

SUBMISSION FROM PROFESSOR COLIN T REID, UNIVERSITY OF DUNDEE

I wish in a purely personal capacity to make just a few short points in response to the call for evidence on the UK Internal Market, focussing on the scrutiny and devolution aspects of the issue.

1. Although there has been discussion of a need to develop mechanisms for “common frameworks” on various matters, some related to the internal market, legislation is already being considered by the UK Parliament which provides for ways of shaping UK-wide arrangements without any reference to these. These are based primarily on conferring powers on UK Ministers to act, even in areas of devolved competence.

2. The Agriculture Bill, for example, provides for UK Ministers to make regulations on the certification of organic products (cll.36-37) and to ensure compliance with the WTO Agreement on Agriculture (cl.40), without any requirement to consult with devolved administrations (although these will share the power to legislate on organic products within their existing competence). Other measures require joint action – for example the Joint Fisheries Statement under the Fisheries Bill (cll.2-3), but with no provision on what happens in the event of difficulty in agreeing a joint position. Further examples require the Scottish Ministers’ consent before the UK Ministers can make regulations that encroach on devolved competence, e.g. the Environment Bill for aspects of producer responsibility (cll.47, 48). There is little evidence of a clear, consistent and widely agreed plan for dealing with the regulation of the internal market, the interaction between devolved and reserved powers and the arrangements for common frameworks.

3. In terms of parliamentary scrutiny, there are two situations to consider. The first is exercising scrutiny where the UK measures can be adopted with no requirement for consultation with, or consent from, the Scottish Ministers. There seems no direct route for intervention here by the Scottish Parliament. The second is where Scottish Ministers are involved to some extent. The latter provides some opportunity for scrutiny of the Scottish Government’s position, in accordance with existing protocols, but this represents only an indirect form of scrutiny and of course where the requirement is for consultation only, the Scottish Ministers’ views may be overridden.

4. It must be realised, though, that much of this is not new, in view of the existing position of the UK Government in relation to the wide range of reserved matters, in particular consumer protection and international affairs (including dealings with the EU). After all, the idea of reserved powers is to allow for a clear single position to be taken across the whole UK by UK Ministers. Indeed, UK Ministers currently enjoy very wide powers under the Scotland Act 1998 to legislate on EU-related matters, even within devolved competence, with existing concerns over scrutiny. Nevertheless, the challenges will, perhaps, become more pointed in future, given that the UK Ministers will be introducing distinct policy measures, not just rules to implement a framework agreed by the slower and more consensual processes at EU level.

5. Across this whole area, the picture may be clouded by conflicting views as to where a particular measure sits in terms of devolved competence; for example, are rules on organic products a matter of agriculture and environment (both devolved) or consumer protection, product standards and import/export control (all reserved)? With the existing powers in relation to EU-derived measures, the clear power of the UK Ministers to legislate on both reserved and devolved matter has offered a simple way of avoiding the need to dissect proposals too finely into reserved and devolved elements (albeit with a cost in terms of scrutiny at Holyrood).