



## **RESPONSE TO THE UK GOVERNMENT DEPARTMENT FOR BUSINESS AND TRADE REVIEW OF THE INTERNAL MARKET ACT**

Alcohol Focus Scotland (AFS) is the national charity working to prevent and reduce alcohol harm. We want to see fewer people have their health damaged or lives cut short due to alcohol, fewer children and families suffering as a result of other people's drinking, and communities free from alcohol-related crime and violence. AFS welcomes the opportunity to respond to the UK Government Department for Business and Trade on their review of the Internal Market Act.

### **The Market Access Principles for Goods**

#### **Question 3: What is the right balance between the potential for local regulatory innovations in sectors and UK-wide alignment?**

##### **The right balance has not been struck**

The UK Internal Market Act has not struck the right balance between regulatory innovations and UK-wide alignment.

The right balance is one where devolved nations are able to regulate where they deem necessary to protect and improve their nation's public health. The nature and extent of public health problems can vary across UK jurisdictions and devolution enables each to innovate in how it responds. For example, the rate of alcohol-specific mortality in Scotland remains significantly higher than that in England.<sup>1</sup> The existing devolution settlement has allowed the Scottish Government to develop and implement the internationally path-breaking policy of minimum unit pricing for alcohol (MUP), which is estimated to have reduced alcohol-related hospitalisations by 4% and alcohol-specific deaths by 13%.<sup>2</sup>

The opportunity for different administrations across the UK to innovate in public health policy can be of mutual benefit as the evidence obtained from implementing such policies in one country can help inform decision-makers in others. Since the introduction of MUP in Scotland, the policy has been introduced in Wales, and Northern Ireland has announced its intention to introduce it. The previous UK government had noted that, while it had no plans to introduce MUP in England, "it will continue to monitor the progress of MUP in Scotland and will consider available evidence of its impact". Under the new Labour administration we hope that evidence from devolved nations will be considered and the possibility of introducing this life-saving measure in England revisited. Similarly, the Scottish Parliament legislated to ban smoking in public places in 2006; an approach which was subsequently adopted by other administrations, and which has saved and improved tens of thousands of lives across the UK.

However, as the Centre for Public Policy at the University of Glasgow states, the UK Internal Market Act "limits the ability of the devolved governments to set and apply their own ambitious standards, especially in relation to the production and sale of goods. The UKIMA'S operational

impacts to date have been felt mostly in environmental policy, animal welfare, agriculture policy and public health, particularly in Scotland and Wales.”<sup>3</sup>

The UK Internal Market Act gives the UK Government significant powers to frustrate, delay and diminish policy and law-making by devolved governments – an effective UK veto over devolved action.<sup>4</sup> While this has forced some cooperative working towards a four-nations approach on key policy areas, having this driven by the IMA risks stifling policy innovation at the devolved level, slowing the pace of policy development and generating pressure to conform to the standards that the UK Government deems appropriate for England.

Alcohol Focus Scotland is particularly concerned that the legislation limits the ability of Scotland and other devolved nations to adopt effective policies for reducing alcohol harm (and harm caused by other health-harming products), including regulatory action on marketing and labelling of these products.

For example, AFS has long called for statutory regulation on alcohol labelling given the alcohol industry’s ongoing failure to provide basic health information on a voluntary basis. The Scottish Government has made clear its preference for mandatory labelling across the UK but has supported the UK Government’s attempts to encourage voluntary approaches by the industry. The Scottish Government’s Alcohol Framework, however, reserved the right to legislate: “if insufficient progress is made by the time of the UK Government’s deadline of September 2019, the Scottish Government will be prepared to consider pursuing a mandatory approach in Scotland.”

The Act limits the capacity of the Scottish Parliament to regulate on alcohol labelling without the agreement of UK government. Labelling will be subject to common frameworks, a mechanism through which the UK Government and devolved administrations can work together on policy areas where powers returned from the EU intersect with devolved competence. The Food Compositional Standards and Labelling provisional common framework, published in January 2023, is yet to be approved by Ministers across the UK government and devolved administrations. We understand that the aim is to ensure that the programme to establish Common Frameworks is complete by Easter 2025.

If agreement is not reached between the Scottish Government and the UK Government, the UK Government would not have to pass the regulations necessary to allow for divergence. Alcohol Focus Scotland has concerns that this has both deterred the Scottish Government from bringing forward proposals to improve alcohol labelling and constrains the ability of the Scottish Parliament to ensure that people have access to the information they require to make informed decisions about their drinking.

### Redressing the balance

AFS supports the suggestions put forward by the Centre for Public Policy at the University of Glasgow to redress the balance between market access and policy-making autonomy.<sup>5</sup> These include changes to the legislation, such as introducing principles of proportionality and subsidiarity, and/or expanding the list of policy areas that are excluded from the reach of the market access principles. Non-legislative change options include having a more robust, evidence-based and transparent exclusions process, and more rigorous legislative tracking to

encourage intergovernmental communication and cooperation at an earlier stage of the law-making process.

### **Proportionality test**

Introducing a proportionality test would require decision-makers to balance the effects of the regulatory variations on trade across the UK's borders with the protection of recognised public interests. This would consider:

- Whether the public interest is sufficiently important to justify potential limits to intra-UK trade;
- Whether the regulations are designed to address the public interest; and
- Whether the same objective could not be achieved using a measure less restrictive of intra-UK trade.

This would create the space to moderate the impact of the market access principles on a case-by-case basis through a structured, evidence-based assessment.

### **Subsidiary test**

The introduction of a subsidiary test would protect the regulatory authority of the devolved nations, removing the veto power that the UKIMA gives to the UK Government over the exercise of those law-making powers that intersect with the market access principles. It would leave open the possibility of common standards and harmonised regulations, but the burden of proof to demonstrate the necessity of these would fall to the UK Government, should they face resistance from one or more devolved governments.

### **Expanding the list of excluded policy areas**

There are very few permissible exclusions to the UKIMA market access principles, especially in relation to goods. The exclusions are much more limited than the broad public interest grounds under EU internal market law. We therefore support legislative changes to expand the set of legitimate public interest requirements justifying restrictions on intra-UK trade, including public health.

### **Reform of the exclusion process**

There is a need for reform of the exclusion process. See our answer to question 15 on improvements that could be made to this process.

### **Legislative tracking**

A new framework for legislative tracking would support coordination and planning between the UK and devolved governments. It could provide a platform for increased intergovernmental coordination in areas of shared regulatory concern at an early stage of policy development and encourage cooperation and shared learning, such as through agreements on joint consultations.

There may be a role for the Office for the Internal Market as a suitable repository for legislative tracking. The OIM operates as an independent regulatory body, and its statutory functions already include monitoring the operation of the UK internal market. Alternatively, the UK and devolved governments could charge the IGR Secretariat with responsibility for legislative tracking.

**Question 5: What are your views on the use that has been made of the Part 1 amendment powers – for example the exclusion for single-use plastics?**

There is a lack of consensus and transparency over the operation and timing of submissions and decisions under the agreed exclusions process.<sup>6</sup> Moreover, the UKIMA and the exclusions process give the UK Government significant powers to frustrate, delay and diminish policy and law-making by devolved governments and parliaments. This could be seen as an effective UK veto over devolved action. The evidence base for exclusion decisions is also unclear, generating considerable uncertainty and potentially wasted resource for devolved governments, parliaments and key stakeholders.

We urge the UK Government to consider changes to the legislation to introduce tests of proportionality and subsidiarity and/or to expand the list of policy areas that are excluded from the reach of the market access principles. Procedural changes can also be put in place to reform the exclusions process (see our answer to question 15) and introduce legislative tracking.

**The management of the UK internal market and operation of the UK Internal Market Act**

**Question 15: What improvements could be introduced to facilitate more pragmatic management of the UK Internal Market Act's exclusions process?**

We highlight the concerns raised by the Centre for Public Policy at the University of Glasgow on the exclusion process, which they state “remains problematic both structurally and operationally. It generates uncertainties and slows the pace of policy development and, in effect, gives the UK Government a veto power over exclusion requests emerging from devolved governments.”

AFS supports their proposals for a clearer exclusion process to be developed. This includes the introduction of an exclusion request form, submitted to an impartial body, alongside requirements for timing and format in which the relevant parties are required to respond. This could be accompanied by an agreed evidence base required to evaluate exclusion decisions to grant or withhold an exclusion. The Office of the Internal Market could potentially expand its role to include assessing proposed exclusions, in addition to regulatory proposals. Alternatively, the independent secretariat established recently to support intergovernmental relations - and accountable to the UK and devolved governments - could commission evidence to support the exclusion process in a way similar to its role in resolving intergovernmental disputes. Such evidence should be published and reported to parliaments, to aid the transparency of the decision-making process.

To address issues with timing, rather than waiting for the completion of devolved legislative processes prior to making decisions, the UK Government should consider implementing a similar process to that in place under the Sewel Convention where legislative consent is sought before the law has gone through all of the law-making stages in parliament.

Consideration should also be given to expanding the set of legitimate public interest requirements justifying restrictions on intra-UK trade to include public health.

## References

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<sup>1</sup> Office for National Statistics (2025). *Alcohol-specific deaths in the UK: registered in 2023*.

<sup>2</sup> Public Health Scotland (2023). *Evaluating the impact of minimum unit pricing for alcohol in Scotland: Final report. A synthesis of the evidence*.

<sup>3</sup> Swan, C.B., Horsley, R., McEwan, N. & Whitten, L.C. (2024). *Westminster Rules? The United Kingdom Internal Market Act and Devolution*. The Centre for Public Policy at the University of Glasgow.

<sup>4</sup> Swan, C.B., Horsley, R., McEwan, N. & Whitten, L.C. (2024). *Westminster Rules? The United Kingdom Internal Market Act and Devolution*. The Centre for Public Policy at the University of Glasgow.

<sup>5</sup> Swan, C.B., Horsley, R., McEwan, N. & Whitten, L.C. (2024). *Westminster Rules? The United Kingdom Internal Market Act and Devolution*. The Centre for Public Policy at the University of Glasgow.

<sup>6</sup> Swan, C.B., Horsley, R., McEwan, N. & Whitten, L.C. (2024). *Westminster Rules? The United Kingdom Internal Market Act and Devolution*. The Centre for Public Policy at the University of Glasgow.