



## **Review of the UK Internal Market Act**

April 2025

### **Introduction to Scottish Environment LINK**

Scottish Environment LINK is the forum for Scotland's voluntary environment community, with over 40 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

Its member bodies represent a wide community of environmental interest, sharing the common goal of contributing to a more sustainable society. LINK provides a forum for these organisations, enabling informed debate, assisting co-operation within the voluntary sector, and acting as a strong voice for the environment. Acting at local, national and international levels, LINK aims to ensure that the environmental community participates in the development of policy and legislation affecting Scotland.

LINK works mainly through groups of members working together on topics of mutual interest, exploring the issues and developing advocacy to promote sustainable development, respecting environmental limits. This consultation response was written by LINK's Governance Group.

#### **1. Response**

##### **Question 1: What are your views on how the UK internal market for goods is best supported using the UK Internal Market Act?**

Scottish Environment LINK members take a keen interest in the UK Internal Market Act (UKIMA) due to the impact of the Act on the Scottish Government's ability to implement pro-environment policy measures. This most notably was demonstrated by the issues related to the planned Deposit Return Scheme, though we also hold wider concerns around the chilling effect on policy development and implementation, such as in the delays to ending peat in horticulture. LINK published a recent report on UKIMA, which included recommendations for its improvement.<sup>(1)</sup>

Following the EU referendum, Scottish Environment LINK argued that the proposal to create a legally recognised single market within the UK based on the principles of mutual recognition and non-discrimination had some merit. However, it was LINK's view that the internal market as designed by the then UK Government was inconsistent with the principles of devolution and that insufficient consideration had been given to the advantages of regulation in the public interest, including to protect and improve the environment.

Government has the right, and the duty, to intervene in the market to achieve objectives in the public interest. Within the UK, responsibility for the environment lies with the devolved administrations. From the establishment of devolution until the introduction of the Internal Market Act, the devolved administrations could, within the limits of their powers, pass environmental measures which could impact on goods.

A fundamental point of importance is that the UKIMA did not simply replace the European single market. It instead created a more centralised and restrictive devolution settlement.

Within the EU, member states are bound by common environmental standards but were permitted to go beyond these, creating a race to the top. UKIMA in practice limits the ability of the devolved administrations to



innovate and pursue higher standards. This dynamic is particularly acute due to the asymmetric nature of the UK constitutional settlement, in which the UK Government acts as both the government of England for the purposes of UKIMA and the ultimate arbitrator of the Act itself.

The Scottish Government is now unable to pursue policy choices it would have been able to do so while the UK was a member of the EU. This is disproportionate and an overreaction to the need to harmonise trade across the UK - as this consultation paper itself states, the internal market “has existed for hundreds of years”, including the period in which devolved governments operated with more flexibility than today.

1. <https://www.scotlink.org/wp-content/uploads/2025/01/The-Internal-Market-Act-a-challenge-to-devolution-report.pdf>

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

Devolution was established on the principle that the four nations of the UK could pursue different approaches in areas within their responsibilities, such as the environment or public health, but that specific, well-defined issues would be reserved to the UK Government.

Under the EU single market, member states can implement trade-related policies where local regulations can be justified by wider public policy objectives. This principle has been lost to devolution since the introduction of the UKIMA but could easily be reestablished.

Currently, UKIMA requires the devolved administrations to seek an exclusion to take forward a particular policy proposal which would otherwise be blocked by the Act. LINK instead proposed that a broader systemic exclusion is added to Schedule 1 of the Internal Market Act by regulation. This systemic exclusion would establish the principle that the devolved governments could implement measures which are proportionate and intended to support a legitimate public policy objective, within the limits of devolved powers. In this model, the devolved governments would not be required to ask permission to act, but disproportionate measures could be challenged.

This approach would address the fundamental flaw posed by UKIMA. By requiring devolved governments to effectively ask permission to pursue actions within their responsibilities, UKIMA not only undermines the principle of devolution but causes other issues: establishing unnecessary bureaucratic processes for reasonably minor policy measures; slowing down policy-making; discouraging policy innovation; creating uncertainty over the extent of devolved power; and ultimately creating a significant deregulatory pressure.

This power would be limited by the principles of proportionality and subsidiarity, which are well established principles with a long history in case law, and would not give the devolved administrations an arbitrary licence to act.

### **Question 4: What are your views on the operation of the market access principles for goods to date?**

The failed introduction of the Deposit Return Scheme demonstrated that UKIMA is unfit for purpose in its current form.



**Scottish Environment LINK** the voice for Scotland's environment

Registered office: 5 Atholl Place, Perth, PH1 5NE. A Scottish Charity No. SC000296

Scottish Environment LINK is a Scottish Company Limited by Guarantee and without a share capital under Company no. SC250899





Deposit return is a well understood and effective scheme which operates internationally. It was, and is, the policy of governments across the UK to introduce such a scheme. The legislative basis for Scotland's DRS was the 2009 Climate Change Act, and the relevant secondary legislation was made prior to the commencement of UKIMA. If Scotland, or another part of the UK, had introduced DRS prior to UKIMA then it would have been allowed to continue. Instead, the scheme was blocked, causing significant disruption and cost to business. This underlines the point that UKIMA is more restrictive than the European single market it was intended to replace.

As a matter of principle, there is no clear reason why a government with significant environmental responsibilities should be unable to introduce a recycling scheme which is clearly in the public interest and proportionate to meeting environmental objectives.

The handling of DRS illustrated other fundamental issues with UKIMA. Clarity is lacking on the process and timing for seeking exclusions - in the case of DRS, the Scottish and UK Governments disagreed publicly over whether an exclusion request had even been made. In October 2020 a UK Minister gave public assurances that "we are confident that the deposit return scheme can be brought into effect in full compliance with the market access principles", only for an exclusion to be denied in 2023.

**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? In particular, we would welcome views on whether the changes have had or will have a positive or negative impact and whether they have been effective. (An explanation of what the Part 1 amendment powers are and what use has been made of them can be found in the Annex).**

LINK members were supportive of the ban on single-use plastic items and believe this is an example of devolved administrations successfully moving at different paces while pursuing environmental objectives.

**Question 13: How can the Office for the Internal Market best support the UK internal market through its role in providing independent monitoring and advice?**

[Research conducted](#) on behalf of Scottish Environment LINK found that "over its short existence, the OIM has developed a reputation as a fair and impartial player on the sidelines of debates around the operation of the Act, and this role could potentially be expanded." The OIM could be given a role overseeing the exclusions process. However, this would be a limited solution to addressing the flaws of the Act.

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

LINK's proposal to introduce a broader systemic exclusion, limited by the principles of proportionality and subsidiarity, would address the fundamental issues and limit the unnecessary use of the exclusions process.

**Question 18: Should there be a different process to consider exclusions proposals which could lead to potentially significant economic impact, compared to those likely to lead to smaller economic impact?**

As in our answer to question 15, if a broader systemic exclusion was introduced, allowing devolved administrations to act to support a legitimate public policy objective, this would be limited by the principle of proportionality. This would of course be relevant to proposals with significant economic impact, which should not necessarily rule out the ability of government's to act, but would be a material consideration. his response



Scottish Environment LINK the voice for Scotland's environment



Registered office: 5 Atholl Place, Perth, PH1 5NE. A Scottish Charity No. SC000296

Scottish Environment LINK is a Scottish Company Limited by Guarantee and without a share capital under Company no. SC250899



was compiled on behalf of LINK Governance Group and is supported by:

Badenoch & Strathspey Conservation Group  
Borders Forest Trust  
Environmental Rights Centre for Scotland  
Friends of the Earth Scotland  
Marine Conservation Society  
RSPB Scotland  
Scottish Wild Land Group  
Scottish Wildlife Trust  
Woodland Trust Scotland

**For further information contact:**

LINK Director of Policy and Advocacy  
Dan Paris  
[dan@scotlink.org](mailto:dan@scotlink.org)



**Scottish Environment LINK** the voice for Scotland's environment



Registered office: 5 Atholl Place, Perth, PH1 5NE. A Scottish Charity No. SC000296

Scottish Environment LINK is a Scottish Company Limited by Guarantee and without a share capital under Company no. SC250899