



OFFICIAL REPORT
AITHISG OIFIGEIL

Constitution, Europe, External Affairs and Culture Committee

Thursday 27 March 2025

Session 6



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CONSTITUTION, EUROPE, EXTERNAL AFFAIRS AND CULTURE COMMITTEE
11th Meeting 2025, Session 6

CONVENER

*Clare Adamson (Motherwell and Wishaw) (SNP)

DEPUTY CONVENER

*Alexander Stewart (Mid Scotland and Fife) (Con)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)

*Neil Bibby (West Scotland) (Lab)

Keith Brown (Clackmannanshire and Dunblane) (SNP)

*Patrick Harvie (Glasgow) (Green)

*Stephen Kerr (Central Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Mags Simpson (Confederation of British Industry Scotland)

Marc Strathie (Institute of Directors Scotland)

David Thomson (Food and Drink Federation Scotland)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament
**Constitution, Europe, External
 Affairs and Culture Committee**

Thursday 27 March 2025

[The Convener opened the meeting at 08:56]

**Decision on Taking Business in
 Private**

The Convener (Clare Adamson): Good morning, and a warm welcome to the 11th meeting in 2025 of the Constitution, Europe, External Affairs and Culture Committee. We have received apologies from Keith Brown, and we welcome back Jackie Dunbar.

Our first agenda item is to decide whether to take in private at future meetings our consideration of a draft submission to the United Kingdom Government's consultation on its review of the United Kingdom Internal Market Act 2020 and our consideration of a draft report on part 2 of the review of the European Union-United Kingdom trade and co-operation agreement inquiry. Do members agree to do so?

Members *indicated agreement.*

**United Kingdom Internal Market
 Act 2020 (Consultation and
 Review)**

08:56

The Convener: Our second agenda item is to take evidence as part of our inquiry to feed into the consultation on the UK Government's review of the United Kingdom Internal Market Act 2020.

Before I introduce our witnesses, I should state that there is an active court case that is relevant to the committee's inquiry—Biffa Waste Services Ltd v the Scottish ministers. Given that the case is currently active, we have sought the Presiding Officer's permission to be able to refer to the deposit return scheme exclusion process today. The Presiding Officer has permitted discussion of the policy issues in order to enable scrutiny, while indicating that we should avoid direct comment on the specifics of the active case. Any reference to the matter should be made within those parameters, and direct discussion of the active court case is to be avoided.

I welcome our first panel. Marc Strathie is senior policy adviser for devolved nations at the Institute of Directors Scotland, and Mags Simpson is deputy director of policy at the Confederation of British Industry Scotland. We are also joined online by David Thomson, who is the chief executive of the Food and Drink Federation Scotland. I extend a warm welcome to you all.

I will ask an opening question. The committee has previously recognised that there are significant challenges in managing the tension that exists in any internal market between open trade and regulatory divergence. What are your views on the impact of that tension on businesses? What opportunity does the review of UKIMA provide to address that tension?

We will go first to Ms Simpson.

Mags Simpson (Confederation of British Industry Scotland): Thank you for having me. I appreciate you giving us the chance to come and speak to you.

Fundamentally, CBI Scotland and the wider CBI would support anything that provides certainty and stability for business. That is the key thing that business is always looking for. Anything that causes confusion or uncertainty creates barriers to doing business in Scotland. It is that simple.

The review provides an opportunity for mutual recognition. We need to fully respect the fact that products, services and qualifications are accepted in all parts of the UK.

The CBI represents a broad spectrum of businesses of different types that are working in different industries. We may get into some of the detail of that later. Without wishing to sound glib, trying to keep it all going is incredibly complicated. The more straightforward we can make it, the easier it is to do business and grow the economy and the easier it is for the country to thrive.

09:00

The Convener: Thank you. I will bring in Marc Strathie next.

Marc Strathie (Institute of Directors Scotland): Thank you, convener, and thank you for some of the previous sessions. I found them enlightening—certainly the one on the legal issues. I hope that we will be able to shed some light from the business side.

Mags Simpson has already alluded to some of the key points. We would like to see more intergovernmental working, which Stephen Kerr referred to in a previous meeting. How do we get more governments working together, looking at best practice, learning from each other and developing from that? We have seen some good examples of that in the past, such as on the plastic carrier bag charge. We would welcome more of that collaboration.

As Mags Simpson said, the key is that businesses are already going through a tricky time. They are trying to get their heads around different arrangements across the EU, and there are possibly impending tariffs looming as well. It is a very complicated regulatory environment right now. As far as possible, we need to have a more streamlined process that works for all but also has scope for the devolved powers across the UK to be able to make the relevant and necessary amendments as they see fit. We support striking a balance that gives devolved governments the scope to be able to tailor regulation to their needs.

The Convener: The committee report in 2022—oh, sorry, David Thomson. I omitted to bring you in.

David Thomson (Food and Drink Federation Scotland): Do not worry. It is my fault for being on the telly; I apologise for not being able to be there in person with you.

The Food and Drink Federation supports the idea of an internal market act. Being able to sell goods all across the UK is of fundamental importance to the success of our businesses. Businesses that sell across the whole of the UK—from England to Scotland, Scotland to England, Wales to Scotland and so on—need surety of regulation and they need a clear path. Echoing what Mags Simpson said, I think that our members

definitely crave certainty for businesses. We are supportive of the principle of the internal market act.

We take a much longer-term view of the areas for potential reform. A set of decisions on the deposit return system took place very late, and our members and others had brought in and invested money in infrastructure and fulfilling their legal requirements. It is in such areas that we ask whether we can use the internal market act and the common frameworks to have a clearer, more transparent framework for regulation that allows businesses to plan for the longer term.

The Convener: Thank you. I will go back to my second question. The committee's report on our internal market act inquiry was published in 2022. Our view was that

"it would be regrettable if one of the consequences of the UK leaving the EU is any dilution in the regulatory autonomy and opportunities for policy innovation which has been one of the successes of devolution"

which has been one of the successes of devolution here, in Wales and in Northern Ireland.

Three years on from that, do you think there has been a dilution in policy innovation as a consequence of the UKIMA and the difficulties that have been alluded to already?

David Thomson: To be honest, it is difficult to say. At the moment, we face a range of regulation across the UK. An example is regulation on how high-fat, salt and sugar products are placed in stores, and restrictions on promotions of those products. That regulation is already in place in England, and only yesterday or the day before, Wales also passed a regulation on that. Scotland is waiting to see what the Scottish Government will put in place, so at the moment, there is still potential for different approaches.

We are also involved in extended producer responsibility and the additional costs for plastics and packaging. That is being done on a four-nations basis, even though it is a devolved responsibility.

We would argue that there is still quite a lot of regulation and activity. From our perspective, we do not necessarily observe that the internal market act has had a chilling effect, but we are still at the very early stage of the passage of the legislation and of understanding its implications.

Marc Strathie: Broadly, David is spot on. We have not seen a massive change. There has been a little bit of uncertainty around the exclusions process, however. That has been the one area in which we have noticed the most change, and we might get on to that later. On the whole, I would not say that there has been massive divergence.

Mags Simpson: I will keep my answer simple: exactly what they said. [*Laughter.*]

The Convener: That is always helpful, thank you. I move to questions from committee members.

Alexander Stewart (Mid Scotland and Fife) (Con): A number of common frameworks apply to Scotland—I think that there are 26 in total in the various categories. We have already heard that the common frameworks are based on agreement, not imposition. How useful do you think that it would be to enhance the clarity on common frameworks, even if nothing else is progressed at this stage? We have already heard that there are still some frictions and difficulties. Would managing the common frameworks provide an opportunity for development so that organisations, instructors, industries and sectors can progress things? It would be good to get a view from all of you on that. I will start with Mags Simpson.

Mags Simpson: I represent our members and we have spoken to them about that sort of thing. Forgive me for reading verbatim, but it will give you bit of a feel our members' point of view:

“The process of developing common frameworks to manage regulatory divergence between the devolved administrations has continued with varying degrees of progress across sectors.”

Businesses have expressed the need for greater clarity and predictability, particularly in regulated sectors such as food standards, which David Thomson will talk about. Construction is an important area, especially with the work on net zero, and professional qualifications. Anything that would help to make those things more straightforward would only be a good thing.

Alexander Stewart: David, the food and drink sector has a huge issue with this.

David Thomson: Yes. The vast majority of the common frameworks, or at least a significant minority, are in the food and feed sector, so they are critical. There is a huge amount of technical regulation on food safety and other related aspects. We do not really know what is going on with common frameworks. We do not know what is being discussed and are not asked to input the industry's point of view, so we do not really know what is being discarded, what has been agreed, and what will be taken forward. As we have said elsewhere, we need clarity about the progress of negotiations. I understand that governments need to negotiate with one other, but it would be helpful if we could have much more clarity about the agenda, the timeframes and the kinds of things that are likely to come out of negotiations, in a much more structured way for each of the frameworks. At the moment, we do not get reports about what is happening.

Alexander Stewart: You have indicated that there is a lack of transparency in the process and you feel that you are still being left a bit in the dark.

David Thomson: Yes. Business stakeholders do not know what is happening or what will pop out of the common frameworks process at any given time.

Marc Strathie: I echo David Thomson's point. In the past few months, there has been a little more stakeholder engagement on the UK internal market aspects and we have all been involved with that, which is great, and it absolutely must continue. I completely agree that clarity is critical, but there needs to be a balance between clarity and overburdening businesses with more bureaucracy and regulation. We need to strike that balance so that we ensure that we do not go too far down one route. Clarity is fantastic, but we do not want to overburden businesses.

Alexander Stewart: Do you feel that there is a good, close working relationship between business and governments, or is that relationship still fractured?

Marc Strathie: We were chatting about that before the meeting. I think that the relationship has got better, particularly in the last six months. As I alluded to earlier, one of the key things that we would like to see is a greater relationship across the board with all the devolved administrations, more intergovernmental work and more innovation. It is about how we learn from each other and look at the potential positives that we can take from the UK internal market act as opposed to its potential drawbacks. The relationship has definitely improved, but that improvement cannot stop now—it is still early days.

Alexander Stewart: The whole principle of market access and whether it is weakening or strengthening still seems to be one of the main areas that you have some difficulty with. Mags Simpson, you talked about having certainty and stability, and I get the sense from what you are saying that there is still not certainty and stability or a complete picture of what is expected of business and what you can contribute. There has been a lot of dialogue, but it appears to have been only one way.

Mags Simpson: You are right. It is about market access. I am not supposed to talk about the deposit return scheme, but we have suppliers who had already decided to pull products out of Scotland if that scheme came in, and they are big companies. The whisky industry is a good example. If we look at what is happening in Northern Ireland, we see that decisions are already being made about what products are

going in because of the knock-on effect. You have to remember that the logistics piece is a big circuit. It is a circular economy. If you send a truck into Ireland you have to bring it back with something in it. Businesses will make subtle decisions if they think that certain pieces of regulation are coming in.

Alexander Stewart: David Thomson, do you have anything to add on stability?

David Thomson: As a general principle, long-term planning did not happen with the DRS, because that planning was essentially in place given that the law was in place, and then a different decision was taken. We now have a situation where England, Scotland and Northern Ireland will have a DRS that is interoperable, whereas Wales is still in policy discussions about it—even though we have been talking about it for a very long time. Wales has not yet brought the regulation forward, so we do not know if it will pass the internal market act test or what political decisions will be made around it at the time that it is brought forward. That kind of thing breeds uncertainty. Businesses ask the question of us all the time. They ask us, “Is this an internal market act issue? Is it something where the devolved Government will have to do something other than what it wants to do because there will be an intervention by the UK Government?” So, it still breeds a lot of uncertainty. If we can get away from that uncertainty, everyone will benefit.

Alexander Stewart: Marc Strathie, do you have anything to add?

Marc Strathie: The only point that I would add is about making business part of the conversation, because right now it is not part of it. If you want to build a greater level of trust and collaboration, as we were talking about earlier, you need to bring businesses into the conversation. All of us can help that.

You have been hearing directly from the other witnesses about the impact that the situation is causing. Mags Simpson alluded to some of those issues, and that really brings it to life. Hearing it from the horse’s mouth, as it were, is sometimes even more impactful when it comes to realising what impact decisions, timescales and so on have on businesses.

Alexander Stewart: Do you still feel that you are being consulted or supported by Government?

Marc Strathie: I would certainly say that we have been in the last few months. Before that, consultation periods were hit and miss at times. It now feels that we have a good process, and things such as this inquiry are very welcome. The same approach seems to be taking place across devolved nations, which I have covered. Across

the board, I feel that we are being fairly consulted on the matter now.

09:15

The Convener: Going back to the answer that you gave to Alexander Stewart, David, I note that transparency is an issue that we find very frustrating as a parliamentary committee. Such processes are done through the common frameworks and mainly involve civil servants, and there is not an opportunity to ask UK ministers about decisions that are made in Scotland. I am a bit concerned about what you said regarding the common frameworks. I understand that they were designed with stakeholder engagement in mind and that industry experts or professional experts were to be involved in the common frameworks that were relevant to their areas. However, from what you said, it sounds as if that is not greatly understood and you do not know how such experts are chosen. Is that the case?

David Thomson: That is fair. In England, Scotland, Wales and Northern Ireland, we all have direct engagement with civil servants and ministers at that level—that happens all the time and it is incredibly useful. However, when we get into the common framework, the engagement seems to go into an inter-Government box. Therefore, we do not know what long-term discussions are happening or what their outcomes are. As far as I am aware, no direct conversation is being had between industry and any civil servants as to what goes on behind closed doors at common framework sessions, which we would for sure be directly involved in.

I read the *Official Report* of the committee’s previous evidence session, in which the legal academics all pointed to a kind of democratic deficit when it comes to the Parliament’s duties. I can understand your perspective on that issue as well. The parliamentary process gives us, as stakeholders, another opportunity to input and support developments or make sure that they are adapted in a way that is better for our businesses. However, we feel that a bit is missing as part of the process.

Stephen Kerr (Central Scotland) (Con): To clarify, are you saying that, when it comes to common frameworks, representatives of the industries and sectors that might be impacted by the discussions that are being held have no seat at the table? Is that right? Have you had a seat at the table, Marc?

Marc Strathie: At a UK level, we have had engagement across the board. On David Thomson’s point, it can sometimes be challenging for a Government to get every single sector on board across the piece.

Even at a UK level, we have good engagement, which has ramped up in the past six months in particular. Before that, the market access principles were broadly protected under the internal market act. I could not speak for the whole variety of sectors. A bit like the CBI, we cover sectors right across the board.

Stephen Kerr: At IOD, are you content that your members' voices are being heard inside the "box", as David Thomson described it?

Marc Strathie: Yes, but there is always room for improvement. We have had greater engagement in the past six or seven months, but I would like there to be a little bit more, if I am honest.

Stephen Kerr: You mentioned the UK level. Is that also the case with the Scottish Government?

Marc Strathie: Yes. There has been a real uptick in activity in the past six or seven months, and there has been good progress to date, but there is still room for improvement.

Stephen Kerr: What about the CBI?

Mags Simpson: I am only one individual, and the CBI represents thousands of businesses. We do not want all those who are involved in the frameworks to think that one solution fits all, because different sectors in the economy are impacted in different ways. Also, let us not forget that Scotland is essentially an export economy. Our biggest customer is England, so anything that creates barriers to that trade is not going to be helpful.

Stephen Kerr: Do you hear the chatter among your members? Are they being plugged in to—

Mags Simpson: Yes, absolutely.

Stephen Kerr: They are?

Mags Simpson: Yes. Those are not my views; they are our members' views.

Stephen Kerr: They feel that the common framework process is working for them.

Mags Simpson: I do not want to say that it is absolutely working. There is room for improvement, as Marc Strathie alluded to. It is about the transparency that David Thomson mentioned. In certain areas, it is easier and the process is therefore a lot quicker and a lot more open; however, when things are a wee bit more complicated, they sometimes get a bit caught in the weeds.

Stephen Kerr: I suppose that that is a by-product of government and bureaucracy: a lot of things get caught in the weeds.

David, do you want to add anything about that seat at the table? If common frameworks are

being worked up but you are not involved, that seems a bit odd.

David Thomson: I will differentiate three things. We are engaged in normal discussion about policy as that is brought forward by each of the four Governments. We have also been involved in discussions on the level of the operation of the 2020 act itself. However, for each of the 20 or 30 common frameworks, there are specific processes and specific ways in which the Governments talk to one other, and that element is invisible to us. We are involved in developing policy and in discussions on the impact of policy in each of the four nations, but we do not feel that we have an insight into the Governments getting together and having a discussion about what is agreed.

Stephen Kerr: Marc and Mags, has David Thomson reflected what you think?

Marc Strathie: Absolutely.

Mags Simpson: Yes.

Stephen Kerr: You broadly agree with what he has just said: you get the input, but you do not necessarily know what will happen next—

Mags Simpson: What the results are.

Stephen Kerr: What the results—the outputs—are.

Marc Strathie: I go back to Alexander Stewart's point about clarity. There is an opportunity to shape things, but there is room for improvement on having that clarity at the end point.

Stephen Kerr: What is your view on the operation of the office for the internal market? Have you heard any feedback about it? Have you had any engagement with it? Do you know what it does?

Marc Strathie: I have not had any engagement with it.

Stephen Kerr: There is no comment from CBI Scotland. David, does the Food and Drink Federation Scotland have any experience of the office for the internal market?

David Thomson: Yes.

Stephen Kerr: Okay—good. What has it been?

David Thomson: It is an odd thing. We perceive that the office is there to provide advice to all four Governments on the operation of the internal market, and to produce reports. Its engagement has involved quite a lot of reach-out. We have been at sessions with board members and chairs talking about the kinds of things that our members are interested in, in the legislative sense. We have had a number of discussions on those, and it has produced reports on things that

are important to the food and drink industry. From that point of view, we have had good engagement.

However, from what the office has told us, its engagement with the four nations has been very limited, and Governments have not necessarily asked it to provide insight, advice and reports very often—they have certainly not done that as often as it would like. That might be improving over time, but that is the impression that we have had.

Stephen Kerr: Is there a bigger role for the office for the internal market? It seems to me that you think that it is a pretty good thing but that its potential may be unfulfilled.

David Thomson: From an observer's point of view, it is odd that the office was set up to support all four Governments but they do not necessarily all ask for its point of view. That is the obvious thing, particularly in relation to long-term strategy and policy areas.

For example, over the past 10 years, in the broad area of the environment, we have had a plastic packaging tax, circular economy bills, the DRS maybe happening and definitely happening, and extended producer responsibility. Is there a way to take a longer-term view of all the challenges that we know will come? We know that there will be regulation and that a chunk of it will potentially be devolved. Can the office for the internal market do something on a longer-term look to help the Governments to navigate the difficulties of bringing forward regulation and help businesses to understand what the general path is likely to be?

Stephen Kerr: So the role of the office for the internal market falls into the broader issue of how we get our Governments on this little island to talk and listen to one other and work together. Is that a fair comment? You are all nodding.

Marc Strathie: Absolutely. I know that that point came up in the previous evidence session. We are passionate about it. In my role, I often speak to the UK Government and the respective devolved Governments. We all have a duty to take up and learn from best practice, whether it is devolved nations' or UK Government best practice. We should all take the mantle and do a little more of that.

Stephen Kerr: That is good.

Mags Simpson: I do not want to sound provocative, but we need to take politics out of the matter. We need to have a level playing field that makes it easier for businesses to operate without repeating themselves.

Stephen Kerr: It is about sales and jobs, is it not?

Mags Simpson: It is. It is about growing our economy. Scotland has a vested interest in growing Scotland but, whether we like it or not, we need to grow as a United Kingdom.

Stephen Kerr: The review that the Labour Government has put in place is an opportunity for people to talk about whether we even need a UKIMA. You will have heard that discussion in the Parliament and the committee.

You have all talked about the importance of certainty and stability, and you have introduced the idea of clarity. UKIMA gives the internal market of the United Kingdom a pretty solid legal framework—some say that it is too rigid—that guarantees market access. There are market access principles, which you have referred to. Marc, is it the IOD's view that we need a UKIMA? What would be the costs of not having it?

Marc Strathie: We need a UKIMA. The cost of not having it would be uncertainty. As Mags Simpson said, from a Scottish point of view, our biggest market is England.

Unfortunately, since the departure from the EU, there has been a period of greater uncertainty. However, we still need to think about the long-term approach and what UKIMA means for all the devolved nations. Right now, that is probably the one area on which there is still a bit of uncertainty. That will be resolved only with greater stakeholder engagement. As I said, we are getting to a better place on that, but there is still a way to go to have a perfect UKIMA.

Stephen Kerr: How would you amend it?

Marc Strathie: As I said, learning from best practice is critical for us, but the devolved nations have to be treated with respect. If a devolved nation—whether it is Scotland, Wales or Northern Ireland—feels that something is important to it, UK ministers need to treat it with respect so that it can have the confidence to take that matter to the table.

There also has to be greater dialogue. UK ministers should tell the respective devolved nations what the direction of travel is and not land things late. David Thomson alluded to the impact on business, but I imagine that, from a devolved nation's perspective, the late notice that the convener mentioned can also be frustrating. Mutual respect has to be baked in from the start, as does collegiality. We are part of this situation together and we will learn and develop best practice from one other.

Stephen Kerr: How would IOD members and their businesses feel about there being too much divergence?

Marc Strathie: Divergence is always tricky. In our state of the nation survey report, we spoke

about tax divergence in Scotland, for example. Divergence is a concern. The key is to have proportional divergence where it is relevant and necessary. Divergence for the sake of divergence is an issue, but where it is proportional and represented, it is okay. That is the purpose of devolution. Places across the UK are different and there are different needs across this island, as you said earlier.

We need to find a balance. Some of our members say that it is easier working with Holyrood in a certain area and others say that it is easier working with Westminster, so people have different experiences. That is okay.

Stephen Kerr: What about the CBI? I put the set of questions to you, Ms Simpson.

Mags Simpson: The UKIMA is important. It matters because the UK internal market underpins economic growth and investment stability.

Stephen Kerr: It is that essential.

Mags Simpson: It is, as long as there is mutual recognition and non-discrimination so that one part of the UK cannot benefit in relation to another. That would make no sense. If we have divergent regulations, all that that will do is increase costs and reduce competitiveness. Most businesses operate across the four nations—very few operate exclusively in one. The UKIMA protects supply chains and makes sure that businesses can operate efficiently across the UK. I alluded earlier to the logistics of it all, and we need to have free-flowing trade within the UK. If we start to build in barriers, we will get the situation that we have with Brexit.

09:30

Stephen Kerr: Would you want to amend UKIMA in any way?

Mags Simpson: I cannot think of anything to amend off the top of my head.

Stephen Kerr: You are fairly content with the legal framework.

Mags Simpson: I take Mark Ruskell's comments on board in that, if there is something that the Scottish Government or the Scottish Parliament feels extremely strongly about, they should have the opportunity to say to the group, "This has to be different, and this is why", as long as it is evidenced and thought through and nothing weird and wonderful comes out of it. That is how I would approach it.

Stephen Kerr: You are calling for a clear understanding of the pathway by which divergence might occur and the basis for it.

Mags Simpson: Yes. It has to be evidenced and the possible knock-on effect for the supply chain has to be understood. You need to understand what it means for consumers, for the costs of the product and for the businesses that are trying to deliver the product or service.

Stephen Kerr: Do businesses need to be in the room?

Mags Simpson: Yes.

Stephen Kerr: David, I put the same set of questions to you.

David Thomson: I will not repeat what Mags Simpson and Marc Strathie have said, but I agree with a lot of it. From our perspective, our businesses want one set of rules—or at least an interoperable set of rules—as far as possible across the whole of the UK. They support the principles or the ideas of the internal market act, for all the reasons that Mags Simpson outlined.

At the time when the internal market act was created, UK Government modelling showed that, if we did not have an attempt to provide convergence in regulation, it would cost each of the four nations a lot of money, and it would cost Scotland and Wales a lot more proportionally, as the larger market in England has the weight.

We agree in principle that we need something like the act. It also underpins our ability to do international trade deals. We have not covered that issue, but it is one of the ways in which the UK Government, which has responsibility for international trade deals, can ensure that those deals are delivered across the whole of the UK as a result. That is an important element that we have not touched on.

If I was to change the internal market act, I would go back to what I have talked about all the way through, which is that we need longer timescales and more clarity. When do you make the decision about the internal market act being breached? When do you make the decision about putting in place an exemption, in particular? That should happen much earlier in the process than we saw in relation to the deposit return scheme. I will not go into that example, but it is illustrative—or perhaps it is not illustrative, because that happened at a particular point. The internal market act had just been brought in, and the DRS became its first cause célèbre. That tells us how not to do it—there should not be a late decision when money has already been spent. Is there anything in the internal market act to ensure that all four nations are beholden to much earlier decision-making, particularly on exemptions?

Stephen Kerr: From what you have said—please interrupt me and say if it is otherwise—it all seems to come down to having a better culture of

working together, better understanding of one other and a collaborative approach to making things work for everybody.

David Thomson: Yes.

Patrick Harvie (Glasgow) (Green): I make no secret of the fact that I am a critic of the internal market act. It strikes fundamentally at respect for the devolution settlement and the ability of the Scottish Parliament and the Scottish Government to make the decisions that the Scottish people have given those bodies the authority to make. In reality, however, we know that it is not about to be abolished. The UK Government is not going to make such a sweeping change. It might not even perform major surgery on the act, but there is some scope for specific tweaks, and I want to ask you about some of the specific proposals that have come from other witnesses in the inquiry.

There is recognition of the desire for certainty but, as Marc Strathie said, it is about striking a balance. There will never be 100 per cent certainty and there will be circumstances in which divergence is justified. That is a political decision and one that is subject to democratic accountability.

One of the arguments for change is that the broad, undefined discretion that the UK Government has on the exemptions process should be replaced with a specific and defined set of criteria for exemptions. It seems to me that that would give some greater clarity and certainty to Governments and stakeholders about how the act operates and how decisions would be made. Another proposal is to set a threshold for the burden of proof, if you like, in relation to what the UK Government would have to demonstrate as a justification for denying an exemption.

I put the case that those kinds of changes would strike a better balance between giving clarity to Governments and stakeholders and respecting the democratic legitimacy of the different levels of Government. Would you be comfortable with that kind of change?

Marc Strathie: Absolutely—those proposals would certainly be welcomed at our end. I do not want to bang on too much about the exclusions process, but I will say that, right now, it is shrouded in a bit of mystery. The proposals that you mention would make a big difference and would strike the balance that I mentioned earlier in a proportionate and legitimate manner. I agree with both proposals.

Patrick Harvie: That was easy. Anyone else?

Mags Simpson: There is an element of that—absolutely. We just need to be careful, because the benefit of doing business across the four nations is that it is scalable. There could be

unintended consequences if you start playing around with that and suddenly shrink the market overnight. In principle, my answer to what you said is yes, but let us keep it simple.

Patrick Harvie: It will always be the case that governments and populations can make democratic decisions that create uncertainty. Brexit is the supreme example of that. In the run-up to that decision, nobody knew which way it would go and the result fell on a knife edge. There were then several years of profound chaos and uncertainty as a result, and we are still living with a lot of the damage of that. However, that does not take away from the fact that there was a democratic process and that decisions can be made. There will always be scope for some uncertainty and unintended consequences. The critical thing is that, when such decisions are being made, you listen to those who warn about the consequences and you make an informed decision about whether those consequences are acceptable.

Mags Simpson: Yes, and it is about mutual respect for those decisions once they have been made.

Patrick Harvie: Yes.

David, do you want to add anything on the types of concrete, practical changes that could be made regarding exemption criteria, burden of proof or anything else that you want to throw into the mix about specific changes that we ought to advocate in our report on this inquiry?

David Thomson: I read the *Official Report* of the previous meeting, when some of those things were brought up. I go back to my key themes on this, which are certainty and long-term decision-making, whether that relates to differences or similarities. I agree that, as Mags Simpson said, something that would, to an extent, take politics out of this would keep things simple. Having criteria that are as understandable and clear as possible would be an opportunity to provide businesses with a bit more certainty in the longer term.

On proportionality, I note that 96 per cent of food and drink manufacturers in Scotland are small and medium-sized enterprises. Most of them are on the small side—for example, some of them are the only enterprises in Scotland that make a particular product.

As you said, Mr Harvie, it is important to understand the arguments and be clear that you have taken them into account in making decisions. It is important to understand the issue of proportionality—whether it is a big-market access issue or not—but it is also important to understand the impact of that decision making on small

businesses in Scotland or any other part of the UK.

George Adam (Paisley) (SNP): Good morning, everyone. I would like to ask about devolved authority in general. We have come to the conclusion that there can be diversion, as Patrick Harvie said, when there is political will to do things slightly differently.

At the moment, under the internal market act, the devolved Governments are looked on as the junior partners in the whole process, and that is what is causing the problem. How could Scotland implement policies that reflect local needs and priorities using the current internal market act mechanism? I am interested in how you think we could do that rather than us politicians telling you how we think we should do it.

Mags Simpson: I might be being controversial here, but I would push back and say that those decisions are for politicians. Businesses that operate in the market will deal with the market conditions that they are given. We always say that businesses are not interested in the politics of it. At the moment, we have a UK internal market, which means that all those businesses have market access—in essence, free access—and can operate across the UK. It is quite straightforward but, once you start meddling with that, it becomes a different market, and businesses will adapt to whatever that market becomes. Therefore, I do not feel comfortable saying what the politics should be.

Marc Strathie might have a different view.

Marc Strathie: I completely agree. The only thing that I will add, which goes back to something that we discussed earlier on stakeholder engagement, is that we should try to get insights from businesses and understand the potential consequences of any action. In fairness, all the Governments across the UK are fairly good at that at times—they bring us and different businesses into the conversation. However, we cannot get complacent about that. It should be baked in at the start.

Over the past couple of years, as David Thomson mentioned, unfortunately, there have been some instances in which the consequences for businesses have not been considered as much as they should have been. That is the only point that I would make. Mags Simpson made a really good point that businesses respond to the market conditions that they are given, and those conditions have changed quite a lot over the past few years. The key point is that businesses are always adaptable and resilient. They will always respond to changes, but it is important to understand their considerations and the consequences.

George Adam: David Thomson, do you have anything to add?

David Thomson: I would not dare to tell the committee how to do its job.

George Adam: It is a bit of stakeholder engagement.

David Thomson: Absolutely. The interesting thing, which I picked up on in a previous evidence session, is that, when devolution was put in place, we had the European settlement, which included a set of structures that supported the common market. I read in the committee papers about the differentiation between what we have with the internal market act and what was in place in Europe. We had a set of constraining factors within Europe, but they were handled slightly differently and—in seeking to take a bit of the politics out of it—I wonder whether there is a way to do that in a more neutral manner, rather than the perception being that one Government is working against another Government.

George Adam: It is funny that you should say that, because that leads on to my next question. As a Scottish National Party politician, I would say that the internal market act is an act of political intervention. It has been done by the UK Government for a specific reason: to limit the ability of devolved Administrations to make the differences that they want to make in their areas of responsibility.

We are talking about taking the politics out of it. Previously, we worked with the common frameworks. We would take the politics out of it, go to a wee room and argue about what the way forward should be. We would then come back with a settlement on how we had agreed to go forward. That approach would probably help businesses. We would say, “Here are the rules and regulations”—exactly as Marc Strathie spoke about—and, “Here is how we are going forward with policy. Both Governments have agreed to it, so let’s get on”. My argument is that the internal market act has created the political situation that we now find ourselves in. I know that you cannot and will not comment on that opinion, but there are, or were, better ways of working that would create the stability that the marketplace is looking for.

09:45

Marc Strathie: As I said, the key thing is to have a better working relationship. I think that everyone would fully support the principle that you described earlier—businesses would like to think that Governments were working together and thrashing things out behind the scenes to find the best market conditions, rather than acting in a political manner.

You talked about the devolved Administrations being junior partners. We should try to move away from that aspect and look at equal partnership. I keep going back to the idea of collaboration and learning from each other. The Scottish Government will come up with good ideas that everyone across the UK might want to adopt.

George Adam: I am always a great believer in stealing someone else's ideas if they are good.

Marc Strathie: Exactly. We should learn from and embrace best practice instead of being stubborn in that regard. The broad concept that you described would be welcome.

Mags Simpson: I will go back to my comment to Mr Kerr. As far as our members are concerned, the UK internal market underpins economic growth and investment stability. To be honest, the world has gone a bit mad—it is just crazy. The UK is trying to attract companies to invest in this country, and I worry about what on earth it would signal to the rest of the world if we were just to throw the UK internal market up in the air. We must bear in mind that we are in a world market in which we are all competing with everyone else, partly because of what is going on in America and partly because of what is happening in Europe.

My advice is to be careful what you wish for. Is that allowed?

George Adam: We could debate that issue for quite a while.

Mags Simpson: We could, but let's not do that.

David Thomson: As I said in my answer to your previous question, the act is constructed in a way that results in there being senior and junior partners, and I wonder how we can get out of that. You spoke about common frameworks, joint ministerial committees and a range of things that have operated since the start of devolution and have been sometimes better, sometimes worse and sometimes in abeyance.

I am interested in how those systems will develop under the new UK Government and whether there can be a way, under the act, for that sort of structure to necessitate far more agreement via common frameworks—that is what those frameworks are designed for—rather than relying on, in essence, a pretty rough legal backstop that no one has particularly tested. Common frameworks are a way of doing that without going anywhere near the legal backstop, as some people have described it, of taking a case to court under the terms of the act.

Neil Bibby (West Scotland) (Lab): We have spoken at length about these issues. Mr Strathie, you talked about the balance to be struck between devolved Governments being able to have some regulatory divergence while maintaining

frictionless trade across the United Kingdom. Those are both good things, but they sometimes run counter to each other, and we all accept that it is difficult to strike that balance. As we have discussed, that takes us to common frameworks, common sense and co-operation instead of conflict.

Notwithstanding the concerns about regulatory divergence, do you share the concerns that any legal changes to the internal market act could result in a situation in which nothing gets done and there is a stalemate across the UK that prevents us from making changes that could be positive for business? Should we be alive to those concerns?

Marc Strathie: The legal point is important. We spoke earlier about clarity and how that can be aided, but we must be mindful of gridlock and stalemate. The Governments of all nations must be able to be flexible and to bring sensible things to the table. If those are deemed to be divergent, that is fine, but the balance with the legal aspect is key. In the previous evidence session, there was a lot of chat about that with the legal academic experts. I would not profess to be an expert on that subject, but I am slightly wary. Businesses have conveyed their concerns about regulation and bureaucracy right now, so adding further layers of that could be a slightly slippery slope.

Neil Bibby: Ms Simpson, you said that you support the internal market act but that there would be additional concerns.

Mags Simpson: Yes. As Marc Strathie said, the issue is about increasing complexity.

David Thomson: Our members would say that, in many cases, the lack of new regulation is probably a good thing in general. However, we understand that innovation happens in different parts of the UK at different times. I go back to the point about long-term planning. If we had a long-term plan that suggested that regulation would start in one part of the UK and then be extended to another part of the UK, with a planned structure for that, that would be easier for businesses to implement, because they would know what was coming. We can compare that approach with the fairly piecemeal one that we seem to have at the moment.

Neil Bibby: I am not going to argue for any specific deregulation but, if legal changes were made to the internal market act, there could be circumstances in which deregulation that you wanted might not happen.

Marc Strathie: Yes, and there are also cases in which better regulation is good for businesses.

Neil Bibby: Yes, that is my point.

Marc Strathie: Reports over the years have suggested that the UK is heralded as a world

leader for its regulatory environment. There are cases in which deregulation is the best approach, but there are also cases in which better regulation is the right approach. It is not that one approach is wrong and one is right. There is no one-size-fits-all approach.

Neil Bibby: However, you agree that we need to avoid gridlock.

Marc Strathie: Absolutely. We need to avoid gridlock and stalemate completely, because that does not help anyone.

The Convener: We have heard an awful lot about having certainty and clarity in these areas being the most important thing for the economy and for business. However, some of the decisions that have been made demonstrate that we now have a situation in which, for as long as the English market is analogous with the UK market, because of how the structures work, a lot depends on relationships. We would all welcome better relationships, but that seems like a pretty precarious thing on which to pin our hopes for the future.

If the system was being designed from scratch and things had not developed in this way, would there be an argument for equality between the negotiators? We have heard UKIMA described as driving a coach and horses through the devolved settlements of both nations. Could something be done to strengthen and equalise the negotiations at that level?

We have talked about the office for the internal market, which can give advice, but none of the Governments concerned is compelled to heed that advice. Is a regulator or an arbitrator necessary so that there is a body to make a decision when there is gridlock? That is just an option.

I will leave it at those two questions at the moment.

Marc Strathie: I have been fairly clear that the quality of the partnership is critical, so, in response to your first question, I would say yes—absolutely.

On a potential new regulator, the current context is interesting, because there are discussions about the UK's role as a regulator and some of the UK Government's decisions on regulatory bodies and so on. It goes back to the point that I made to Mr Bibby. If a regulator could strike a balance with those tough decisions, it could work, but I go back to the point that things would be tricky if the issues were too difficult and we were facing a stalemate.

In principle, it would be great if a regulator could intervene when there were tensions between the Governments, but it would be nice if we did not often have to get to that point. I completely take your point, convener, about basing things on relationships. Things might have looked good for

the past six months or whatever, but the position could be precarious, so I take your point. If we cemented the relationships, we would avoid the need for a regulator, but, in principle, it could work.

Mags Simpson: We have spoken to our members about that. At the moment, there is no independent arbitration body to monitor or resolve disputes, and businesses would, on the whole, support a neutral adjudicator that could handle internal market issues fairly and efficiently. However, our plea would be that you engage with business when designing those mechanisms. Let us not create more regulation to apply further regulation to make sure that we are applying the regulation—do you know what I mean? That might sound glib, but there is a great onus on businesses to make sure that they comply with regulations, so let us not create a load more.

David Thomson: We are on record in saying that—I know this, because I wrote our response to the original consultation on the internal market act—if possible, there should be something that responds to all four Governments on an equal basis in relation to the legislation, because that is a way to ensure fairness. However, that is a regulatory issue. The reality is that the English market is 10 times the size of the Scottish market, so the regulation and the reality might have to adjust.

In my answer to Mr Adam's question, I talked about the possible different structures and mechanisms. However, I agree with the convener that there is an issue, because, as I said, sometimes devolved Governments have been listened to and sometimes they have not. Sometimes, it is not even about party relationships; it is about the relationships between individual ministers or officials. There might be advantage in crystallising that more sharply for the purposes of the internal market.

As I said, taxpayers' money is being spent on the office for the internal market, but it is not being utilised, so are there better ways for that money to be utilised?

The Convener: I have a final question about the significant differences between how the UK internal market and the EU market operate, specifically in the areas of subsidiarity and proportionality, which govern the exercise of EU competences but are not included in UKIMA. Do you have any views on including subsidiarity and proportionality tests in UKIMA as part of the review?

David Thomson: Our members have not really thought about that, but I will say two things. In my answer to Mr Harvie, I said that proportionality depends on the business size and the impact on the business. It is important to remember that it is

not necessarily solely about proportionality in the market but about understanding the impact on individual businesses.

On Mr Bibby's point about freezing regulation, as I understand it, having worked as a civil servant in that system, you did not bring forward regulations or ideas until you got an okay from the European Commission that you were in the right general area. I guess that there is a danger that that might freeze the innovation that we talked about. There are opportunities in that regard, but it is important that our eyes are open to the impacts.

Mags Simpson: Simple—what David said. [*Laughter.*] Genuinely.

Marc Strathie: I completely agree.

The Convener: That concludes questions from the committee. I thank you all for your contributions.

I suspend the meeting to allow for a change of witnesses.

09:59

Meeting suspended.

10:09

On resuming—

The Convener: Welcome back. I am very sorry to say that we have lost Christina McKelvie, who was a very dear friend and colleague to everyone in the Parliament. Given the circumstances, we have decided to suspend today's proceedings and close the meeting. The cabinet secretary has agreed that we will, through the clerks, send him the questions that we would have put to him, and he will respond to them in order to allow us to continue our work.

I know that I speak for everyone in the room when I say how sad we all are about the circumstances. We will miss an exceptional, empathetic and brave woman in this Parliament.

Meeting closed at 10:09.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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