



# **Department for Business, Energy and Industrial Strategy**

Consultation response

## **UK Internal Market**

The Scottish Council for Development and Industry (SCDI) is Scotland's Economic and Social Forum. We are an independent and inclusive economic development network representing all sectors and all geographies of the Scottish economy. Our mission is to convene our members, partners and stakeholders across the private, public and third sectors to deliver inclusive and sustainable economic growth for Scotland.

For more information on this consultation response, or to engage on any other issue, please contact the SCDI Policy Team:

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## UK Internal Market

SCDI welcomes the opportunity to respond to this consultation on the Department for Business, Energy and Industrial Strategy's White Paper on the UK internal market.

During the consultation period, SCDI has organised separate meetings for cross-sections of our members from industry with the Secretary of State for Business, Energy and Industrial Strategy, Alok Sharma MP, and the Secretary of State for Scotland, Alister Jack MP, as well as with the Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP. This response is based on the key priorities, issues and concerns which they have raised, as well as further input from SCDI members.

Given the complexity, technicality and importance of the issues under consideration – as well as the ongoing impact of the COVID-19 crisis on the capacity of businesses and civic organisations to respond – it is disappointing that such a tight timescale of four weeks has been provided for the consultation.

### SUMMARY

Our members believe that the UK Government and the devolved administrations should:

- **Protect seamless trade across the UK** to prevent new barriers and costs for Scottish business and consumers.
- **Work together constructively to reach mutual agreement** between the four nations on a path forward.
- **Respect and protect Scotland's devolution settlement** in recognition of the democratic and economic rationale for policy differences or divergence and the principles of proportionality and subsidiarity.
- **Provide clarity and transparency** to Scottish business on how existing and future devolved policies would be affected by the proposals.
- **Improve governance proposals** to support intergovernmental negotiations towards agreements, resolve any disputes and enforce the rules.

### PROTECTING SEAMLESS TRADE

Seamless trade and the exchange of goods, services, capital and people between the four nations of the UK is vital for the Scottish economy. The rest of the UK is Scotland's biggest market and biggest trade partner. The UK internal market underpins the shared prosperity of Scotland, England, Wales and Northern Ireland.

SCDI members would be highly concerned by the creation of new barriers to trade within the UK. A wide range of sectors of the Scottish economy are clear that those which could result in additional difficulties and delays in the flow of goods and services across the UK internal market could disrupt their supply chains; increase costs and restrict market access for Scottish businesses; and raise prices and reduce choice for Scottish consumers.

This would be a damaging scenario for the Scottish economy which the UK Government and the Scottish Government should work together to avoid, especially as it would compound the loss of the benefits to Scotland and the UK of membership of the European Single Market. SCDI believes that, for many industries, alignment between EU, UK and Scottish regulations

will continue to be a priority to maintain frictionless trading relationships, with divergence likely to be beneficial in a more limited number of industries.

The issues of mutual recognition across the UK internal market and international trade are very closely tied. The White Paper acknowledges that ensuring there is market access for goods and services covered by new trade deals to all parts of the UK through the mutual recognition of regulations, even if they do not comply with devolved regulations, would support the UK's ability to 'develop and implement' trade agreements.

While SCDI members support the principles of mutual recognition and non-discrimination, which have also underpinned the European Single Market, they have also raised practical concerns and questions about implementation which are noted below. There should also be the scope and flexibility for the different nations of the UK to regulate markets in different ways, as has been afforded by the rules of the European Single Market under the principles of proportionality and subsidiarity.

SCDI members have also raised practical concerns and questions about the implementation of the proposals which are noted below.

## **GOVERNMENTS WORKING TOGETHER**

SCDI is not convinced that the legislative approach proposed in the White Paper is the right priority. We believe that for mutual recognition to work in practice and maintain support, common frameworks, agreed through inter-governmental negotiations between the UK Government and the devolved administrations, should be the foundation of the UK internal market.

Moreover, we agree with the Institute for Government that the UK's regulatory trade policy would be more informed and more secure if the devolved governments which would have responsibility for implementing specific policies flowing from new trade agreements are involved in the negotiations and decision-making about those deals. This is the approach which the Canadian Government adopts with Canada's provincial governments.

We, therefore, urge both governments to engage constructively with each other to mutually agree a path forward which is in the interests of the Scottish economy.

## **RESPECTING DEVOLUTION**

The path forward must protect and respect the devolution settlement, recognising the competencies and responsibilities of the Scottish Government and the Scottish Parliament. The capacity of Scotland's devolved institutions to pursue and achieve their own policies should not be undermined. These policies should, of course, be evidence-based and the subject of full and open consultation and scrutiny, including with business and civic organisations, as well as the UK Government and the other devolved administrations wherever appropriate.

The UK internal market has regularly evolved since it came into existence. It has functioned with differences between Scotland and other parts of the UK without difficulties or disadvantages for Scottish businesses or consumers, including as a result of devolution. A coherent UK internal market can continue to function well with substantial divergence in specific policies if some necessary minimum standards are commonly maintained.

There are well-evidenced democratic and economic rationale for different policies. Policy differences or divergence can reflect the varied needs and priorities of the different nations

of the UK or support specific market strengths and requirements which benefit the Scottish economy. For example, Scotland has environmental protection and building regulation policies which are designed to reflect the distinct challenges of Scotland's climate and its net-zero target.

The imposition of a single approach across the UK in devolved policy areas could be to the detriment of Scottish businesses and consumers. This is an approach which the UK Government must, therefore, take care to avoid.

## **PROVIDING CLARITY FOR BUSINESS**

Although many SCDI members understand and support the value of the UK internal market, they are also unclear as to how the White Paper's proposals could affect them or could affect existing and future devolved policies. It is critical that greater clarity and transparency is provided by the UK and Scottish governments to enable further engagement before any proposals are finalised.

Numerous practical examples or potential cases arising from engagement with the White Paper have been highlighted to SCDI. These include the following:

- **Labelling:** Under the principle of mutual recognition, would different policy on the labelling of products in one part of the UK affect the sale of products created and labelled in another part of the UK?
- **Regulation:** Under the principle of non-discrimination, if one part of the UK were to allow the sale of a product (e.g. genetically modified crops), would all parts of the UK also have to do so?
- **Deposit Return Scheme:** How would Scotland's Deposit Return Scheme, which has already been legislated for, and similar potential schemes being created in other parts of the UK, be affected?
- **Geographical Indication:** Under the principle of non-discrimination, how would the protected status and identity of key products from Scotland's natural larder (e.g. whisky, salmon, lamb, beef) be preserved and guaranteed, as at present by EU law, particularly in new trade deals?
- **Procurement:** Under the principle of non-discrimination, would Scottish local authorities be able to tailor their procurement policies to reflect local markets and benefit local suppliers, such as through Community Wealth Building approaches?
- **Exemptions:** Would the delivery of public health, environmental or other public policy objectives (e.g. in a case similar to Minimum Unit Pricing for alcohol in Scotland) be interpreted as justifiable exemptions to the principles of mutual recognition or non-discrimination?

SCDI members would appreciate clarification from both the UK Government and the Scottish Government on their respective interpretations of what the White Paper would mean in each of these examples or cases before any proposals are finalised. There is also a need for sufficient time for full and proper scrutiny of any legislation or draft legislation and consultation with businesses, civic organisations and the devolved administrations.

In the current circumstances in relation to public health and the economy, businesses are fully justified in requesting clear answers to their questions and that the UK Government works together with the devolved administrations to agree clear and transparent proposals.

## **RESOLVING DISPUTES**

The White Paper states that 'existing governance arrangements between the UK Government, devolved administrations and UK Parliament and the three devolved legislatures' will be utilised. We also note that the White Paper proposes that there should be an independent body to monitor the functioning of the UK internal market, overseeing implementation, identifying any potential barriers and consulting with businesses, consumers and others to gather evidence.

In principle, SCDI welcomes the development of independent monitoring bodies to make assessments, offer recommendations to governments and engage with stakeholders. These can offer valuable long-term, non-political expert advice. However, whether it would be beneficial in this area may depend on whether, as SCDI would prefer, the common frameworks or, as the White Paper proposes, legislation on a UK internal market, are the foundation for seamless trade in the UK internal market. In either case, further detail on the status of this independent monitoring body and how it would operate is required before we could offer the proposals our full support.

In addition, it is clear that the governance proposals in the White Paper will need to be strengthened in two key aspects. Firstly, the independent monitoring body must be genuinely independent and demonstrably and equally concerned with both the UK internal market and the devolution settlements. This must be obvious in its remit, membership and working practices. It must engage with and listen to stakeholders in Scotland as well as across the UK in an open, meaningful and constructive way. It must be fully informed of the distinct needs, sectors and interests in the Scottish economy within the UK internal market, acting to protect and further these within its work.

Secondly, an intergovernmental mechanism will need to be established to support intergovernmental negotiations towards agreements, resolve any disputes and enforce the rules. SCDI members do not consistently see that the UK Government and devolved administrations are working constructively or successfully through the Joint Ministerial Committee as was intended. We believe, therefore, that changes are urgently needed to deliver and demonstrate effective policy co-operation.