

ANNEX A

Briefing provided to Ministers on 8 September 2020

Purpose

To provide an initial high level summary of the key elements of the UKG Internal Market Bill and consent request, which officials have just received. This initial summary will be supplemented by fuller initial analysis tomorrow morning.

Summary

The Bill, as anticipated, has provisions covering

- market access requirements in the form of a mutual recognition requirement, and prohibitions on direct and indirect discrimination, in respect of goods and services.
- The recognition of professional qualifications
- A new internal market monitoring authority that will sit within the Competition and Markets Authority
- Modification of the effects of the NI Protocol in domestic law in respect of NI-GB trade and state aid
- The reservation of subsidy control
- New comprehensive powers for UK ministers to bypass devolved discretion in funding in devolved areas in Scotland, including economic development, infrastructure, culture, sporting activities, and educational and training activities and exchanges – effectively seeking to displace and diminish the role of the SG in spending and funding decisions.

Exemptions to the market access requirements appear limited and include SPS and chemicals in respect of goods and some areas of services (health, financial, legal). There do not seem to be any general exemptions based on a proportionality or threshold test.

However, they do not appear (on first review) to be backdated to provisions in existence prior to enactment.

Consent Request

The accompanying consent request letter sets out very limited areas where UK ministers consider consent to be required, although the Annex to the Explanatory Notes indicates that consent will be sought for all seven parts of the Bill. The most significant areas mentioned in the consent letter are the reservation of state aid and taking comprehensive powers for direct UKG spending in devolved areas. UK ministers propose making the enacted bill a protected enactment at Sch 4 of the Scotland Act 1998, placing it beyond modification by Scottish Ministers or the Scottish Parliament. There is no recognition of the very significant new de facto constraints on devolved competence imposed by the blanket market access requirements, in line with the concerns raised by the Scottish Government in its initial response to the UKG White Paper and by many stakeholders in Scotland and across the UK (the explanatory notes include references to support from business – but no acknowledgement anywhere about the range of critical voices).

Conclusion and next steps

The draft bill confirms our initial assessment of the white paper proposals that it is no exaggeration to describe the Bill as an unprecedented threat to the devolution settlements in Scotland, Wales and Northern Ireland. Government legal colleagues are undertaking more detailed initial legal analysis which will be with ministers as soon as possible. This will be supplemented by further legal and policy analysis in the coming days.

ANNEX B

“Top line” briefing provided to Ministers from 9 September 2020

The following information is provided as extracts from an internal briefing document provided to Ministers. It is provided as extracts because the document contains other information outside the scope of your request or exempted from release.

A. Update & next steps

1. Further to the UK Government publishing its [White Paper](#) on proposals to legislate for the ‘UK Internal Market’ on 16 July (consultation closed just four weeks later on 13 August), the [UK Internal Market Bill](#) was published on Wednesday 9 September, with copy being shared with devolved administration late the evening before.
2. The Scottish Government submitted an initial response to the White Paper, will prepare advice on legislative consent, and publish a detailed full position in the autumn. We are looking at a truncated legislative process, with wholly inadequate time allocated for Parliamentary scrutiny, either at Westminster or in Holyrood.
3. The Scottish Parliament also debated the matter on 18 August where the White Paper proposals were overwhelmingly (92 votes to 31) rejected by parliamentarians across political parties, except for the Scottish Conservatives.

B. The Bill

4. The Bill’s Provisions include:
 - A principle of **mutual recognition** to ensure that compliance with regulation in one part of the UK is accepted as compliance in the other parts, regardless of the views, and indeed laws, of devolved legislatures. It is important to note that the system of mutual recognition envisaged in the White Paper is significantly different to the way mutual recognition operates in the EU.
 - A principle of **non-discrimination** so that local products and services cannot be favoured over others because of origin alone.
 - An independent monitoring function to report on the “health of the internal market” and lead on business and consumer engagement, making non-binding recommendations – which may either report to the UK Parliament and devolved governments – or only to the UK Parliament.
 - The **reservation of state aid** in which a new UK subsidy control regime, which is being developed separately, is seen as an integral part of the UK internal market package of measures.
 - In addition, the bill has measures to make **unilateral changes in domestic law** relating to the NI Protocol and State Aid, despite the UK’s commitment in international law to implement these in **the Withdrawal Agreement**.
 - It also grants **greater powers for UK ministers to bypass devolved decision making in allocating funding to Scotland**.

5. The Bill represents an assault on devolution the like we have not experienced since the Scottish Parliament was established. We will oppose it at every turn.
6. It will open the door to a race to the bottom on food standards, environmental standards and will endanger key public health policies such as minimum unit pricing. It will also deliver a hammer blow to the Scottish economy by making it harder for the UK Government to conclude Free Trade agreements if other countries think the UK won't meet its obligations.
7. UK ministers will by now be aware of the scale of opposition to their internal market proposals – this is reflected in the decisive vote in the Scottish Parliament in August. But it is also apparent in the views of businesses and key sectors like farming and crofting. There are also political concerns across every part of the UK and in every party in the UK, including the Conservative party.
8. The lack of adequate time to properly scrutinise the proposals suggests that the UK Government itself has little confidence that proposals are coherent or workable. The UK is also looking to push the Bill through Westminster as rapidly as possible in order to avoid proper scrutiny.
9. The Scottish Government is clear – and this is backed up by the views of stakeholders across Scotland – that the correct and proportionate means of dealing with these issues is through the common frameworks process which, despite our differences over Brexit, has been able to make significant progress over the last several years.
10. The Scottish Government is making a clear commitment to that process and to not diverge in frameworks areas until they are finalised and in place. We call on the UK Government to step back from these unnecessary and damaging plans and to make the same commitment.

C. Top lines

On devolution

11. Scottish Government sees this Bill as the biggest threat to devolution since 1999 and will vigorously oppose it at every turn.
12. It is fundamentally inconsistent with devolution, centralising control in the UK Government and UK Parliament, cutting across devolved powers by imposing new domestic constraints.
13. It is unnecessary because common frameworks can address any domestic market issues that may arise as a consequence of EU exit. The Scottish Government will support common frameworks where they are in Scotland's interests and where they are agreed, not imposed.
14. It allows a lowering of standards because Scotland will be compelled to accept standards, set by the UK Government and Parliament, regardless of the views and decisions of the Scottish Government and Parliament.
15. It does not, as is claimed, provide business certainty. It is the UK Government's approach to EU exit and negotiations – invoking Article 50 without a plan, breaking international law with regard to the Northern Ireland Protocol and pursuing a "low deal" or

“no deal” trade agreement with the EU, which will result in customs checks, regulatory barriers and extra business costs, that creates uncertainty for businesses.

16. It is damaging to businesses and consumers in Scotland and more widely across the UK. It is predicated on leaving the EU Single Market of 450 million people. It means losing the benefits of variations in approach to reflect consumer preferences, and health and environmental considerations in Scotland, and the advantages of high quality regulation of meat and fish products.
17. The Scottish Government does not want to see anything that would introduce new barriers to Scottish producers in selling their products in other parts of the UK, or anything that would negatively affect consumers.
18. Different standards have been applied across the UK for many years with no detriment to business or consumers. In more than four years of discussion with the UK Government, no example – not one - has ever been given of where the ‘internal market’ is at risk from devolution.
19. Scottish Ministers, as well as key stakeholders across Scotland, are clear that common frameworks – and not the UK Government internal market proposals – are the proportionate and preferred option for managing regulatory divergence in the UK when EU law no longer applies.
20. Scottish Ministers have renewed their commitment not to diverge in any frameworks area until they are finalised and have called on UK Ministers to do the same.
21. The UK Government Bill threatens both the frameworks process, devolution and the UK’s international standing. Frameworks are based on principles of equal negotiation and agreement. The UK Government seeks to legislate for an invented problem to centralise control and impose rules on Scotland.
22. We do not accept any suggestion that a significant gap may emerge in the operation of the internal market across the UK at the end of the transition period and believe that common frameworks will adequately address the practical regulatory and market implications of the UK leaving the EU. We also believe that having a voluntary structure of operational frameworks in place before the end of the year will make the proposals of the White Paper redundant. This is the view of key stakeholders across Scotland – in business, farming, the environment and many other areas.

On expected provisions relating to the Withdrawal Agreement

23. Although not present in the White Paper, the UK Internal Market Bill enables UK Ministers to override the legal force of the Withdrawal Agreement in areas including state aid and the Northern Ireland Protocol customs
24. We already know that the proposed Internal Market Bill would take a wrecking ball to devolution. Now, by threatening to undermine the international treaty, the Withdrawal Agreement, the UK Government is headed for a low, or no, deal cliff-edge exit from the EU which would have severe implications for jobs and the economy.
25. Using the Internal Market Bill to renege on parts of the Withdrawal Agreement is extraordinary and will not only alienate the EU, but also damage the UK’s international standing.

26. Legislating in direct opposition to the agreed terms of the Withdrawal Agreement sets a deeply uncomfortable and dangerous precedent and, in relation to the Northern Ireland Protocol, risks crucial protections against the return of a land border in Ireland.
27. The UK's senior legal civil servant Jonathan Jones has resigned, reportedly over its decision to override parts of the Brexit deal on Northern Ireland.
28. The Bill provisions do not provide "clarification" in relation to aspects of the NI Protocol, they give ministers powers to change the fundamental meaning and intent of the agreement, particularly on state aids.
29. On state aid, ministers would have powers to make changes to all aspects of the state aid provisions in the protocol.
30. On customs arrangements, the proposals include powers to eliminate any new documentation on "NI Goods" moving to GB, and explicitly the power to remove the need for export certificates, which are required under the Common Customs Code, which, under the Protocol applies fully to NI.
31. In all three of the areas where UKG proposes giving itself powers to override the Protocol – state aids, unfettered NI access to GB markets, and tariffs on goods moving from GB to NI – there is no ambiguity about the requirements of the Protocol, and it is absolutely clear that UKG fully appreciated these implications at the time they were agreed.
32. The Scottish Government is deeply concerned that these proposals will further diminish any trust EU leaders, and other international partners have in the UK.

On powers

33. Talk of a power surge is deliberately misleading. The powers the UK has listed are in areas that are already devolved.
34. The White Paper makes it clear that State Aid is to be removed from being a devolved power to become a reserved power.
35. The White Paper also clearly identifies minimum pricing, animal health and welfare, environmental standards (such as recycling targets and deposit return schemes), food safety, procurement and other devolved policy areas as being at risk from these proposals.
36. However, it is more than being about whether individual powers in specific areas are devolved or not. It means any Scottish Parliament laws could be challenged in court or bypassed if they were deemed to contravene the new UK Internal Market legislation agreed by the UK Parliament.
37. We believe that Frameworks which are being established to manage policy variations on the basis of agreement and respect for devolution are all that is needed to manage the practical regulatory and market implications of the UK leaving the EU. We urge The UK Government to reaffirm its commitment to that process.

On why this is not a matter of simply replacing EU rules with UK rules

38. This is not a simple case of replacing EU rules with UK rules. The Bill does not replace current arrangements within the European Single Market:

- the EU operates by equal members negotiating and agreeing single market rules – the UK Government is attempting to do the opposite. The UK Government wants to be able to decide and impose, even in devolved areas.
- EU single market rules recognise policy objectives alongside pure market considerations, for example, the health benefits of Minimum Unit Pricing –there is nothing in the Bill to suggest the same balance.
- Disputes regarding the EU regulatory landscape are adjudicated by national courts and the European Court of Justice – the UK Bill has no such basis.
- Subsidiarity is a central aspect of EU rules - one that is explicitly violated by the UK Government Bill.
- On trade deals: within the EU, where trade deals cover areas which are within national competence, then those deals can only be ratified if every member state ratifies them (which is why Wallonia was able to cause such disruption to CETA). To truly replicate the EU approach, the devolved parliaments should therefore be required to ratify devolved aspects affected by trade deals.

ANNEX 1. Stakeholder reaction

Immediate reactions to the Bill:

Welsh Counsel General, Jeremy Miles saying (reported 9 September 2020):

“Let me be clear – the UK Government plans to sacrifice the future of the union by stealing powers from devolved administrations. This bill is an attack on democracy and an affront to the people of Wales, Scotland and Northern Ireland, who have voted in favour of devolution on numerous occasions.

“The UK Government is explicitly seeking to rewrite the devolution settlement. The fact that they are also seeking primary legislation shows they are taking those powers from us. We believe in the principle of an internal market – but this bill is not remotely necessary to deliver it. We will do everything we can to challenge the power grab and the race to the bottom which this bill represents.”

Professor Nicola McEwen, University of Edinburgh, Centre on Constitutional: Change, 9 September: ‘EU exit poses challenges for goods/services trade across UK. But instead of building structures to make governments work together on challenges #InternalMarketBill all but cuts devolved governments out of the process...

“Unlike in EU internal market, there are very few exclusions to #InternalMarketBill rules. Public Health, environmental standards, morality etc are not grounds for exemption. Unfettered market access trumps other policy goals.”

Michael Dougan, Professor of European Law, University of Liverpool, 9 September:

“It’s perfectly possible to have a well functioning UKIM that accommodates regional variation, even if that involved certain trade barriers. And economic concerns have to be weighed against democratic interests of Scotland and Wales to shape own societies.”

Scottish Trades Union Congress 9 September:

“Despite their other political differences, Johnson is uniting political parties, trade unions and wider civil society in Scotland against a power grab which would see UK Government interference in previously devolved matters and a rolling back of the constitutional settlement we voted for in 1997 and strengthened in 2016.

“The mutual recognition principle in the UK Internal Market Bill is in fact a free pass for the UK Government to undermine the ability of the Scottish Parliament to make support for business conditional on Fair Work and to ensure environmental and food safety.

“And rather than pass funds to the Scottish Parliament to invest in public services according to the will of Scottish voters, Johnson intends to undermine the devolution settlement. Programmes designed to replace previous EU programmes should be devolved to the four parliaments for delivery.”

Pete Ritchie, Nourish Scotland, 10 September:

“The Bill reserves the previously devolved powers of SG to run its own subsidy schemes - but also farm subsidies could be included. It provides no role for devolved administrations in

schemes like the UK Shared Prosperity Fund which is due to replace other EU funding streams..." A bad bill in every respect (as well as explicitly breaking international law)."

Previous reactions to the White Paper:

Andrew McCornick, President, NFU Scotland, 14 August:

"The UK Internal Market proposals put forward 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.

As it stands, the UK Government proposals for legislation on a UK Internal Market undermine 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 rules require acceptance of standards from other parts of the UK."

NFU Scotland response to the White Paper:

"It is the clear view of NFU Scotland, and the other farming unions of the UK, that the proposals pose a significant threat to the development of Common Frameworks and to devolution.

"The UK Internal Market proposals appear 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.

"The proposals for the UK Internal Market, in the absence of effective Common Frameworks, could trigger a 'race to the bottom'. In a Scottish context, at very least, it could force the choice between upholding high standards of production or maintaining the competitiveness of agricultural businesses."

Scottish Council for Development and Industry, 14 August:

"SCDI is not convinced that the legislative approach proposed in the White Paper is the right priority. Mutually agreed common frameworks should be the foundation of the UK internal market, rather than the imposition of a single approach across the UK in devolved policy areas."

Yvonne White, Chair, Scottish Crofting Federation, 12 August:

"we cannot find evidence to support the need for this legislation. The criteria for UK internal trade must be agreed by all four nations, and not be imposed on us. In common with other Scottish food producers, we fear that the proposed legislation will lead to a race to the bottom, threatening our high standards in food, environment and animal welfare, thus damaging the image of Scottish produce.

"These standards are best safeguarded by the Scottish Parliament. Likewise our Parliament needs to retain control over agricultural support, as enshrined in the current devolution settlement. Any weakening of that position will pose an existential threat to the hill livestock sector, which is, after all, the backbone of crofting"

Finance and Constitution Committee, Scottish Parliament:

"The Committee is concerned that adopting the principles of mutual recognition and non-discrimination without addressing the fundamentals of what the UK internal market will look like creates significant risk for how devolution work... We reiterate our view as stated in our report on common frameworks that 'we strongly agree that the ongoing work to define the UK internal market also respects the devolution settlement such that enabling the functioning of the UK internal market must not and will not be at the cost of adjusting the devolved competencies without the consent of the Scottish Government and Scottish Parliament'."

William Wragg MP, Chair, HoC Public Administration and Constitutional Affairs Committee, 10 August:

“The White Paper addresses this issue by proposing to set in law the principles of mutual recognition and non-discrimination. This will effectively create new reservations in areas of devolved competence.”

39. The other devolved administrations also responded:

Welsh Government

Jeremy Miles in letter to Alok Sharma 14 August: “Our initial view was that the White Paper was fundamentally flawed and misleading – further analysis of the substance of your proposals has confirmed this view... The proposals also undermine three years of collaboration via Common Frameworks. Our commitment to the Frameworks programme remains and we continue to focus on the effective delivery of the programme...“The White Paper would thus remove or emasculate the current rights of the devolved institutions to implement changes to the regulatory environment in devolved policy areas governed to date by EU law, such as labelling, or environmental standards...“I cannot emphasise strongly enough that, in our view, the model of primary legislation envisaged in the White Paper is unnecessary, unworkable, heavy-handed, and will not secure legislative consent from the Senedd.”

Northern Ireland Executive

“There is a lack of detail and legal certainty throughout the paper... We will need a full assessment of the proposals on devolved powers prior to considering any legislative consent motion...our devolved institutions must still retain the ability to innovate for the betterment of our region”.

ANNEX C

Briefing provide to Ministers on 10 September 2020

The following information is provided as extracts from an internal briefing document provided to Ministers. It is provided as extracts because the document contains other information outside the scope of your request or exempted from release.

Internal Market

Top Lines

- This Bill represents an assault on devolution the like we have not experienced since the current Scottish Parliament was established. We will oppose it at every turn.
- It will open the door to a race to the bottom on food standards, environmental standards and will endanger key public health policies such as minimum unit pricing. It will also deliver a hammer blow to the Scottish economy by making it harder for the UK Government to conclude Free Trade agreements if other countries think the UK won't meet its obligations.
- It is damaging to businesses and consumers in Scotland and more widely across the UK. It is predicated on leaving the EU Single Market of 450 million people. It means losing the benefits of variations in approach to reflect consumer preferences, and health and environmental considerations in Scotland, and the advantages of high quality regulation of meat and fish products.
- We already know that the proposed Internal Market Bill would take a wrecking ball to devolution. Using the Internal Market Bill to renege on parts of the Withdrawal Agreement is extraordinary and will not only alienate the EU, increasing the likelihood of a low, or no deal EU exit, but also damage the UK's international standing and future trading relationships.
- The lack of adequate time to properly scrutinise the proposals suggests that the UK Government itself has little confidence that proposals are coherent or workable. The UK is also looking to push the Bill through Westminster as rapidly as possible in order to avoid proper scrutiny. This is astonishing given the UK Government is now saying the Withdrawal Agreement was rushed and not scrutinised properly to justify breaking international law.
- The Scottish Government is clear – and this is backed up by the views of stakeholders across Scotland – that the correct and proportionate means of dealing with these issues is through the common frameworks process which, despite our differences over EU exit, has been able to make significant progress over the last several years.
- The Scottish Government cannot recommend consent to a Bill that undermines devolution in this way and breaks international law.

Background

The Bill's Provisions include:

A principle of **mutual recognition** to ensure that compliance with regulation in one part of the UK is accepted as compliance in the other parts, regardless of the views, and indeed laws, of devolved legislatures. It is important to note that the system of mutual recognition envisaged in the White Paper is significantly different to the way mutual recognition operates in the EU.

A principle of **non-discrimination** so that local products and services cannot be favoured over others because of origin alone.

A scheme for the recognition of professional qualifications across the UK (subject to exceptions).

An independent monitoring function to be exercised by the Competition and Markets Authority to report on the "health of the internal market" and lead on business and consumer engagement, making non-binding recommendations – which may either report to the UK Parliament and devolved governments – or only to the UK Parliament.

The **reservation of state aid/subsidy regulation** to which a new UK subsidy control regime, which is being developed separately, will be subject and this is seen as an integral part of the UK internal market package of measures.

In addition, the bill has measures to make **unilateral changes in domestic law** relating to the NI Protocol and State Aid, despite the UK's commitment in international law to implement these in **the Withdrawal Agreement**.

It also grants **greater powers for UK ministers to bypass devolved decision making in allocating funding to Scotland**.

UK ministers will by now be aware of the scale of opposition to their internal market proposals – this is reflected in the decisive vote in the Scottish Parliament in August. But it is also apparent in the views of businesses and key sectors like farming and crofting. There are also political concerns across every part of the UK and in every party in the UK, including the Conservative party.

The Scottish Government is making a clear commitment to that process and to not diverge in frameworks areas until they are finalised and in place. We call on the UK Government to step back from these unnecessary and damaging plans and to make the same commitment.

The UK Government Bill threatens the frameworks process, devolution and the UK's international standing. Frameworks are based on principles of equal negotiation and agreement. The UK Government seeks to legislate for an invented problem to centralise control and impose rules on Scotland.

We do not accept any suggestion that a significant gap may emerge in the operation of intra-UK trade at the end of the transition period and believe that common frameworks will adequately address the practical regulatory and market implications of the UK leaving the EU. We also believe that having a voluntary structure of operational frameworks in place before the end of the year will make the proposals set out in the Bill redundant. This is the

view of key stakeholders across Scotland – in business, farming, the environment and many other areas.

Although not present in the White Paper, the UK Internal Market Bill enables UK Ministers to override the legal force of the Withdrawal Agreement in areas including state aid and the Northern Ireland Protocol customs.

We already knew that the proposed Internal Market Bill would take a wrecking ball to devolution. Now, by threatening to undermine the international treaty, the Withdrawal Agreement, the UK Government is headed for a low, or no, deal cliff-edge exit from the EU which would have severe implications for jobs and the economy.

Using the Internal Market Bill to renege on parts of the Withdrawal Agreement is extraordinary and will not only alienate the EU, but also damage the UK's international standing.

Legislating in direct opposition to the agreed terms of the Withdrawal Agreement sets a deeply uncomfortable and dangerous precedent and, in relation to the Northern Ireland Protocol, risks undermining crucial protections against the return of a land border in Ireland.

The UK Government's senior legal civil servant, Jonathan Jones, has resigned, reportedly over its decision to override parts of the Brexit deal on Northern Ireland.

The Bill's provisions do not provide "clarification" in relation to aspects of the NI Protocol, they change, and give ministers powers to further change, the fundamentals of the agreement, particularly on state aids.

On state aid, UK Ministers would have powers to undermine all aspects of the state aid provisions in the protocol.

On customs arrangements, the proposals include powers to eliminate any new documentation on "NI Goods" moving to GB, and explicitly the power to remove the need for export certificates, which are required under the Common Customs Code, which, under the Protocol applies fully to NI.

In all three of the areas where UKG proposes giving itself powers to override the Protocol – state aids, unfettered NI access to GB markets, and tariffs on goods moving from GB to NI – there is no ambiguity about the requirements of the Protocol, and it is absolutely clear that UKG fully appreciated these implications at the time they were agreed.

The Scottish Government is deeply concerned that these proposals will further diminish any trust EU leaders, and other international partners have in the UK. The EU Commission said, following the extraordinary meeting of the EU-UK Joint Committee, 10 September: "Violating the terms of the Withdrawal Agreement would break international law, undermine trust and put at risk the ongoing future relationship negotiations." And the Lord Chief Justice of Northern Ireland Sir Declan Morgan, said on 9 September: "Where there is an indication that a state intends to break international law...it may have a domestic effect on the confidence that the public may have in the legal system generally."

ANNEX D

Briefing provide to Ministers on 14 September 2020

The following information is provided as extracts from an internal briefing document provided to Ministers. It is provided as extracts because the document contains other information outside the scope of your request or exempted from release.

14 September: Bill begins its Westminster passage

10 September: Michael Russell gave a statement to the Scottish Parliament on the Bill.

9 September: The UK Government published the UK Internal Market Bill, only sharing copy (along with legislative consent letter) with Scottish Government Ministers, and the other devolved administrations, late evening on Tuesday 8 September.

28 August: Michael Russell wrote to Michael Gove to urge the UK Government to abandon the proposals outlined in the White Paper and to work with the devolved

18 August: Jenny Gilruth and Michael Russell set out the Scottish Government's opposition to the White Paper proposals at the UK Internal Market debate in the Scottish Parliament. The Scottish Parliament agreed to call on the UK Government to withdraw its proposals for an internal market regime.

administrations to secure completion of frameworks.

12 August: Scottish Government publishes initial assessment of UK Internal market proposals and Michael Russell provided evidence to FCC Committee.

30 July: Michael Russell gave a statement in the Scottish Parliament setting out the Scottish Government opposition to the proposals contained in the White Paper.

16 July: UK Government's White Paper was published with a four-week consultation period.

3 July: Michael Russell wrote to Michael Gove in advance of the publication of the UK Internal Market White Paper to make clear that the Scottish Government is strongly opposed and would not accept these plans.

The Scottish Government sees this Bill as the biggest threat to devolution since 1999 and will vigorously oppose it at every turn.

- This Bill represents an assault on devolution the like we have not experienced since the current Scottish Parliament was established. We will oppose it at every turn.
- It will open the door to a race to the bottom on food standards, environmental standards and will endanger key public health policies such as minimum unit pricing. It will also deliver a hammer blow to the Scottish economy by making it harder for the UK Government to conclude Free Trade agreements if other countries think the UK won't meet its obligations.
- It is damaging to businesses and consumers in Scotland and more widely across the UK. It is predicated on leaving the EU Single Market of 450 million people. It means losing the benefits of variations in approach to reflect consumer preferences, and health and environmental considerations in Scotland, and the advantages of high quality regulation of meat and fish products.
- We already know that the proposed Internal Market Bill would take a wrecking ball to devolution. Using the Internal Market Bill to renege on parts of the Withdrawal Agreement is extraordinary and will not only alienate the EU, increasing the likelihood of a low, or no deal EU exit, but also damage the UK's international standing and future trading relationships.

- The lack of adequate time to properly scrutinise the proposals suggests that the UK Government itself has little confidence that proposals are coherent or workable. The UK is also looking to push the Bill through Westminster as rapidly as possible in order to avoid proper scrutiny.
- The Scottish Government is clear – and this is backed up by the views of stakeholders across Scotland – that the correct and proportionate means of dealing with these issues is through the common frameworks process which, despite our differences over EU exit, has been able to make significant progress over the last several years.
- The Scottish Government cannot recommend consent to a Bill that undermines devolution in this way and breaks international law.
- ***The Welsh Government has also made clear its opposition, with Welsh Counsel General, Jeremy Miles saying (reported 9 September 2020):***
 “Let me be clear – the UK Government plans to sacrifice the future of the union by stealing powers from devolved administrations. This bill is an attack on democracy and an affront to the people of Wales, Scotland and Northern Ireland, who have voted in favour of devolution on numerous occasions.
 “The UK Government is explicitly seeking to rewrite the devolution settlement. The fact that they are also seeking primary legislation shows they are taking those powers from us. We believe in the principle of an internal market – but this bill is not remotely necessary to deliver it. We will do everything we can to challenge the power grab and the race to the bottom which this bill represents.”

Talk of a power surge is deliberately misleading. The powers the UK has listed are in areas that are already devolved.

- The Bill reserves State Aid, removing it from being a devolved power. It also takes comprehensive powers for direct UK Government spending in devolved areas, bypassing Scottish Ministers and Parliament.
- In addition, the bill has measures to make unilateral changes in domestic law relating to the NI Protocol and State Aid, despite the UK’s commitment in international law to implement these in the Withdrawal Agreement.
- UK Ministers propose making the enacted Bill a protected enactment at Schedule 4 of the Scotland Act 1998, placing it beyond modification by Scottish Ministers or the Scottish Parliament.
- The White Paper that trailed legislation, also clearly identified minimum pricing, animal health and welfare, environmental standards (such as recycling targets and deposit return schemes), food safety, procurement and other devolved policy areas as being at risk from these proposals.
- However, it is more than being about whether individual powers in specific areas are devolved or not. It means any Scottish Parliament laws could be challenged or bypassed if they were deemed to contravene the new UK Internal Market legislation agreed by the UK Parliament.
- We, along with many stakeholders in Scotland, believe that Frameworks which are being established to manage policy variations on the basis of agreement and respect for devolution are all that is needed to manage the practical regulatory and market implications of the UK leaving the EU. We urge The UK Government to reaffirm its commitment to that process.

The Scottish Government does not want to see anything that would introduce new barriers to Scottish producers in selling their products in other parts of the UK, or anything that would negatively affect consumers.

- Different standards have been applied across the UK for many years with no detriment to business or consumers. In more than four years of discussion with the UK Government, no example – not one - has ever been given of where the ‘internal market’ is at risk from devolution.

The UKG claims the legislation is to protect businesses and consumers. But make no mistake, this legislation would be bad for business in Scotland threatening to undercut the world famous quality of Scottish produce – on which thousands of jobs depend – in a race to the bottom.

- Under this legislation, quality Scottish meat and fish products, reared to high animal welfare standards, could be ruthlessly undercut by cheap, mass produced food from outside Scotland, where far less care had been given to how animals were reared and slaughtered.
- The Bill would require us to accept goods here that meet whatever standards are set elsewhere in the UK. For example, if the Scottish Parliament legislated to ban the sale of chlorinated chicken or hormone-fed beef in response to the UK Government agreeing to their being imported and sold as part of trade deal, these proposals would give the UK Government power to overrule the decision of the Scottish Parliament and force their sale in Scotland.
- UK Ministers claim that the UK Government is committed to maintaining ‘world leading’ standards. If that is the case, why were the Scottish Government’s proposed amendments to the UK Agriculture and Trade Bill to include a guarantee that food standards would not be compromised in trade deals so roundly rejected?
- Frameworks in agriculture are being completed across UK nations to manage divergence and protect the UK’s internal market. We are disappointed that the White Paper undermines the good work which has been completed on Frameworks today under the JMC principles and in respect of devolution.

This is not a simple case of replacing EU rules with UK rules. These proposals do not replace current arrangements within the European Single Market.

- The EU operates by equal members negotiating and agreeing single market rules – the UK Government is proposing the opposite. The UK Government wants to be able to decide and impose, even in devolved areas.
- The proposals are also wider than current European Single Market rules, covering for example, building standards (where Scotland and England have long standing differing regulations).
- EU single market rules recognise policy objectives alongside pure market considerations, for example, the health benefits of Minimum Unit Pricing – there is no indication that the UK Government proposals will allow for this.

Key sectors across Scotland, from business and industry, farming, crofting and the environment, have made clear that the UK Government legislation would be bad for businesses and consumers, for the environment, and are a threat to devolution. In responses to the White Paper:

Scottish Trades Union Congress 9 September:

“Despite their other political differences, Johnson is uniting political parties, trade unions and wider civil society in Scotland against a power grab which would see UK Government interference in previously devolved matters and a rolling back of the constitutional settlement we voted for in 1997 and strengthened in 2016. The mutual recognition principle in the UK Internal Market Bill is in fact a free pass for the UK Government to undermine the ability of the Scottish Parliament to make support for business conditional on Fair Work and to ensure environmental and food safety. And rather than pass funds to the Scottish Parliament to invest in public services according to the will of Scottish voters, Johnson intends to undermine the devolution settlement. Programmes designed to replace previous EU programmes should be

Lord Chief Justice of Northern Ireland Sir Declan Morgan, 9 September:

“Where there is an indication that a state intends to break international law...it may have a domestic effect on the confidence that the public may have in the legal system generally.”

EU Commission, following the extraordinary meeting of the EU-UK Joint Committee, 10 September:

“Violating the terms of the Withdrawal Agreement would break international law, undermine trust and put at risk the ongoing future relationship negotiations.”

David Melding after quitting the Tory frontbench as Shadow Attorney General in the Senedd over the proposals on 9 September:

“The publication of the internal market bill had done nothing to lessen my anxieties about the dangers facing our 313-year-old union and indeed they have been gravely aggravated by the decisions made in the last few days by the prime minister.

“I feel it is necessary to speak out against what I consider to be a lack of statecraft at this crucial time for the UK’s very survival as a multi-national state.”

Previous reaction to the UK Internal Market White Paper:

Andrew McCornick, President, NFU Scotland, 14 August:

- “the UK Internal Market proposals put forward **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.
- As it stands, the UK Government proposals for legislation on a UK Internal Market **undermine 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 rules **require acceptance of standards from other parts of the UK.**”

NFU Scotland response to the White Paper:

- “It is the clear view of NFU Scotland, and the other farming unions of the UK, that the proposals pose a significant threat to the development of Common Frameworks and to devolution.
- “The UK Internal Market proposals appear 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.
- “The proposals for the UK Internal Market, in the absence of effective Common Frameworks, could trigger a ‘race to the bottom’. In a Scottish context, at very least, it could force the choice between upholding high standards of production or maintaining the competitiveness of agricultural businesses.”

Scottish Council for Development and Industry, 14 August:

- “SCDI is not convinced that the legislative approach proposed in the White Paper is the right priority. **Mutually agreed common frameworks should be the foundation** of the UK internal market, **rather than the imposition of a single approach** across the UK in devolved policy areas.

Yvonne White, Chair, Scottish Crofting Federation, 12 August:

- “we cannot find evidence to support the need for this legislation. The criteria for UK internal trade **must be agreed by all four nations, and not be imposed on us**. In common with other Scottish food producers, we fear that the proposed legislation **will lead to a race to the bottom**, threatening our high standards in food, environment and animal welfare, thus **damaging the image of Scottish produce**.
- These standards are best safeguarded by the Scottish Parliament. Likewise our Parliament needs to **retain control over agricultural support**, as enshrined in the current devolution settlement. Any weakening of that position will pose **an existential threat to the hill livestock sector**, which is, after all, the backbone of crofting”.

William Wragg MP, Chair, HoC Public Administration and Constitutional Affairs Committee, 10 August:

- “The White Paper addresses this issue by proposing to set in law the principles of mutual recognition and non-discrimination. **This will effectively create new reservations in areas of devolved competence**

Royal Society of Edinburgh, submission to the Finance and Constitution Committee, February 2020:

- “Any outcome by which a stalemate between the UK and Scottish governments leads to the Sewel Convention being overridden should be considered a failure of intergovernmental relations. The Sewel Convention, as a constitutional convention, holds a status and significance beyond a mere political arrangement and consultation, cooperation and communication between different levels of government is vital to ensuring it is upheld.”
- “Any decisions regarding the UK Internal Market which have implications for devolution or impinge on devolved competences should look to adhere to the principles of subsidiarity and proportionality. The presumption must remain that consent of the devolved administrations is sought and required.”

Issue: The Financial Times reported that the Internal Market Bill would “eliminate” the legal force of the Withdrawal Agreement in areas including state aid and the Northern Ireland customs agreement.

The Times also further published an article stating there will be a “constitutional battle” over post-Brexit Britain as the UK Government publishes the Internal Market Bill in the Commons on Wednesday.

The SoS for Northern Ireland admitted in the House of Commons on 08/09 that the Government’s ‘back up’ plan, if enacted in the absence of a Brexit Deal, does break international law by overriding the terms of the Withdrawal Agreement agreed last year.

The Head of the Government Legal Department, Jonathan Jones, resigned on 8 Sep reportedly over the plans to renege on the Withdrawal Agreement.

- The UK Government is asking the Scottish Government to recommend consent to the Internal Market Bill. There is no way we can recommend consent to a Bill that undermines devolution and the Scottish Parliament and which, by the UK Government’s own admission, is going to break international law.
- This blatant disregard for the terms of the Withdrawal Agreement will also deliver a hammer blow to the Scottish economy by making it harder for the UK Government to conclude Free Trade agreements if other countries think the UK won’t meet its obligations.
- Now, by threatening to undermine the Withdrawal Agreement, the UK Government is headed for a low, or no, deal cliff-edge exit from the EU which would have severe implications for jobs and the economy.
- Using the Internal Market Bill to renege on parts of the Withdrawal Agreement is extraordinary and will not only alienate the EU, but also damage the UK’s international standing.
- Legislating in direct opposition to the agreed terms of the Withdrawal Agreement sets a deeply uncomfortable and dangerous precedent and, in relation to the Northern Ireland Protocol, risks crucial protections against the return of a land border on the island of Ireland.

ANNEX E

REASONS FOR NOT PROVIDING INFORMATION

Section 30(b)(i) – free and frank provision of advice

An exemption under section 30(b)(i) of FOISA (free and frank provision of advice) applies to some of the information requested. This exemption applies because disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice. This exemption recognises the need for officials to have a private space within which to provide free and frank advice to Ministers before the Scottish Government reaches a settled public view. Disclosing the content of free and frank advice on independence policy development will substantially inhibit the provision of such advice in the future, particularly because these discussions are still ongoing and decisions have not been taken, and these discussions relate to a sensitive or controversial issue such as Scotland's constitutional future.

This exemption is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, there is a greater public interest in allowing a private space within which officials can provide full and frank advice to Ministers, as part of the process of exploring and refining the Government's position on independence policy development, until the Government as a whole can adopt a policy that is sound and likely to be effective. This private thinking space is essential to enable all options to be properly considered, based on the best available advice, so that good policy decisions can be taken. Premature disclosure is likely to undermine the full and frank discussion of issues between Ministers and officials, which in turn will undermine the quality of the policy making process, which would not be in the public interest.