

Response to consultation on revision of UK Internal Market Act 2020

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

The UK IMA works at its best when it applies to issues which are solely concerned with trade between the four nations. It breaks down however where other considerations might be seen as overriding the principle of free trade – for example, where governments would like to act on their devolved powers to legislate on environmental issues such as the sale and supply of peat. In this case it is making unilateral action by devolved governments prohibitively difficult by requiring a specific exclusion to the Act each time such an issue arises - undermining the principles of devolved powers.

Question 2: What are your views on whether differing regulations that have effect later in the supply process are more straightforward for businesses to address?

In the case of peat sale and supply, any divergent regulations would necessarily produce effects early in the supply chain. In the case of horticulture this simplifies decision making for businesses: if every business is peat-free (because peat use is prohibited) the result is a level playing field and business certainty.

However, the UK IMA undermines this. By allowing peat supply to continue to enter a nation's market from elsewhere in the UK, it creates an unfairly biased market. The use of historically cheaper yet environmentally-damaging peat allows peat-using businesses to undercut local (peat-free) businesses. This makes any divergent legislation entirely toothless and indeed counterproductive as it puts local businesses at a significant and unfair disadvantage. It is therefore preventing devolved administrations from fully exercising their devolved powers. It also continues and indeed favours business models which are harmful to the environment.

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

We believe that there should be a blanket exemption from the UK IMA for all environmental trade policies. Environmental trade issues have been the main cause of difficulties in this area – as well as peat sales, other environmental issues where the UK IMA has caused problems include single use plastics, bottle return schemes and glue traps. This avoids the messy and unwieldy solution of adding single-issue exclusions for every policy which falls into this category and allows devolved administrations to act on devolved environmental issues as they see fit.

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

This does not apply in the case of legislation to end peat sales as there has been no legislation in any administration yet (despite policy pledges to legislate made in 2021 and 2022 by governments in the UK, Scotland and Wales) – so intra-UK trade in environmentally damaging peat continues freely, undermining efforts to reach statutory targets on reducing carbon emissions and boost biodiversity.

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?

We support the use of these powers in the case of environmental trade, such as single-use plastics. However, we feel that the approach, whereby individual exclusions have to be added in to legislation piecemeal each time this issue arises, is unwieldy and unnecessarily time-consuming, requiring extensive staff and Ministerial time and resources in both UK and devolved administrations in each individual circumstance.

This approach also fails to address the fundamental principle that devolved powers must ask for such an exclusion from the UK government each time they would like to act unilaterally on an environmental issue, undermining the main principle of devolution and leaving them at the mercy of ideological decisions by particular administrations in Westminster (as has happened with the glue traps exclusion).

We believe that a better approach would be to add a blanket exclusion for all environmental trade policies, leaving devolved administrations free to act on their devolved powers in accordance with their own timetables and priorities.

Question 6: What are your views on how the UK internal market for services is best supported using the UK Internal Market Act?

We have no comment to make on this question.

Question 7: What is the right balance between the potential for local regulatory innovations in services and UK-wide alignment?

We have no comment to make on this question.

Question 8: What are your views on the operation of the market access principles for services to date?

We have no comment to make on this question.

Question 9: What are your views on the use that has been made of the Part 2 amendment powers – for example, removing exclusions for certain services?

We have no comment to make on this question.

Question 10: What are your views on how the UK internal market for professions is best supported using the UK Internal Market Act?

We have no comment to make on this question.

Question 11: What is the right balance between the potential for local regulatory innovations in professions and UK-wide alignment?

We have no comment to make on this question.

Question 12: What are your views on the operation of the system for recognising professional qualifications to date?

We have no comment to make on this question.

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?

The OIM's detailed assessment of the likely impact of the UK government acting unilaterally in ending peat sales (2022¹) was thorough and provided a balanced assessment of the situation, concluding that, with some caveats, 'there will be limited incentives for manufacturers and retailers [in other nations of the UK] to sell peat-containing growing media in England once the ban takes effect.'

However there has been no similar assessment carried out for Scotland, Wales or Northern Ireland – presumably because there has been no request for one from these administrations. We have heard doubts expressed on more than one occasion about the effect on intra-national trade were Scotland or Wales to act independently, suggesting there is a need for such an assessment : so perhaps it would be useful if the services of the OIM to nations other than England could be better promoted.

Question 14: What are your views on whether the current arrangements in Part 4 relating to the use of the Office for the Internal Market task groups are appropriate for securing the most effective and efficient performance of the CMA's Part 4 functions?

We have no comment to make on this question.

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

See above response to Question 3: insertion of blanket exclusion for environmental legislation.

Question 16: How should we ensure proportionate engagement with interested parties in relation to potential exclusions?

There has already been formal consultation following declarations of intent to legislate on peat sales in England and Wales, ² and Scotland³ (returning large majorities in favour of legislation), plus extensive further discussions in the four years since, including the OIM assessment⁴, regular stakeholder meetings, targeted research projects⁵ and a five-year trials programme

¹ www.gov.uk/government/publications/report-impact-of-a-proposed-ban-of-the-sale-of-horticultural-peat-in-england-on-the-effective-operation-of-the-uk-internal-market/impact-of-a-proposed-ban-of-the-sale-of-horticultural-peat-in-england

² consult.defra.gov.uk/soils-and-peatlands/endingtheretailsaleofpeatinhorticulture/

³ www.gov.scot/binaries/content/documents/govscot/publications/consultation-analysis/2023/12/ending-sale-peat-scotland-analysis-consultation-responses/documents/ending-sale-peat-scotland-analysis-consultation-responses/ending-sale-peat-scotland-analysis-consultation-responses/govscot%3Adocument/ending-sale-peat-scotland-analysis-consultation-responses.pdf

⁴ www.gov.uk/government/publications/report-impact-of-a-proposed-ban-of-the-sale-of-horticultural-peat-in-england-on-the-effective-operation-of-the-uk-internal-market/impact-of-a-proposed-ban-of-the-sale-of-horticultural-peat-in-england

⁵ www.rbge.org.uk/news/media-centre/press-releases/current/understanding-barriers-to-peat-free-horticulture/

under the government-funded RHS Transition to Peat-free Fellowship⁶. There has already been so much engagement in fact that further discussion should be unnecessary to include a specific exclusion for ending the sale and supply of peat within the UK IMA.

Were a blanket exclusion for environmental legislation to be added to the UK IMA, engagement with interested parties over an end to peat sales would happen at devolved administration level – which, since such policies most directly affect and are decided by citizens of that administration seems appropriate.

Question 17: What evidence should be provided in support of an exclusion proposal by the proposing government, so the proposal can be fully considered (for example, information on potential impacts on businesses' ability to trade within the UK and the policy implications of not having an exclusion)?

Evidence should include existing engagements, consultations, reports, discussions and stakeholder input (as outlined in the answer to Question 16) rather than delaying still further by unnecessarily repeating the process of consultation. This tactic of 'reinventing the wheel' has too often been used as a reason for inaction and procrastination. A blanket exemption for environmental issues would render this extra engagement for every issue unnecessary, saving time and resources and enabling devolved administrations to act more nimbly in environmental emergencies.

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?

If a blanket exclusion for environmental legislation is added this would need just one major assessment and evidence gathering exercise under which potentially significant economic impacts to divergent environmental legislation could be considered in the round, alongside those less likely to cause harm. This would save time and resources and lead to a robust exclusion which would cover all grades of impact without having to revisit each time an individual issue arises.

Question 19: What do you think constitutes a potentially significant economic impact?

We have no comment to make on this question.

Question 20: Is there anything else you want to tell us about the operation of the UK Internal Market Act?

The Peat-free Programme, funded by the Esmée Fairbairn Foundation and hosted by Plantlife, is working through an extensive partnership (www.peatfreepartnership.org.uk) to secure legislation to end the sale and supply of peat for horticulture across all four nations of the UK.

This has given us a valuable insight into how the UK Internal Market Act 2020 is currently impacting on the ability of governments to exercise their devolved powers to legislate on environmental issues.

⁶ www.rhs.org.uk/science/transition-to-peat-free

The use of peat in horticulture is an excellent case study to consider for any review of the Internal Market Act, as like other similar issues such as bottle returns, single use plastics and glue traps, it cuts across two areas: one devolved (the environment) and one which is not devolved (trade).

The use of peat in horticulture has a very high environmental impact. Extraction of peat releases hundreds of thousands of tonnes of carbon dioxide each year, contributing to climate change and making it harder for governments to reach statutory net zero targets. Peatlands are important for biodiversity and nature's recovery; they also provide and act as natural solutions to climate resilience, helping absorb excess rainwater from extreme weather events and protecting local communities from flooding.

All four governments agree that legislation is necessary to make the horticulture industry give up peat for good: a voluntary approach between 2010-2021 reduced peat usage considerably but levels of peat in UK horticulture still remain high (950,000m³ in 2022).

The Welsh, Scottish and UK governments all have a stated policy to legislate to end peat sales in horticulture. The Northern Ireland Executive is still in the process of developing its Peatlands Strategy. Yet, four years on from the first stated intent to legislate, there is still no legislation in place anywhere in the UK. This is in no small part due to the dampening effect of the UK IMA on the ability of devolved administrations to take action without deferral to Westminster.

In the case of Scotland and Wales, this is to a large part because were they to legislate unilaterally, as their devolved powers allow them to do, the UK IMA would render such legislation meaningless by continuing to allow peat supplies to cross their borders from elsewhere in the UK. The Scottish and Welsh governments have therefore felt unable to act on their own policies, constrained by the UK IMA and its perceived consequences for home markets.

We share the Scottish Government's view that the Common Frameworks have been a far more collaborative and equitable way of deciding intra-national matters within the UK than the IMA, especially concerning those issues, like peat sales, where environmental policy impinges on trade policy. We would like to see a Common Framework developed for peat sales to enable agreement on how best to go forward. However, as with exclusions under the UK IMA, relying on individual Common Frameworks for each issue seems a piecemeal, ad hoc approach, so we feel a neater solution would be a blanket exclusion for all environmental legislation within the UK IMA, alongside a specific Common Framework on peat sales.

At the moment, the only solution to the problems posed by the UK IMA with regard to the sale and supply of peat is to pass pan-UK legislation which would take effect simultaneously in England, Northern Ireland, Scotland and Wales. We understand this is currently under discussion within the EFRA Inter-Ministerial Group. While this is a practical and effective solution to the current difficulty, it is hardly true to the spirit of devolution and is unlikely to allow nations to pass legislation fully tailored to their particular administration.

As it stands, the UK Internal Markets Act effectively asks devolved governments to 'get permission' from the UK Government before they can act. At present, Scotland and Wales (and to a lesser extent Northern Ireland) are dependent on legislation from the UK Parliament on peat sales before they are able to act on their own devolved powers. They have now been waiting four years since announcing their policies to legislate, with still no legislation tabled by

the UK Government to end peat sales. This takes away the choice to act on peat sales for both Scotland and Wales, and means Westminster is effectively dictating policy to both devolved nations on this issue.

Our preferred solution would be to add a blanket exclusion for all environmental trade policy, opening the way for devolved governments to legislate in this area at their own speed, and in their own way. Alongside a Common Framework on the sale and supply of peat, this would allow all four nations the freedom to act as they see fit on legislating to end peat sales, enabling them to fulfil their own policy pledges and upholding the spirit as well as the letter of devolution.