

Annexe A

CONSTITUTION, EUROPE, EXTERNAL AFFAIRS AND CULTURE COMMITTEE

23rd Meeting, 2023, Session 6

7 September 2023

Office for the Internal Market

1. The Office for the Internal Market (OIM) published its [Annual Report on the Operation of the Internal Market 2022-23 in March this year](#).
2. Its [Periodic Report on the UK internal market regime 2023](#) will also be of interest to members, particularly with regard to Common Frameworks and the market access principles.
3. This is the second time we have taken evidence from OIM, the previous occasion being on [13 January 2022](#) as part of the Committee's inquiry into the [The UK Internal Market](#) which we [reported on](#) in March that year.
4. The executive summary of OIM's annual report is outlined at **Annexe A**.
5. SPICe has prepared a briefing for this evidence session at **Annexe B**.

CEEAC Committee Clerks
September 2023

Executive Summary

1. This report is the Office for the Internal Market's (OIM) first annual report on the operation of the internal market. It covers the period from April 2022 to March 2023 and builds on our 'Overview of the UK Internal Market' report published in March 2022. We are publishing this report alongside our first statutory periodic report on the UK internal market regime.
2. Our role is to assist the four governments across the UK by applying economic and other technical expertise to support the effective operation of the UK internal market. We have an advisory, not a decision-making role. Given our focus on the economic impacts of different regulatory choices across the UK nations, we recognise that the findings and issues raised in our reports are likely to constitute one consideration, among others, when a government or legislature determines its preferred policy and regulatory approaches.
3. We have prepared this report to meet the requirement under section 33(5) of the UK Internal Market Act 2020 (the Act) that we prepare a report no later than 31 March 2023 (and at least once in every relevant 12-month period) on the operation of the internal market in the UK and on developments as to the effectiveness of the operation of that market.
4. Since the United Kingdom left the European Union (EU), significant powers have returned to the UK Government and to the Devolved Governments of Scotland, Wales, and Northern Ireland, increasing the autonomy for these governments to shape their own regulations and also therefore the possibility of regulatory differences emerging between the four nations of the UK post-Brexit.
5. In preparing this report, we gathered evidence from a range of sources, including statistics from the Devolved Governments, from the Economic Statistics Centre of Excellence (ESCoE) and from the Business Insights and Conditions Survey (BICS) which is conducted by the Office for National Statistics (ONS). We held roundtable discussions with a variety of stakeholders, such as businesses and trade associations, academics, members of the policy community, and legal professionals.
6. We commissioned qualitative research from an independent consultancy, Thinks Insights & Strategy (TIS), which obtained views of businesses based in all UK nations and who trade across the UK. We also monitored UK regulatory developments and reviewed publicly available information relevant to the operation of the UK internal market, and used information provided by businesses and other stakeholders through the OIM's webform.

7. In preparing this report, we heard from a number of stakeholders who raised issues associated with the Northern Ireland Protocol (the Protocol). Under the Act, our remit does not extend to the Protocol, and so we are unable to undertake a review of the Protocol or of legislation implementing it. For the purposes of our reporting functions, Northern Ireland is part of the UK internal market, and this report refers to the Protocol where appropriate.¹
8. We found that the available data on intra-UK trade was limited, with long lags before figures were available for Scotland, Wales and Northern Ireland and no data at all for England. There are inconsistencies in the way data is collected and produced which hampered comparability. However, some clear indications emerged. We found that intra-UK trade was very important to the UK nations, representing around 45% to 65% of the external sales and purchases of Scotland, Wales and Northern Ireland, although less so for England as a result of the relative size of its economy.
9. Given the limitations in the data currently available, we have published a 'Data Strategy Road Map' alongside this report which sets out initiatives to improve intra-UK trade data being undertaken by the ONS, the Devolved Governments and others. These projects aim to improve significantly what can be known and monitored of how the UK's internal market is working, by improving the available data.
10. We found from the BICS that the majority of businesses that trade within the UK do not experience challenges when selling to other UK nations, and less than one in ten of firms that engaged in trade cited challenges due to differences in rules and regulations. Our qualitative research also found that few businesses had encountered challenges in trading with other UK nations.
11. Businesses were also largely unaware of the potential for regulatory differences between UK nations to arise. When the potential for such changes was raised with the participants in our qualitative research and at our roundtables, they considered that it could raise challenges and that consistency was preferable. Despite this, the businesses we heard from mostly said they would be able to adapt to regulatory difference, although our evidence suggests that some smaller firms may find adaptation more challenging due to more limited resources and a lack of experience in adapting to regulations.

¹ This report was prepared shortly before the Windsor Framework was announced. We will work with the governments to understand any implications of the Windsor Framework for our reporting.

12. Our report covers a number of policy areas potentially impacting the internal market including: the proposed ban on the sale of horticultural peat; the development of Deposit Return Schemes; government prohibitions on single-use plastic products; proposed changes to genetic technologies; food and drink which is high in fat, salt and sugar; and glue traps and snares. Looking forward, we also identify some potential areas of note for the future including the impact of the Retained EU Law (Revocation and Reform) Bill 2022.
13. In reviewing these regulatory developments, we have identified common themes in relation to different regulations between the nations which we hope will assist policymakers when considering the potential impacts of future regulatory change on the UK internal market.
14. Perhaps unsurprisingly, where businesses express a concern about a regulatory development this is often because they expect compliance to entail additional costs or because they expect that a development will place some businesses at a disadvantage relative to others. We heard from businesses who were concerned that similar policy goals across the nations may be introduced at different speeds and/or in different forms. We also found a general lack of awareness of the Act (including the Market Access Principles) and noted some uncertainty as to the potential effects of the Act on specific regulations.
15. We also heard from governments, businesses and third sector organisations that intergovernmental discussion at an early stage of policy development (for example, via a relevant Common Framework) could help enable a coordinated approach across nations and/or ensure that differences between the nations' approaches are managed well.
16. We will report on the impact of regulatory developments on the effective operation of the UK internal market in subsequent annual reports.

Background

The Office for the Internal Market (OIM) is part of the Competition and Markets Authority (CMA)¹. OIM was, in effect, provided for by the UK Internal Market Act 2020 and opened in September 2021.

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

Today's evidence session provides an opportunity for the Committee to discuss OIM's first reports on the internal market and its role in respect of common frameworks.

The role, functions and statutory objective of OIM

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

[Guidance on the Operation of OIM](#) explains that its role is advisory, not decision-making. OIM can 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 but there is no such requirement for advice. Advice given by OIM at the request of one government or Northern Ireland Department must be shared with the other

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

governments/ Northern Ireland Department (i.e., those who did not request the advice).

OIM must also produce reports on the state of the internal market. These reporting duties are explored below.

State of the internal market reports

OIM must report annually². 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.

OIM is also required to report periodically (every five years)³. The periodic report requires OIM to report on:

- the effectiveness of the operation of provisions of Parts 1 to 3 of the Act⁴;
- 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 published its [first annual report on the operation of the internal market](#) as well as its [first periodic report on the UK internal market regime](#) on 22 March 2023.

The reports are the first insight into how OIM will undertake its general reporting duties, and how it assesses the functioning of the internal market alongside linked issues – including the process for exclusions from the market access principles of the UK Internal Market Act 2020 and common frameworks.

The annual report 2022-2023

In order to build a picture of the operation of the internal market and issues which may affect its efficacy in the future, OIM considered:

- economic data on trade flow across the UK
- the experience of businesses trading across the UK
- case studies on future areas of regulatory development likely to affect the UK internal market.

Overall, OIM found that awareness of the UK Internal Market Act 2020 *“including the MAPs [market access principles], is low, and businesses, lawyers and*

² Section 33(5) of UKIMA sets out the requirement for an annual report

³ Section 33(6) of UKIMA provides for OIM to report periodically (every five years).

⁴ Broadly, this is the market access principles for goods and services and mutual recognition of professional qualifications.

parliamentarians have raised questions about how the Act would affect specific regulations.”

OIM stated that it *“will monitor this area as awareness and certainty about the operation of the Act as well as the volume of regulatory activity which may impact the operation of the internal market may be expected to increase over time.”*

Trade flows

The annual report assessed economic data on the flow of trade between the different parts of the UK. OIM also asked businesses trading in the UK to share their experiences and looked at the knowledge and perceptions they have of the internal market and specifically the MAPs.

On trade flows, the report highlighted the amount of intra-UK sales for Scotland, Wales and Northern Ireland amounted to £89bn in 2019. It also stated that:

“Of these three nations, Scotland traded the most with the rest of the UK in absolute terms in 2019, followed by Wales and then Northern Ireland, with these absolute differences likely driven primarily by the relative sizes of their economies.”

The report highlighted that larger businesses and those in manufacturing were more likely to export to other parts of the UK. The report drew on evidence from the [Business Insights and Conditions Survey](#) undertaken each fortnight by the Office for National Statistics which indicated (from the inclusion of the question ‘In the last 12 months, has your business sold goods or services to customers in other UK nations?’ in three surveys between August 2022 and February 2023) that:

“around 15% of businesses trade with customers in other UK nations”

The figure was higher in particular sectors, such as manufacturing, wholesale and retail trade where it was around 20% of businesses.

Experience of intra-UK trade

OIM’s report provided information on businesses’ experience of intra-UK trade. Businesses were again asked through the Business Insights and Conditions Survey about challenges they faced when trading across the UK. The report concludes that:

“the majority of businesses that trade within the UK do not experience challenges when selling to other UK nations. In all three waves of the BICS, more than half of businesses that sold goods and services to customers in other UK nations did not face any challenges when doing so. Of those businesses who did engage in trade with other UK nations, only a small number said they experienced challenges due to differences in rules or regulations”

OIM also conducted qualitative research with 45 businesses which trade across the UK, asking them about hypothetical scenarios which simulated intra-UK regulatory divergence. The scenarios set by OIM’s research were:

- ‘In your business, the main good/product you manufacture contains a specific input. One UK nation bans the sale of goods/products containing this specific input.’
- ‘One UK nation imposes new labelling requirements on the main good/product that you manufacture.’
- ‘One UK nation bans the supply of your services in its nation unless service providers like you comply with a new and additional (regulatory) requirement.’

The outcome of that research was to show that very few businesses had experience of working across different regulatory environments. The report states that:

“Overall, intra-UK trade was seen to be working smoothly, with the majority of participants experiencing no or few problems trading across UK borders” and that “planning and decision making was based on customer demand, supplier availability, and cost and travel distances, more than any consideration of borders within the UK and businesses did not typically seem to regard intra-UK trade as ‘trading across borders’.”

The report highlighted that the possibility of intra-UK regulatory divergence is not well understood:

“The fact that intra-UK regulatory difference is a potential consequence of the UK’s withdrawal from the EU was not well understood by businesses in the research.”

The report also stated that:

“When presented with the concept of regulatory difference between UK nations, businesses struggled to understand who benefits from that difference. Some participants recognised that political aspirations or consumer pressure might drive regulatory change. But businesses were concerned that intra-UK differences could be costly and complex and disadvantage the economy overall”.

The conclusion from OIM’s research was that:

“Broadly speaking, businesses said that they should be able to cope with intra-UK divergence in the future, but when confronted with specific scenarios they reported that it felt challenging...None of the participants in our sample had put in place specific plans to prepare for or mitigate against the potential challenges that might be created through regulatory change.”

Future areas of regulatory development

OIM held roundtable events with lawyers, academics, policy stakeholders and trade associations which fed into its research. In part, this was to discuss areas of regulatory development which may affect, or be affected by, the UK internal market.

“The key areas that participants identified were agriculture (including agricultural subsidies, gene editing and biotech, pesticides and plant protection products, and animal transport), the environment (extended producer responsibility obligations, deposit return schemes, packaging, and waste) and food and drink (mycotoxins and HFSS foods). Other areas that were also raised included the automotive industry, the construction industry, chemicals, and cosmetics.”

The report considered five policy areas in more detail:

- Deposit return scheme (DRS)
- Single Use Plastic Products
- Genetic Technology (Precision Breeding)
- Food and drink that is high in fat, salt and sugar
- Glue traps and snares

The report noted that *“DRS is the issue on which we have received the most webform submissions via our online reporting service.”* Issues raised by stakeholders online to OIM included concerns around glass being in the scope of Scotland and Wales’ DRS schemes but not likely to be caught by DRS in England and Northern Ireland and the higher producer fee in Scotland for producers who use a UK-wide label. The report reflected that *“Some producers have said that they may consider withdrawing from the Scottish market, either permanently or until harmonised DRS are in place across the UK.”*

As the Committee is aware, the situation on DRS has moved on since OIM’s report with the UK Government agreeing a partial [temporary exclusion to the MAPs](#) and the [Scottish Government delaying the scheme](#) until at least October 2025 “as a consequence of the UK Government’s refusal to agree a full exclusion”⁵.

In relation to single use plastics, OIM’s report stated that *“There has been very little commentary from businesses and consumers on the practical impacts of the differences between bans on single-use plastic items in different nations, and the differing timescales on which they have been introduced.”* The time taken for an exclusion to the MAPs was noted as was the call for clearer messaging on what suppliers could and could not legally sell in the time between Scottish regulations coming into force and an exclusion to the MAPs being effective.

On precision breeding, OIM’s report noted that the policy area interacts with several common frameworks and that, because of the MAPs:

“if precision-bred plants and animals are lawfully produced in (or imported into) a part of the UK where it is also lawful to sell them, they can be sold in any UK nation without needing to comply with requirements imposed by regulations there.”

Since OIM compiled its report, this issue has become live given that the Genetic Technology (Precision Breeding) Bill has now received Royal Assent as the [Genetic Technology \(Precision Breeding\) Act 2023](#). This means that products which have

⁵ [Scottish Government News 7 June 2023](#)

been genetically modified in line with the Act may be available on the Scottish market.

[In evidence to the Rural Affairs, Islands and Natural Environment Committee](#) in November 2022, Cabinet Secretary Mairi Gougeon MSP indicated that the Scottish Government felt common frameworks had not been used as agreed, saying:

“we have also seen examples in which, despite all four Administrations agreeing to the process and agreeing to work in collaboration, the process has not been adhered to. An example of that relates to the UK Government’s Genetic Technology (Precision Breeding) Bill. The process should have been used for that but, instead, it started the other way round. The bill was published without discussion having taken place with the other Administrations in the UK.”

Glue traps may also provide an interesting case study as the report notes the impact that the MAPs have had on the policy making process. The report notes:

“A number of governments and legislatures have noted that the MAPs influenced their decision-making around whether to ban the sale of glue traps. The former Parliamentary Under-Secretary of State at Defra noted that ‘under the UK internal market rules, it is not practical to ban the sale of glue traps in England as they could still be purchased elsewhere in the UK.’ The Scottish Government has stated that it proposes to ban the sale of rodent glue traps in Scotland ‘provided that this can be achieved under the terms of the Internal Market Act’.”

The [Wildlife Management and Muirburn \(Scotland\) Bill](#) was introduced in Parliament on 21 March 2023 and proposes a ban on glue traps. Part 1 of that Bill, amongst other things, makes the purchase or use of glue traps an offence. The [policy memorandum to the Bill](#) explains this approach, given that to ban the sale of glue traps would require an exclusion to the MAPs. It is noted in the policy memorandum that the Scottish Government is seeking such an exclusion, and if granted, the Scottish Government will bring amendments to the Bill at stage 2:

“The IMA provides that provisions of an Act of the Scottish Parliament which contravene the market access principles (i.e., the mutual recognition principle or the non-discrimination principle) “do not apply” or “have no effect”. The mutual recognition principle means that Scottish legislation banning a particular product would not prevent that product being sold in Scotland if it was lawfully produced in, or imported into, another part of the UK.

As glue traps are permitted to be sold in the rest of the UK any provisions to limit their sale in Scotland must be compliant with the IMA. For a ban on the sale of glue traps to be compliant with the IMA, an exemption to the IMA for this purpose would need to be in place. The Scottish Government is exploring the possibility of gaining an exemption with the UK Government and devolved administrations and should an exemption be granted; the Scottish Government intends to bring forward an amendment at Stage 2 or Stage 3 of the Bill to ban the sale of rodent glue traps in Scotland.”

OIM's annual report also noted that the action of governments across the UK in relation to food high in fat, sugar and salt may be an area of future divergence and that stakeholders had suggested that *"restrictions may make e-commerce harder, creating costs and an administrative burden for businesses who need to direct different information to customers in different parts of the UK."*

Periodic report

OIM's periodic report focuses on parts 1 and 3 of the UK Internal Market Act 2020 (i.e., the market access principles) on the operation and development of the internal market in the UK.

The report also covers common frameworks in so far as they interact with the market access principles and/or affect the operation and development of the internal market in the UK. In OIM's words:

"The focus of this report is on the mechanisms which underpin the effective operation of the UK internal market; namely, the MAPs and Common Frameworks."

The context for the report is that *"Since the establishment of the regime by the Act, there has been little new regulatory difference between UK nations."*

There are however two themes – uncertainty and transparency – which emerge in the report which have been identified by the Committee in its previous reports.

The approach to evidence gathering taken by OIM was roundtable discussion with stakeholders (including, for example, business, lawyers, academics and policy professionals) as well as seeking views from the UK and devolved governments. Qualitative research was also commissioned by OIM to seek the views of business more widely. The report highlights a:

"range of views across governments on the effectiveness of the MAPs" with the UK Government having "no specific concerns"; the Scottish Government believing that there "is potential for the MAPs to constrain devolved policymaking in many areas" and the Welsh Government indicating "that there has been insufficient time to assess the effectiveness of the MAPs."

Perhaps an important finding from the report is that the awareness of the MAPs is low amongst business. The report states:

"We found that awareness of the MAPs among businesses is generally very low. By contrast, our roundtable discussions with academics, members of the policy community, and legal professionals demonstrated a greater awareness of the MAPs. When the MAPs were explained to businesses as part of our commissioned qualitative research, some saw potential for the MAPs to alleviate their concerns, while others considered that the MAPs could create 'unfair' trading conditions."

The report notes that this *"Low awareness of the MAPs among businesses and the absence of related case law suggests that businesses have not needed to rely on the MAPs to support intra-UK trade."*

This ties to the findings of the annual report discussed above which did not identify significant challenges for businesses trading across the UK given that much of the regulation across parts of the UK remains aligned.

Similarly, awareness of common frameworks was low amongst stakeholders. The report notes that around half of common frameworks will interact with the MAPs but that *“Only a small number of these have been used in practice to consider regulatory developments that are likely to interact with the MAPs or have a significant impact on the UK internal market”*.

The report also indicated a lack of transparency in the frameworks process, noting that:

“Those who are aware of Common Frameworks indicated that they are unaware of the governments’ ambitions for Common Frameworks and did not know what topics were being discussed or whether there are opportunities for them to contribute to those discussions.”

This is a challenge previously identified by the Committee in its [report on the UK Internal Market](#) published in February 2022.

Notably OIM called for increased transparency, encouraging:

“transparency both between the governments and with external stakeholders such as businesses and third sector organisations about future regulatory developments that may engage the MAPs and intersect with Common Frameworks.”

OIM stated that the four governments across the UK had indicated that they are:

“broadly supportive of the role that Common Frameworks can play in enabling the functioning of the UK internal market.”

The report articulates OIM’s view *“that stakeholder engagement can help to inform the potential effects of regulatory differences on the UK internal market and a proactive approach to engagement would provide useful insights.”*

The report also noted the lack of certainty around the MAPs, stating that:

“Where stakeholders are aware of the MAPs, there is uncertainty about how they may apply in practice due to a lack of case law and the possibility of future changes following further exclusions from the MAPs.”

OIM concluded that *“Awareness and certainty about the Act’s operation and the volume of regulatory activity which may engage the MAPs and Common Frameworks may increase over time.”*

The role of OIM in respect to common frameworks

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"*⁶.

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 initiated if agreement cannot be reached at official level through existing intergovernmental dispute resolution mechanisms.

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SPICe Research

28 August 2023

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

⁶ [Summary of consultation responses \(publishing.service.gov.uk\), para 3.17](#)