engagement with stakeholders

In the [summary of consultation responses](#) on OIM's operational guidance and statement of policy, it is stated that three business roundtables were held as part of the consultation with these *“attended by representatives from a wide range of organisations”*. Other points of interest from the summary include:

- More than half of respondents highlighted the need for OIM *“to adopt a strengthened approach to stakeholder outreach and engagement as well as consultation across the whole of the UK”*.
- Respondents also highlighted *“the need for ongoing engagement with interested parties throughout the review and report processes”* and suggested OIM *“build transparency mechanisms”* into its procedures to allow interested parties the opportunity to contribute to the findings and recommendations of OIM reports.
- An overall sense from the consultation responses that OIM *“should be seen as an authoritative body”* which could both reactively and proactively<sup>3</sup> *“offer expert advice, guidance and information on the UK internal market to a wide set of stakeholders”*.

OIM has undertaken a survey of businesses across the UK. The survey seeks to understand how easily businesses can trade with other parts of the UK and any barriers businesses may experience.

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<sup>3</sup> Reactively through reporting functions under sections 34 to 36 of the Act and pro-actively through monitoring and discretionary functions under section 33 of the Act.



OIM has also launched an online form where businesses, business groups and consumers can report any issues with the way in which the internal market is operating.

Members may like to explore with witnesses:

- How OIM plans to build networks with business and consumers.
- The transparency of OIM, including mechanisms to allow stakeholders to contribute to OIM outputs.

## State of the internal market report

OIM must report annually with the first such report due in March 2023. OIM is also required to report every five years.

The annual report must consider:

- the operation of the internal market in the UK, and
- developments as to the effectiveness of the operation of that market.

The five yearly report requires OIM to report on:

- the effectiveness of the operation of provisions of Parts 1 to 3 of the Act;
- the impact of the operation of Parts 1 to 3 of the Act on the operation and development of the internal market in the UK;
- any interaction between the operation of Parts 1 to 3 of the Act and common framework agreements; and the impact of common framework agreements on the operation and development of the internal market in the UK.

Such reports must be laid before the UK Parliament and devolved legislatures.

OIM has decided to produce a report in spring 2022 on the state of the internal market. This will include information received through work with business stakeholders as part of OIM's survey (see Engagement with stakeholders above).

Speaking on reporting in an evidence session with the House of Lords Common Frameworks Scrutiny Committee on 16 November 2021, Rachel Merelie, Senior Director, OIM stated:

*“our initial thinking is that you need a certain period of time over which to look at the health of the internal market and the trends that are developing, so it is quite important to put a stake in the ground but not too frequently.”*

OIM can also produce ad hoc reports as it feels necessary. The reports and advice of the CMA are the non-binding.

Members may like to explore with witnesses:

- The approach that OIM will take to reporting, including the approach to evidence gathering.
- Whether all OIM outputs will be made available to the governments of the UK and whether legislatures and the public will have access to all reports – including ad hoc reports.

## The role of OIM in respect to common frameworks

The OIM's role *"includes reporting on the impact of common framework agreements on the operation and development of the internal market in the United Kingdom and any interaction between the operation of Parts 1 to 3 of the Act and common framework agreements"*<sup>4</sup>.

OIM explained in an evidence session with the House of Lords Common Frameworks Scrutiny Committee in November 2021, that OIM's reports may be used as part of the evidence presented in any disputes which arise from frameworks. OIM itself does not have a role in dispute resolution which will be dealt with if agreement cannot be reached at official level through existing intergovernmental dispute resolution mechanisms.

Members may like to explore with witnesses:

- How OIM will undertake its assessment of the interaction between common frameworks and the internal market.
- Whether OIM will consider specific framework areas, or the impact of frameworks more generally.

## Protocol

The Protocol on Ireland/Northern Ireland is not within the scope of OIM. There are, however, clear links between the UK internal market, common frameworks and the Protocol.

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<sup>4</sup> Summary of consultation responses [Summary of consultation responses \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/101111/summary_of_consultation_responses.pdf)

Regulatory provisions made in Great Britain which are not required to give effect to the Protocol, but which may have an impact on the internal market because of the existence of the protocol are likely to fall within OIM's scope.

The Committee may wish to discuss with witnesses:

- The challenge for OIM in assessing the UK internal market without straying into areas outside its scope, for example on the Protocol.
- Whether OIM's advice will take into account any issues arising as a result of the operation of the Protocol.

**Sarah McKay, Senior Researcher, SPICe Research**

5 January 2021

Note: Committee briefing papers are provided by SPICe for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest to committees and are not intended to offer comprehensive coverage of a subject area.

The Scottish Parliament, Edinburgh, EH99 1SP [www.parliament.scot](http://www.parliament.scot)