Submission from Professor David Bell

United Kingdom Internal Market Bill (Legislative Consent Memorandum)

1. This note addresses some of the issues raised by the UK Internal Market Bill which was introduced to the House of Commons on 9 September 2020. It addresses Part 6 of the Bill and its implications for Scotland. It also comments briefly on Part 7 and on a provision that may seem to be missing from the Bill.

2. Part 6 of the Bill permits UK Government Ministers to spend monies in support of economic development, infrastructure, culture, and sport in any part of the UK. It also provides for UK Government Ministers to provide financial assistance to education and training, both inside and outside the UK.

3. A note from the Department for Business, Energy and Industrial Strategy issued at the same time as the Bill was published commented that:

   > *"The proposals will allow the UK Government to meet its commitments to deliver replacements for EU programmes, such as a UK Shared Prosperity Fund, replacing bureaucratic EU structural funds and at a minimum match the size of those funds in each nation."*[1]

4. It seems therefore that one possible use of the powers under Part 6 of the Bill is to replace the EU Structural Funds with a UK Shared Prosperity Fund (UKSPF), which was first promised in the 2017 Conservative Party election manifesto, which said that this fund such a fund would be:

   > *"specifically designed to reduce inequalities between communities across our four nations. The money that is spent will help deliver sustainable, inclusive growth based on our modern industrial strategy. We will consult widely on the design of the fund, including with the devolved administrations, local authorities, businesses and public bodies. The UK Shared Prosperity Fund will be cheap to administer, low in bureaucracy and targeted where it is needed most."*[2]

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[1] See: https://www.gov.uk/government/news/uk-internal-market-bill-introduced-*today*

[2] Conservative Party, Forward, Together: Our plan for a Stronger Britain and a Prosperous Future, 2017

Progress on the development of this fund has been lamentably slow.

5. in July 2019, Mr James Brokenshire, the Secretary of State for Housing, Communities and Local Government made a statement concerning the design of the UKSPF. Specifically, it argued that:

   - *The objective will tackle inequalities between communities by raising productivity.*
   - *The fund will be simplified to address the issue that EU Structural Funds have been difficult to access and that EU regulations have limited some of the opportunities for investments underpinning productivity.*
   - *The fund will operate across the whole UK, respecting the devolution arrangements in Scotland, Wales and Northern Ireland.*
   - *Local priorities will be addressed. Local Industrial Strategies for England will highlight long-term opportunities and challenges to increase local productivity.*
   - *Consultation with the public will take place this year, under the Industrial Strategy.*

6. It is not clear how the UK Internal Markets Bill and the recent statement from BEIS relate to these previous pronouncements. Specifically, neither in the Bill, nor in the BEIS note is there any mention of:

- any objective
- respect for the devolution arrangements
- consultation with the public

7. Many organisations have published research relating to the design of the UKSPF e.g. Institute for Fiscal Studies ((2020)[3], Joseph Rowntree Foundation[4], Institute for Public Policy Research (2019)[5].

8. The devolved governments have also considered its design e.g. National Assembly for Wales (2018)[6], Scottish Parliament (2019)[7]. The issue has also

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[3] Institute for Fiscal Studies, "Shared Prosperity? Options And Issues For The UK Shared Prosperity Fund"
[4] Joseph Rowntree Foundation, "Designing a Shared Prosperity Fund"
[5] Institute for Public policy research (2019) "Regional Funding after Brexit: Opportunities for the UK Shared Prosperity Fund"
[6] National Assembly for Wales: Finance Committee (2018) "Preparations for Replacing EU Funding for Wales"
[7] Scottish Parliament: Finance and Constitution Committee (2019) "Report on Funding of European Union Structural Fund Priorities in Scotland, Post-Brexit"

been highlighted within the UK Parliament: House of Commons Library (2020)[8].

9. The next EU Multiannual Financial Framework starts in January 2021. Even though considerable effort had been spent in considering the design of the UKSPF, there is now little time left for the UK Government to consult, to propose a structure and to legislate. It is frankly unrealistic to expect that new arrangements will be in place in time for the next round of funding. The uncertainty will be extremely difficult for organisations and communities that have built capacity to design projects which contribute to the "levelling up" agenda. While this issue is important for Scotland, it is particularly relevant for Wales, which received a significantly higher level of per capita EU structural funds than the other UK nations.

10. The BEIS note introducing the Bill mentions "levelling up" once, but does not reference any mechanism whereby this might be achieved, although as pointed out in Para 7, these issues have been widely discussed.

11. The UK Government is giving itself wide powers over who might receive funding. Specifically, the Bill will give it power to "provide financial assistance to any person". There is no reference to any level of government. This wording provides the UK Government with wide scope to support bodies both inside and outside government, and at every level of government within the devolved nations. The intention may be to make arrangements that circumvent the devolved governments, say by providing funding direct to local authorities. The so-called "City Deals" are perhaps a partial model for this approach, though the generally involve some Scottish Government funding. Direct funding to local government may provide greater recognition for the role of UK Government in funding projects, but it is difficult to see that the lack of consultation and cooperation between different levels of government will lead to an efficient use of public money.

[8] House of Commons Library "The U.K. Shared Prosperity Fund", Briefing Paper No 08527, May

12. Keating (2020)[9] points out that the devolution settlements are all based on the "reserved powers" model, but that the Internal Markets Bill undermines this model. Reserved powers are those competencies reserved to Westminster: everything else is under the control of the devolved parliaments. Part 6 of the UK Internal Markets Bill conflicts with this approach because it gives UK Government ministers powers to spend in areas that were not previously reserved. Thus, under the Bill, the UK Government could provide funding support, for example, to economic development, sport and culture. Spending on these areas has been reserved since the establishment of the devolved Scottish Parliament. Indeed, prior to the establishment of the Scottish Parliament, the Scottish Office controlled a wide range of spending powers within Scotland, albeit at the behest of the ruling party in Westminster.

13. To take a concrete current example, infrastructure spending within Scotland has been treated as being a preserve of the Scottish Government. It has established the Infrastructure Commission for Scotland[10], which laid out a blueprint for infrastructure spending taking account of Scottish Government priorities around issues such as climate change, inclusive economic growth etc. The UK Internal Markets Bill gives the UK government power to spend on infrastructure in Scotland. The UK Government may cooperate with the Scottish Government around setting priorities for infrastructure spending. But there is no indication of such a cooperative approach. The outcome may then be a confused mixture of infrastructure projects that are unlikely to be consistent with an encompassing approach to infrastructure spending within Scotland.

14. Given such a possibility, it is difficult to see how this is consistent with the statement by the Chancellor of the Duchy of Lancaster, Mr Gove that:

> *"The devolved administrations of the UK will enjoy a power surge when the Transition Period ends in December. Holyrood, Stormont and Cardiff Bay will soon have more powers than ever before and*

[9] Keating, M. (2020) "Back to the Unitary State", Centre on Constitutional Change
[10] See: https://infrastructurecommission.scot/

> *there will be no change to the powers the devolved administrations already have."*[11]

15. Past EU funding has respected the principle of "subsidiarity", namely that spending decisions should be allocated at the lowest possible level of government. There is no equivalent principle, explicit or implicit, in the UK Internal Market Bill. If the intention is to centralise decisions at UK level, there is a clear potential for conflict and also for inefficiency. Keating (2010)[12] points out that Scotland is more committed to a traditional public sector model which emphasises egalitarianism and cooperation with public services, whereas the emphasis in England is around consumer choice and competition[13]. Failure to acknowledge the subsidiarity principle is likely to result in a confusing and inefficient policy landscape in Scotland. This may be obviated by improved intergovernmental cooperation through bodies such as the Joint Ministerial Committee. However, as Sargeant (2020)[14] points out, no agreement has been reached on a mechanism for improving intergovernmental relations, even though the review began in March 2018.

16. It is difficult to see how spending projects will be evaluated in the absence of cooperation between different levels of government. For example, the UK and Scottish Governments may have different understandings of what "levelling up" means. Policy design and funding intended to miss out a level of government may result in conflicting narratives over the success of project outcomes.

17. The Scottish Government established a steering group to consider the replacement of the European Structural and Investment Funds[15]. It consulted many stakeholders across Scottish society and produced an initial report[16]. In subsequent work, it has been considering the most appropriate spatial level

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[11] BEIS (2020) "UK Internal Market Bill"
[12] Keating, M. (2005) "Policy convergence and divergence in Scotland under devolution." Regional studies, 39(4), pp.453-463.
[13] These differing approaches have been evident during the coronavirus pandemic, around, for example, decisions about the management of the "track and trace" system.
[14] Sargeant, J, (2020) "UK government should be prepared to compromise on the UK internal market"
[15] I chair this group.
[16] Replacement for European structural and investment funds (ESIF) post-EU exit in Scotland: consultation report

for project design, appraisal and implementation of the UKSPF. This is, in a sense, an exploration of the "subsidiarity" principle within Scotland. The work of the group has been based on the assumption that the Scottish Government would be a responsible body to receive and distribute UKSPF funding. This is consistent with Mr Brokenshire's assurance that the UKSPF would respect the devolution settlement. However, the contents of the UK Internal Markets Bill are not reassuring in respect of that settlement, although the BEIS note[17] does commit to the quantum of funding available to the devolved nations being at least as great as that previously being available under EU Funding.

18. Part 7 of the Bill relates to "Regulation of distorted or harmful subsidies". This part prohibits public authorities from subsidising businesses. For Scotland, this requires a modification of Schedule 4 of the Scotland Act 1998. Part 7 is somewhat confusing, since this would normally be understood as providing for a prohibition on "state aid". Yet, one of the main obstacles to the establishment of a trade agreement with the EU appears to be the UK government's insistence on being able to provide financial support to UK businesses as it sees fit. It appears that the UK government wishes to be allowed to provide financial support for UK businesses, but to prevent devolved authorities from so doing. Scottish Enterprise, with funding from the Scottish Government has provided relatively small amounts in Regional Selective Assistance (RSA) for many years. This is a form of state aid and there is no equivalent scheme in England. The EU did not consider RSA to breach state aid rules. It would appear that Part 7 of the Bill may prevent the continuation of RSA in Scotland.

19. A surprising omission from the UK Internal Markets Bill is any reference to public procurement. Public procurement is extensively regulated within the EU single market and an alternative regulatory framework is necessary post-Brexit[18]. Some discussion of this issue might have been expected in order to

[17] BEIS (2020) "UK Internal Market Bill"

[18] The EU set extensive rules to ensure a "level playing field" for businesses tendering for public contracts across Europe. However, since February 2019 the UK has been an independent member of the WTO Government Procurement Agreement (GPA)[18]. This gives it access to public procurement markets of the EU 27, the United States, Japan and 18 other countries worldwide. Nevertheless, it will allow UK suppliers some access to these markets. This agreement is not as comprehensive as the EU public procurement arrangements.

prevent public bodies from favouring “domestic” suppliers in their own nation. However, the UK government has brought public procurement within the “Common Frameworks” system. It was recently in the process of undergoing its Phase 2 review.[19] it remains to be seen how far the outcomes of this process constrains the freedoms the Scottish Government has to set conditions around public sector contracts, such as its current insistence that suppliers pay the Living Wage[20].

[19] SPICE “Common Frameworks: Progress Report"
[20] Scottish Government: Public Sector Procurement