

Scottish Affairs Committee

Oral evidence: [UK Internal Market Bill, HC 986](#)

Wednesday 18 November 2020

Ordered by the House of Commons to be published on 18 November 2020.

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Members present: Pete Wishart (Chair); Mhairi Black; Andrew Bowie; Deidre Brock; Wendy Chamberlain; Alberto Costa; Sally-Ann Hart; John Lamont; Douglas Ross.

Questions 1 - 99

Witnesses

I: Michael Russell MSP, Cabinet Secretary for Constitution, Europe and External Affairs, Scottish Government; and Professor Michael Keating, Professor of Politics, University of Aberdeen.

II: Paul Scully MP, Parliamentary Under Secretary of State (Minister for Small Business, Consumers and Labour Markets), Department for Business, Energy and Industrial Strategy; Iain Stewart MP, Parliamentary Under Secretary of State (Minister for Scotland), Scotland Office; and Bruno Williams, Deputy Director, Frameworks Division, Cabinet Office.



Examination of Witnesses

Witnesses: Michael Russell MSP and Professor Michael Keating.

Q1 **Chair:** Welcome to the Scottish Affairs Committee in a one-off session on the Internal Market Bill. There are going to be two evidence sessions today, one involving Scottish Government and constitutional expert Michael Keating, and the other UK Government Ministers.

Without further ado, we will let our first witnesses introduce themselves, with any short introductory statement they may have.

Michael Russell: Thank you very much. I am Mike Russell. I am the Cabinet Secretary for Constitution, Europe and External Affairs in the Scottish Government.

I want to make three very brief points. First, the Scottish Parliament as a whole, by 19 to 28, rejected the Internal Market Bill on 7 October. That was all parties to the Parliament with the exception of the Conservatives. The Scottish Parliament, to the greatest extent, is opposed to this Bill. However, we are not opposed to having arrangements in place that will ensure the continuation of free and uninterrupted trade in these islands.

We regard the Bill as being a solution in search of a problem. We believe there is already a set of arrangements in place that can fulfil the objectives that the UK Government have; that is the common frameworks. They have been worked on for more than three years. The objectives and principles behind the frameworks were laid out as long ago as December 2017 at a Joint Ministerial Committee. The work that has been done has produced a comprehensive set of agreements, some finalised and some provisional, which can be in place by the end of this year to govern this matter. Therefore, I very much agree with those Members of the House of Lords who have been endeavouring to make amendments to the Bill to make sure there are some common frameworks in place. We do not believe the Bill is required. We believe there are other aspects of the Bill that are very damaging indeed. We may move on to those in terms of some of the proposals.

On the central issue in contention here, Lord Hope's amendment today would address the issue of placing the frameworks in the primary position and making sure there is not the imposition that is taking place in the Bill and the negation of almost every power the Scottish Parliament has.

Professor Keating: I am professor of politics at the University of Aberdeen, and I have been leading a research project on Europe, Brexit and the devolution settlements.

It is generally agreed that something needs to be done to secure free trade within the UK after we leave the European single market because it is the European single or internal market that secures free trade and market access within the United Kingdom. I find this Bill problematic on two accounts, one practical and one constitutional.



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The practical question is whether these wide powers are really needed when we already have a process of negotiating policy frameworks. The powers in this Bill are very wide-ranging. They have few exceptions compared with the European single market, which has many more exceptions that our single market makes in other countries and where this is too drastic a solution for the extent of the problem.

The second constitutional issue is that it introduces a new principle into the devolution settlement because hitherto when we have been operating on the reserved powers model, that is all competencies belong to the Scottish Parliament with two exceptions. One is powers expressly reserved to Westminster, and the second is a very general provision that the Scottish Parliament must legislate within European law. That is a broad transversal principle that applies to everything.

When we come out of the EU that will not apply. This Bill is one of a number of measures attempting to introduce that principle into UK law but without all the safeguards that exist in the European arrangement. Yes, in the EU there is such a broad provision that cuts across all kinds of fields, but it is subject to proportionality, subsidiarity, a community method of making policy, qualified majority voting and the jurisdiction of the European Court of Justice. None of that is present here. This, to my mind, represents a major constitutional change. We do not know how important it will be because we just do not know what the single internal market provisions will be. It is an important constitutional principle at stake here, and I think that deserves attention.

Q2 Chair: Thank you both for your very concise opening statements. Cabinet Secretary, you and your Scottish Government colleagues have regularly called this a power grab and that this Bill somehow constrains devolution. Surely, as the UK Government claim, it is just a Bill that devolves significant new powers to the Scottish Parliament. What could possibly be wrong with that?

Michael Russell: Let me start by paying tribute to the Bill's drafters. The Bill is a clever Bill because what the Bill does—although it does take powers away, particularly the state aid powers, which have been entirely accepted during devolution as being in the largest part devolved—is it negates powers more than anything else. If one was to use language entirely accurately, it means that the power of regulation, for example, in many areas, perhaps all areas, can be undermined by the way in which the principles are laid out, which Michael Keating has explained well.

That applies in a surprising number of areas. I know members of the Committee will have heard from the General Teaching Council for Scotland. The General Teaching Council is very concerned that the powers it has to regulate the teaching profession, and they are independently exercised powers—indeed, I was the Education Secretary who granted the General Teaching Council its independence—will be undermined by the principle of mutual recognition. What will take place is that those who do not have teaching qualifications in England will essentially be able to insist that they can teach in Scotland without the



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qualifications the GTC—quite properly, because it runs the register—has insisted upon.

It is a Bill that undermines substantial numbers of powers, and that weakens the whole basis to devolution. The Royal Incorporation of Architects in Scotland has made similar points about building regulation, which is not a matter that has ever been in dispute in terms of the difference in building regulations north and south of the border. Yet suddenly it has become an issue that could be undermined.

This is a cleverly constructed Bill that weakens the basis of devolution, and we can see operational devolution. I go back to the point I made in my opening: there is an alternative. There is a viable, agreed alternative. I do think that, where such an alternative exists, it should be used.

Q3 Chair: We will come on to frameworks and the tension within the Bill in the course of these proceedings. I know the Scottish Government have also said the market access principles, which are at the heart of the Bill, mean that decisions on standards taken in Scotland can be undermined and Scotland would have to accept goods and services of a lower standard. But surely, as the UK Government say, this is just a matter of allowing Scottish producers access to markets right across the UK unfettered. Again, surely there cannot be anything wrong with that suggestion and proposal.

Michael Russell: There are two areas of very substantial concern there. One is the ability, because of the size of the market, of the producers to compete but also the general principle that bad drives out good. If you have a lower standard, that will drive out the higher standard in almost all circumstances. I think it is clear in the generality that is what will take place.

There is another issue to do with policies set by the Scottish Parliament. If you take, for example, private sector procurement in the health service, there is generally a different point of view in Scotland. There is still a level of private sector procurement in the health service, but it is a different approach. Of course, there are all sorts of caveats that will be applied. You will say, "We have exempted this or exempted that." The powers in the Bill for UK Ministers are very wide-ranging in terms of changing things subsequently. In those circumstances, it would be possible for a health service provider that is able to provide in England to say, "Hang on a minute, we want to provide in Scotland. We are not allowed to. Right, we are going to go to court." Indeed, I think it was Lord Callanan who pointed to this in the House of Lords in terms of the rights of bodies, corporations and others to have recourse to the law in these matters.

The sheer unnecessary nature of this is one of the very frustrating things. There is no need for this to happen. We were very concerned about it when it was first mooted. We saw the direction of travel in this. Our view is that the frameworks and the work we did—and this was and is the view of the Welsh Government, too—made it entirely clear that the work that



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we have all put into the frameworks, and we are still putting into the frameworks, is the right way to go ahead. That also has been agreed with very widely by a range of bodies that have given evidence either to the House of Lords or made submissions.

Q4 Chair: Professor Keating, thank you for your paper. You prefaced it a little in your initial contribution. The central tenet of your paper is that you compare the European internal market, where you know that the rules are set, as you said, by intergovernmental negotiation and qualified majority voting, with the UK internal market, which will be set rules according to the UK Parliament. There is no consent requirement or any mechanism for the devolved Parliaments.

In your view, what does that actually represent to devolution? Do you believe that this Bill, in its totality, weakens or strengthens the whole concept of devolution as it has operated since the Scottish Parliament was first set up?

Professor Keating: It exposes a problem that has always been present in the devolution settlement, namely that Westminster retains ultimate sovereignty. It didn't need this Bill to exercise those powers, it can do it any time it likes. But we work on the assumption that the Sewel Convention and other provisions meant that the UK Government would not use their sovereignty constantly and it would be accepted that the Scottish and Welsh Parliaments and the Northern Ireland Assembly will be free to act within their own provisions.

This adopts a different principle because the internal market principle here is self-enforcing, it does not even need the UK Government to intervene, it just needs individuals to exercise their rights there. That is of concern because it means that the scope could extend depending on judicial interpretation, on people going to the courts, sometimes corporations with deep pockets going to the court to try to get decisions in their favour. This is the experience of the European single market, which is not by any means perfect and has been criticised for excessively emphasising market principles as opposed to social or environmental principles. But at least there are safeguards and there is nothing in this legislation, which is of concern. What is missing in the UK system is any independent place where you can go to get the information. For example, what does the internal market consist of? What does it really mean in practice? Instead of an independent arbitrating body, you have the Competition and Markets Authority, which is at arm's length from Government but is appointed by the UK Government, not intergovernmentally.

Secondly, there is no arbitration mechanism. If there was a dispute here, the UK Government get their own way. Finally, on the decision making, ultimately it is UK Ministers who will, by statutory instrument, be able to change the scope of the application of this Bill.



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The safeguards that one might expect for the devolved Governments and legislatures, as a counterpart to the single market principle, seem to be lacking.

Q5 Chair: Would you possibly describe it as disingenuous to compare the operation, or the proposed operation, of the Internal Market Bill with what currently happens in the European market as it applies its own internal market rules and regulations?

Professor Keating: Yes, the definition and the mechanism is different. The European internal market has numerous exemptions. There is a very sweeping clause, which is about grounds of public morality, public policy, public security. Public policy covers an awful lot of things. Whereas in this Bill the exceptions are very tightly limited.

In the EU internal market there is much more scope for Governments to continue to regulate where they think it is necessary to regulate the market. As far as the mechanisms are concerned, internal market regulations have to be adopted in the Council of Ministers or the Council of the European Union by qualified majority vote. There is a large input by member state Governments into that, and there is the principle of subsidiarity and proportionality. That is measures must be taken by member states where possible and in no more detail than is necessary to achieve their objectives. Those principles can be appealed to the European Court of Justice. There is nothing like that. Those safeguards are not present here.

We do not know what the scope of this is going to be. It may be that this will not be very important, it will only arise on rare occasions. That is the problem, we just do not know what the impact of it is going to be. Constitutionally, it does seem highly problematic that it reflects what, in the words of the White Paper on the internal market, is a unitary state. Some of us would understand this is no longer a unitary state; it is a state in which powers were devolved and the devolved powers would be respected unless there is some very good reason for overcoming them and that any encroachment on devolved powers would have to have a pretty good justification.

Q6 Chair: Lastly, and I suppose it is incumbent on me to introduce this at this stage in the proceedings, devolution is obviously the topic of the week. Prime Minister's Questions has once again been dominated by the remarks of the Prime Minister. I do not think it needs any reminding, but I will just in case anybody has forgotten. He described devolution as a disaster and the biggest mistake made by Tony Blair.

Cabinet Secretary, do you think this fits into a world view about devolution? Does the Internal Market Bill, which you have described as an assault on democracy, go along with the theme of an aggressive Unionism that this Government have applied to devolution since the new Prime Minister has come in? What do you make of this fitting in with this idea of the concept of devolution being a disaster?



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Michael Russell: I suppose, if I were taking an historical perspective, I would compare it to Henry VIII's rough wooing of Scotland. If this is a constructive approach, it does seem to be very destructive.

My own view is that I am not surprised by this. Michael Keating has referred to what devolution is. To be entirely charitable and fair, I think there is a limited understanding of devolution in Westminster and also within the civil service, within officials. There is a dislike of devolution, which I have noticed particularly. I have been doing this job for—gosh, too long—four and a half years now. I think I have been to every single Joint Ministerial Committee on the European negotiations, and I have noticed a deterioration during that time and a dislike of devolution. If you are strongly focused on Brexit, you dislike anybody who is disagreeing with it and you also dislike any idea that the power of Westminster can be constrained.

The important thing about devolution is that there is no hierarchy of Governments, there is a hierarchy of Parliaments. Governments have their own roles to fulfil and that is what they are trying to do. This Bill seeks to diminish the role of one part of that equation and to increase the power of another part of that equation. If that is what the UK Government wish to do, they should step forward with proposals to do it through the constitutional process rather than do it through the back door of Brexit.

Q7 **John Lamont:** Good afternoon, Cabinet Secretary and Professor Keating. I am conscious the Chair has taken up quite a lot of time already this afternoon and time is limited, so please keep your answers as short as possible.

Cabinet Secretary, in terms of what Scotland sells to the rest of the UK in goods and services, could you put a figure on the monetary value, please?

Michael Russell: Not immediately, no. You are going to make the point, and I accept the point, that you believe the internal market should be free and open and that, therefore, it would be a great disadvantage to Scotland if there were barriers within that market. I entirely agree with that point of view, but I see no reason as to why there should be those barriers in the market. Nothing is threatening it, and the frameworks exist to assist in that process.

There is also a secondary point, which is that you do not have to be in the same political union to sell things one to another. If that was the case, the UK would not be Brexiting.

Q8 **John Lamont:** To answer the question, £51.2 billion is the worth of goods and services that Scotland sells to the rest of the UK. What percentage of the value of all Scottish exports does that represent?

Michael Russell: As you pointed out, time is short. I agree with your thesis that there should be no barriers, but I am pointing out that I do not think those barriers exist and I want that trade to continue and be



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productive. I think that answers the point you are raising. I am not in dispute with you about these issues.

Q9 John Lamont: It equates to 60% of all Scotland's trade. Professor Keating, you spoke about your preference for the frameworks to be pursued rather than the Internal Market Bill. What would happen if the Scottish Government did not agree the frameworks with the UK Government and the other parts of the UK?

Professor Keating: It is open to the UK to impose them. Indeed, it reserves the right to do this in the withdrawal Bill, and to take back competencies or to limit competencies if it should want to do that. Constitutionally, it is possible. The bigger question is whether there may be any things that are not anticipated in the frameworks. New things may come up, and the most likely scenario there is in international trade agreements, something not anticipated. In that case, the Governments might need to get together and discuss the need for a framework in that case.

The important point is that we cannot, in any devolved or federal arrangement, anticipate every problem that is going to come up. Nor can we assume that every problem that comes up will always be resolved unilaterally, on that basis and in those interests, by central Government. That is not what devolution is about. Devolution is about consent, agreement and trying to bring powers together.

If there was a crisis on a vastly important issue on which the Governments did not agree and a Scottish Government unreasonably said, "We are not going to agree," then Westminster still has the power to override them. There have actually been very few such cases in the history of devolution. Most of this can be resolved.

The position of successive UK Governments is that, if there is ever going to be a problem about anything, we must give ourselves a unilateral power to resolve that. That is the understanding. This is not about Westminster trying to grab powers back, I have never believed that; it is just that they anticipate that every problem will be resolved on their terms. That is not the understanding some of us have about devolution or other decentralised and devolved systems. If there is a disagreement, you do not just take the powers back; you have to sit down and work it out. You work around those issues, rather than just assuming that you can always get your own way.

Q10 John Lamont: It is fair to say that the UK Government should rightly be concerned about the operation of the UK internal market, given its economic worth.

I was not clear in my first question to you. If the frameworks cannot be agreed with the Scottish Government, and if the UK Government do not take action through the UK Internal Market Bill, there would at least be the possibility for the Scottish Government to start taking decisions that would differentiate Scotland from the rest of the UK and would potentially make it much more difficult for businesses in my constituency and many



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other businesses across Scotland to trade with the rest of the United Kingdom. A yes or no answer will be quite sufficient.

Professor Keating: Yes, that might indeed be the case because there may be good reasons for regulating markets, even though that may interfere with the work of the free market. There may be environmental, social, cultural or other kinds of reasons why Scotland might want to regulate differently. The question is what the cost of that would be, and what the cost of that would be to the rest of the UK.

Q11 **John Lamont:** That could potentially make it more difficult for Scottish businesses to trade with the rest of the UK?

Professor Keating: If the UK Government, in respect of England, imposed regulations to keep out Scottish suppliers then, absolutely, yes.

Q12 **John Lamont:** If the Scottish Government decided to take an action that, for example, might require businesses in my constituency to label their products in a different way, they would find it much more difficult to sell in Berwick, Wolverhampton, Brighton and across the UK.

Professor Keating: If the UK Government, in respect of England, and the Welsh Government legislate to exclude such goods, then yes, but that would be a decision by those Governments, not by the Scottish Government.

Q13 **John Lamont:** I think you are just reinforcing the point that it is important to have consistency for that reason.

Professor Keating: There is always a balance between the need to allow free trade and unfettered market access, which is a good thing, and the need for regulation. Governments might have their own reasons for regulating products, and they might restrict market access. That is always going to be the case. That is the case at present. That is the case within the European single market. It is not unregulated, there is not complete free access; there are limitations that have to be justified according to the regulations.

Q14 **John Lamont:** Just to finish, Chair, it is important that the possibility of what you are describing could do economic harm to businesses in my constituency and other parts of Scotland.

Professor Keating: There could be a cost, yes, of course.

Q15 **Deidre Brock:** Cabinet Secretary, you mentioned the concerns of the GTC about its future control of teacher qualifications. Education, of course, is not on the exempted list, currently anyway, in the Bill. The UK Education Secretary was worryingly vague in answer to my colleague Carol Monaghan recently about whether the Scottish Government's powers to enable free tuition could potentially be curtailed under this Bill if it goes through unamended. Could you talk a little to that, please?

Michael Russell: It is difficult to draw a line and say that is not going to be affected and this is going to be affected, because the powers proposed in this Bill are so wide-ranging. It is perfectly possible that a disaffected



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individual or company could take legal action under almost any part of this Bill. That is one of the problems within it. The frameworks can be drawn more closely because they are focused on particular issues, and those frameworks can develop over time. That is what all four Administrations have agreed there should be. There is no veto on the frameworks, or rather there are four vetoes on the frameworks, and if the UK Government were to decide they did not like a framework, they could say so. That is why there is a link between the frameworks and the intergovernmental review. I am sorry to overcomplicate this. The process that we have been engaged in for two and a half years to try to get something moving on the intergovernmental review has been painful, I have to say, and incredibly slow.

The dispute resolution parts of the frameworks have been quite productive. It is perfectly possible to put in place focused frameworks that deal with these issues in a way that respects the devolved settlement. That is what we are trying to do. The devolved settlement has also allowed for divergence. That is what exists within the European single market and should exist within the internal market of these islands, too. You would only oppose divergence of any description if perhaps you regarded devolution as a disaster.

Q16 Deidre Brock: Thank you very much. Professor Keating, you give some examples of internal market provisions elsewhere in the world. What are your thoughts on the main differences between the UK's approach and what alternative routes to the Bill's angle could have been taken that might have been a bit less disruptive?

Professor Keating: Yes, on the two issues that I mentioned, the exceptions to this, how sweeping these provisions are, in other cases are much less drastic than this non-discrimination and mutual recognition provision. There is the case of Switzerland, which has such provisions because they were directly downloaded from the EU in order to try to realise and implement their agreement with the EU. Those are the most sweeping ones, but even these things are resolved intergovernmentally rather than unilaterally by the federal Governments.

Q17 Deidre Brock: You mentioned Canada and Switzerland in particular and the approaches they have taken there.

Professor Keating: Yes, in the case of Canada the internal market provisions are much less sweeping. There is no general provision. There are many exceptions in that. In the United States they are virtually non-existent. In Spain there is an internal market provision. Even though they are covered by the EU internal market, they have their own internal market Bill. A provision for mutual recognition was struck down by the constitutional court because it said it was extraterritorial jurisdiction. It is one region legislating for what should happen in another region.

Q18 Deidre Brock: You mention that, in Canada, there is a dispute resolution procedure, including arbitration. I just wanted to ask about the Competition and Markets Authority and the intention to site the Office for



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the Internal Market in that, which seems rather odd when it is clear to me that the policy aim is, frankly, to drive down standards against the wishes of the devolved Administrations. I am not clear at all how this authority will be accountable to Scottish Ministers or, indeed, to Welsh Ministers or Northern Irish Ministers. What are your thoughts on that?

Professor Keating: If I could just talk about what happens in some of the other countries as an example, in Spain there is a council for the internal market, which consists of representatives of the Spanish Government and the 16 autonomous communities together. Attached to that is a secretariat that will do all the homework. If an issue comes up, it will do the research, work out what the cost is, whether it does interfere with the internal market, and report. Remember this is a body appointed jointly by the central Government and the regional governments. Then there is an arbitration mechanism. If something is highlighted, they try to resolve it by agreement within the council for the single market. If it is detailed, they pass it on to the sectoral committees, which are the equivalent of our Joint Ministerial Committees, except that they vote by qualified majority as well. The central Government can't unilaterally impose, it has to get at least some of the autonomous communities on its side.

As a last resort things will go to the courts, but mechanisms are in place to make sure these can be resolved by arbitration, by research and by negotiation before that happens.

Similarly in the other cases, there is always an intergovernmental mechanism for negotiating to try to resolve these issues. In no case is the single market principle allowed to override existing constitutional provisions. That is that the Canadian provinces, the Spanish regions and so on retain their own constitutional provisions. They are able to insist on maintaining their own regulatory capacity. If they surrender, it is because they have done it by agreement with the other entities, with the other Governments and with the central Government. That is how federations work.

That, of course, differs from the principle in this Bill, which is a Bill that is unilaterally coming from Westminster and which gives the advisory power to a commission appointed by the central Government and which gives to Westminster, Whitehall Ministers, the power to change the contours of the internal market by statutory instrument.

Q19 **Deidre Brock:** Do you think it might help to address some of the great concerns that have been expressed by so many bodies if the members of the Office for the Internal Market are appointed equally by each of the four Administrations? Perhaps, say, two of the four could be able to veto a nominee of one of the others. Is it possible that the internal market could only work if such parity is observed?

Professor Keating: Certainly, it would help for the Competition and Markets Authority, or the bit of it that has to deal with the internal market, to be appointed jointly so as to get greater sensitivity for the



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devolved. Of course, it only has an advisory role anyway. What we need on top of that is some kind of impartial arbitration mechanism, which we do not have under our present settlement and, finally, a decision-making mechanism that does not give to the Westminster Government and the Westminster Parliament, in various ways, the last word on every occasion.

Q20 Andrew Bowie: Before I begin, I wonder if the Cabinet Secretary might want to revisit his remarks, made a few minutes ago, comparing the current negotiations on the UK Internal Market Bill to the rough wooing of Scotland by Henry VIII, which of course was a war in the mid-16th century in which people actually died.

I want to focus on part 6 of the Bill, which is the spending powers that will be granted to the United Kingdom Government to administer the Shared Prosperity Fund. The Scottish Government and yourself, in particular, Cabinet Secretary, seem to have very strong opposition to this. Can you explain why?

Michael Russell: There are a number of reasons for it. First, it only appeared at the end of the consultation, so there was no opportunity to make representations on it.

Secondly, there is an issue of policy coherence. It is very important for a Government to be able to fund and take forward the policies that it has set. If there is competition within that, such as if on the health service there was a desire to do one thing and then another body, another Government coming in, decided to do another, you would have policy incoherence and you would have money being spent by one Government against another Government.

Thirdly, if this money is meant to replace moneys that are coming from the EU, there has been an established system of engagement of a wide range of people in order to decide what the spending priorities are. That was useful to have. There is no such commitment being given here. What we appear to have here—we do not know very much about it and how it will, in the end, work out—is a set of decisions in which spending decisions will be made by the UK Government on a set of priorities that have not been agreed with the Scottish Government or, as far as we can see, with anybody else.

Sitting down and discussing, if there is more money to be spent, how that money could be spent and working out the right way for all the partners to get engaged in it would have been a sensible thing. To produce the result and to say that is what is going to happen, neither respects the devolved settlement nor leads to an efficient use of money.

Q21 Andrew Bowie: I completely take on board what you say, Cabinet Secretary, but you can understand why, if you are sitting in Aberdeenshire or Aberdeen City Council, which have seen year upon year of budget cuts from the Scottish Government and have £400 per head less than the average local authority spends per head, having extra money from the UK Government to spend on specific projects would be a



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good thing. I cannot understand why the Scottish Government would be averse to that.

Michael Russell: I do not think this is the place to go into the issue of cutting but, if you wanted to, I would point out the number of cuts that have been made to the Scottish budget and the way in which the Scottish budget has been driven down. The real issue here is how you get value for money and how you get coherent value for money. I am absolutely not against a productive discussion on how the so-called Shared Prosperity Fund might be used to replace that money—not that I wish to replace it because Brexit is not a policy I agree with, but if that is what is happening—and target it most accurately.

Let me give you an example from my own constituency. The regional development moneys have been exceptionally important, as has money borrowed from the European Investment Bank for regional infrastructure. I can think of, for example, the desire of the people of the Isle of Luing to have a fixed link. I am keen to see that money come from anywhere it can, but there needs to be a discussion about how that fits into the policy coherence around providing links and transportation, and also an agreement of the partners, the local authority, certainly the local community should be engaged in that. There is a wider Highlands and Islands development issue.

I do not think it helps anybody to say, “We are the UK Government, we are going to spend money, we are going to spend money on what we want to spend that money on.” That is not a mature approach to expenditure or governance.

Q22 Andrew Bowie: But in principle, you would not be averse to the UK Government working and agreeing directly with local authorities in Scotland how best to spend money that the UK Government might be able to spend on specific projects? You would not have a problem with the UK Government engaging, for example, with Aberdeenshire Council on a specific transport project?

Michael Russell: I have no objection to those people who are engaged in the issue, for example, of road development and transport projects being engaged. That includes, of course, the Scottish Government because transportation is devolved. I have an objection to where there appears to be a wasteful use of public money, which is being used not necessarily in the best way possible and agreed between the partners.

The example you give is a very good one, because roads and transportation are a devolved matter. Surely it would be better either to recognise the devolved settlement or to reject the devolved settlement, not to appear to recognise it but by your actions to reject it.

Q23 Andrew Bowie: We all agree that a wasteful use of taxpayers’ money is something we want to avoid. Professor Keating, what limits do you think would remain on the UK Government’s ability to spend on devolved areas should the United Kingdom Internal Market Bill come into law?



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Professor Keating: I do not think there would be any limitations on that. This again has practical implications and political implications. So far the devolution settlement has been based on a clear division of power. It compares well with other countries where things are rather untidy and confused and there is a lot of conflict about competence. Linked to that is the spending power.

Scottish Government and Parliament have powers, they have the spending capacity within those, and that has worked well. It has advantages for transparency, accountability and coherence of policy. This Bill introduces a new power. The UK, of course, can spend in Scotland and does spend a lot of money in Scotland. A new general power can spend in devolved areas. It is not quite clear what the rationale for it is. It will not mean that Scotland gets more money, because if the UK Government give more money to Scotland at the expense of England and Wales, they will be sure to make their voice heard about that.

It is a different way of allocating money. Instead of the block grant and the Barnett formula, some money will be allocated directly to spending activities within Scotland. They will want to know what the justification for that would be. What is missing? What is the problem here that is being addressed? I am not quite sure what the problem is, what is lacking in the present system.

The danger, of course, is the distortion of priorities, because what typically happens in these kind of arrangements—as happens with the City Deals that have been extended into Scotland—is the UK Government put some money on the table, the Scottish Government then has to put money on the table, local government has to put money on the table, so the priorities are set by whatever Westminster wants to do rather than decisions that are made in Scotland. This has been the experience elsewhere.

There is always the danger of waste, of duplication of spending. I want to know what the scope of this is. Maybe it is just about the Shared Prosperity Fund, in which case it is a small amount of money and maybe it is harmless. If it presages a general strategy for the UK Government of spending in devolved areas, that could have unfortunate consequences for the smooth operating of the devolution settlement, for accountability, for good policy making and for clear priorities in policies.

Andrew Bowie: I should point out that the UK Government have promised and given a guarantee that there would be no diminution of the Barnett formula or any of the consequential coming to Scotland as a result of this Bill. We should place that on the record before we move on.

Chair: We have UK Ministers to follow this session, so we will get clarity on that as we go forward.

Q24 **Sally-Ann Hart:** Professor Keating, given that the UK Parliament has the unequivocal ability to amend the terms of reference of the Scottish Parliament and can extend or reduce the areas in which the Scottish Parliament can make laws, what are the implications of the Scottish



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Parliament withholding legislative consent for the Internal Market Bill?

Professor Keating: There are no legal and constitutional implications whatsoever but, until the withdrawal Bill this had never happened. The Sewel Convention whereby they will not do that was working well. The UK Government never showed any desire or intention to take back powers, and I still do not think the UK Government have engaged in some kind of plot to take back powers for their own sake because they could have done that anyway.

This is a consequence of Brexit and of the working out of Brexit, which has raised new issues that the UK Government tend to resolve by saying, "We will decide ourselves how this is going to work in the future" rather than, "Here is a problem we are faced with. We now have a constitution and we have to work within the new rules of this constitution, namely that the devolved Governments have their own powers."

This was a problem waiting to happen at the outset of devolution, because we did not have an adequate entrenchment of the powers of the devolved Administrations, but there was a certain respect. It just shows that the Sewel Convention and the other mechanisms were not capable of dealing with a crisis like this. It has serious implications. This is a test for the way that devolution works and whether it is a genuine division of power or whether Westminster is merely lending powers to the devolved levels, feeling free to take them back wherever it is convenient.

Q25 **Sally-Ann Hart:** When we are looking at the UK Parliament, Scottish Parliament, UK Government and Scottish Government, the UK Parliament is the supreme legislative body for the UK so, constitutionally, is the Scottish Parliament equal to the UK Parliament?

Professor Keating: I would take issue with "supreme legislative body" because we do not have a hierarchy of laws under the devolution settlement. We do not have a system whereby Westminster law always trumps the Scottish law. Laws are of the same status. We have a hierarchy in the sense that, in the last resort, Westminster can take powers back but, short of doing that, Scottish law has the same status as Westminster law. If the Scottish Parliament repeals an old Westminster law in Scotland, it can do that until Westminster takes it back and makes it a protected enactment.

We do not have that hierarchy, but what we are seeing here is an element of hierarchy because we have this internal market principle, which is very sweeping and which is hierarchically superior to any devolved legislation that might get in the way. That is how European law works. It is hierarchical. In any given field, the European law trumps a national law. But there are safeguards built into that, and those European laws are only adopted by agreement among the member states themselves.

What we have here is the introduction of an element of legal hierarchy while not having a safeguard for the devolved Administration and the devolved legislatures.



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Chair: Professor Keating, you can maybe help us out by trying to ensure we get much more concise answers. I have a few more members still to come in yet, and we want to try to get the UK Ministers started at 4 o'clock.

Q26 Sally-Ann Hart: I have one more question to Professor Keating. There has been quite a lot of speculation in the media about President-elect Joe Biden and his comments regarding the UK, the EU and the Internal Market Bill. Do you think there would be any implications for Scotland and the UK Internal Market Bill?

Professor Keating: The main concern in the United States is the Irish protocol and the provisions in this Bill that allow UK Ministers to override the Irish protocol, which has been already agreed. I do not think Scotland enters into that.

Sally-Ann Hart: It does not, no. Thank you.

Q27 Mhairi Black: Thank you to the witnesses. The student in me is currently fan-girling Professor Keating because I have read his work quite thoroughly.

My first question is for Mike Russell. There are two things you have said that I would like you to expand on a little. The first one was in your opening statement. You spoke of encountering a general dislike of devolution; I wondered if you could expand on that. Secondly, you said there were already viable agreed alternatives to this Internal Market Bill, so could you tell me about those alternatives, please?

Michael Russell: In terms of devolution, with respect, Sally-Ann Hart's point does illustrate it. There is no hierarchy of Governments; there is a hierarchy of Parliaments. You can define devolution as being a delicate dance around the issue of Westminster sovereignty, and there is no supreme law in that regard. Not all powers are held at Westminster, and some of them are temporarily linked to the Scottish Parliament. The Scotland Act, in schedule 5, lays out the areas for which the Scottish Government and Parliament is responsible.

The failure to understand that that is the situation has created a confusion about what devolution is, and also confusion about how it has come about. With the greatest respect, I do not want to be unkind about this, but some of us are very long in the tooth in this and look it because we have been through this experience. We were there when devolution was set up. Devolution was not a creature of the SNP. Independence and devolution are not the same thing. There are all these confusions that exist, which we need to clarify.

Added to that, the process of Brexit has created a set of circumstances, regrettably, where many Brexiteers regard taking back control as the key issue. If you are going to take back control, then you look askance at other people who have any control, and you cannot understand why that is the case. I get that bafflement regularly when I speak to even some senior people in the UK Tory Government. They cannot understand how this has come about.



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A good example has been during the pandemic. There has been a failure to understand that the health service in Scotland is completely devolved. It has been since 1948, since the health service was established. It is those things that are causing more and more problems. There is a genuine dislike of devolution in some figures. We have seen it this week with some very senior figures in the UK Government, and that has poisoned the atmosphere. I regret that because there are others I have worked well with. Damian Green, for example, I would say was a very good chair of the JMC because he respected the devolved settlement. So was David Lidington. David Davis did, too. We have not seen that in recent times, regrettably.

Secondly, in terms of the alternatives, is the issue of the frameworks. I presume we are going to get on to the frameworks in some way. The idea of the frameworks developed in 2017. There was some considerable tension around it because the UK Government presented it as a return of powers, which it was not. The rhetoric of that compared with the rhetoric of the Brexit referendum was very stark, the contrast between the two. But by painstaking work, and particularly painstaking work by officials, there was a development of areas in which we could agree that some action was required. There was a huge long list. It started off with 158 areas of intersection between devolved powers, UK powers and European powers. I think the lowest we were ever at was 24. I think we are now around 30 areas where we needed some form of agreement to continue to operate the relationship that was existing, or gaps in the relationship would open up because the UK was no longer part of the EU.

These have been subject to painstaking work. It has been interrupted three times, twice by no-deal preparations, which took precedence, and then by the pandemic. But we have a number of these that are virtually in final form and are in front of committees, and the UK Government and ourselves have been corresponding about these in recent days, one or two of them.

We have provisional frameworks for the other areas. We have made a commitment, as the Welsh have, to operate as if all the frameworks were in place, so this exists and takes care of those areas of relationship. The one objection to this—

Chair: We will maybe have to wait for that, Cabinet Secretary. I am just very conscious of time and I know that Ms Black has other questions.

Q28 **Mhairi Black:** I have one other question for Professor Keating. In clause 47, where it talks about the financial assistance that the UK can give, it says in paragraph (b) that it may be provided subject to conditions, which may include conditions about repayment. Am I reading it correctly when I understand that is saying that the Scottish Parliament could potentially not give consent for a UK project and yet might be responsible for paying back some form of money?

Professor Keating: That is just financial assistance with loans. Sometimes financial assistance is given as a loan, sometimes it is given



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as a grant with conditions, and it must be repaid if the conditions are not met. I think this will be referring not to the Scottish Government but to any individuals or enterprises that got financial assistance.

Q29 **Douglas Ross:** Thank you to our witnesses this afternoon. Mr Russell, Professor Keating said earlier, and I wrote this down, "This is not about Westminster trying to grab powers back" and I noted you nodding in agreement. Just because *Hansard* cannot pick it up, can you confirm that you are in agreement with what Professor Keating said?

Michael Russell: What I agree is that it is not a crude power grab of the—

Douglas Ross: Mr Russell, sorry, we are asking specific questions.

Michael Russell: And I am endeavouring to give a specific answer.

Douglas Ross: Sorry, Mr Russell, I am asking a question, if you can just listen. Do you agree with Professor Keating when he said, "This is not about Westminster trying to grab powers back"?

Michael Russell: What I indicated was an agreement that this is not a crude power grab. I paid tribute to the drafting of the Bill. I think it is a very subtle power grab.

Q30 **Douglas Ross:** Professor Keating said, "This is not about Westminster trying to grab powers back". That is, verbatim, what Professor Keating said. You nodded; do you agree with that?

Michael Russell: I believe there is a very subtle power grab going on, and I pay tribute to those who have been clever enough to devise it.

Q31 **Douglas Ross:** Mr Russell, this is a serious Committee and we need serious answers. Do you agree with what Professor Keating said, yes or no?

Michael Russell: I have indicated what my view is of that. I have done it twice. I am happy to do it again.

Q32 **Douglas Ross:** I am sorry then, I will read the words out and you will say, yes, you agree, or no, you disagree. Do you agree with these words from Professor Keating earlier on in this meeting, "This is not about Westminster trying to grab powers back", yes or no?

Michael Russell: I believe there is a very subtle power grab going on. That is what I have indicated.

Q33 **Douglas Ross:** Does that mean you disagree with the quote from Professor Keating earlier?

Michael Russell: I have made it very clear that I believe there is a very subtle power grab going on.

Douglas Ross: I am sorry, I do not know if you agree or disagree with the quote.

Chair: The Cabinet Secretary has given his answer three times now,



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Douglas. Can we move on, or is there another way you want to phrase that?

Q34 **Douglas Ross:** I would put on record, Chair, that a witness has failed to answer a question when I am giving a very specific comment, and I would give the Cabinet Secretary one more opportunity, when I read out the words from Professor Keating, "This is not about Westminster trying to grab powers back". Does the Cabinet Secretary agree with Professor Keating on that?

Michael Russell: For the fourth time, I believe there has been a very subtle power grab and I pay tribute to the—

Q35 **Douglas Ross:** Mr Russell, what is your belief or understanding of the single market within the United Kingdom?

Michael Russell: I believe there should be unimpeded trade between all parts of the United Kingdom. I am a great fan of free trade, as indeed I understand the Conservative party is.

Q36 **Douglas Ross:** Do you believe there is a single market in the United Kingdom?

Michael Russell: I believe there is an integrated market, a market that we all benefit from. Single market is a technical term that applies particularly to the European single market. In the terms that Professor Keating has described, for example, with the principles of subsidiarity and proportionality in it, it is difficult to take that term across exactly.

Q37 **Douglas Ross:** Do you agree there is or there is not a single market in the United Kingdom?

Michael Russell: I have indicated that the term is a very technical term. It is a term that is applied in the European single market. It is not exactly the same as that. I agree there is a market in which there should be unimpeded access. I have tried to indicate to John Lamont that I am not at war with you on this matter.

Q38 **Douglas Ross:** Do you agree or disagree that there is a single market, and is it your view or the Scottish Government's view that there is or is not a single market?

Michael Russell: My view is that the use of the term "single market" refers to a particular technical thing within the EU. There is a market, which should have as few barriers as possible. We are in agreement on that.

Q39 **Douglas Ross:** Does that reflect the views of the Scottish Government?

Michael Russell: It does.

Q40 **Douglas Ross:** I want to come on to something. I have a company based in my Moray constituency called Baxters Food Group. Do you enjoy products from Baxters Food Group, a Scottish and UK global firm?

Michael Russell: I do.



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Q41 **Douglas Ross:** Could you confirm, then, that you would agree with Audrey Baxter, executive chairman and chief executive of Baxters Food Group, when she says, “We welcome the UK Government’s internal market legislation, which will preserve and protect the current trading conditions. This will continue to guarantee a level playing field for companies like ours and is crucial to our continued success”? Do you agree with that?

Michael Russell: No, I do not agree with Audrey Baxter on that. I believe there is another way of achieving the same end that will be as productive for Baxters, which is a celebrated company and I celebrate their success.

Q42 **Douglas Ross:** I am sorry you do not agree with Ms Baxter, but I welcome that you celebrate their success. Some people within your party suggested it should be boycotted because they dared to accept a visit from the Prime Minister earlier this year. It is good to get your clarification to fellow members of your party.

Cabinet Secretary, you are coming towards the end of your career in elected office and within the Scottish Government. You have been charged in your role as Cabinet Secretary to negotiate to the best of your abilities with the UK Government to deliver for Scotland. If you believe that you have not been able to do that, and you have been very critical of the UK Government, what has been your personal biggest failure during this time in the passage of this Bill?

Michael Russell: I would need to think very substantially about that, but perhaps my biggest failure to date has been to underestimate the extraordinary hostility that is being shown towards the Scottish Government, the Scottish Parliament and the Scottish people by the current UK Government and perhaps some of those who are part of it.

Q43 **Douglas Ross:** But you have done nothing wrong? There are no personal failures?

Michael Russell: There is a Gaelic proverb, Mr Ross, that says, “It is at the end of the day that the fisherman tells of his fishing.” I will undoubtedly reflect upon these matters, and I will be happy to share with you my own views of my successes or failures at that time.

Douglas Ross: In a long time. I look forward to that.

Michael Russell: A long time to get there.

Chair: We will get round to writing Michael Russell’s political epitaph at some point in the future but we still have a few more productive months yet, Cabinet Secretary.

Michael Russell: There is life in me yet, don’t worry.

Q44 **Wendy Chamberlain:** Thank you to both witnesses for their time today. Cabinet Secretary, you mentioned that you hoped we would get to common frameworks, and it is me who is covering that bit. First, thinking about the Office for the Internal Market, in the White Paper on the



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Internal Market Bill, and in part 4 of the Bill itself, it was largely silent around a dispute resolution other than written statements being tabled in the respective Parliaments. It seems that the UK Government are saying that any disputes should be managed via current internal mechanisms. I just wanted to get your views. The JMC is supposed to be at the heart of our intergovernmental relationships. You have mentioned integrated review. Do you think a permanent JMC is a likely solution to dispute resolution for the Internal Market Bill?

Michael Russell: It is a very good and important question. The JMC has been a pretty hopeless vehicle for the Governments to liaise together. The remit of JMC (EN), which was set after a Downing Street plenary of the JMC in, I think, October 2016, has never been fulfilled by the UK Government; it has just been avoided. There has not been a JMC plenary since December 2018. Although there is meant to be a minimum of one a year, there just has not been one. There is also a review of the intergovernmental relationship, which is trying to come to a conclusion, but there is no agreement on dispute resolution.

The best way to handle this—and you will respect this, as I respect your position—I do not believe devolution is the end point. I work very constructively with the Welsh Government, which have a different view. Mark Drakeford, their present First Minister—who was my counterpart on the JMC (EN) for a long period of time—and I both gave lectures at the Institute for Government some time ago in which we looked at possible reforms and the way in which you would have quadrilaterals of Ministers and perhaps a standing JMC, which was on the basis of equity and equality, that we were all working for the same thing. There would have to be an arbitration or dispute resolution mechanism within that, but that was perfectly possible.

That has never been offered by the UK Government. If the UK Government were to recognise that that is what should happen, I think you would be able to make substantial progress on those issues. I think Northern Ireland, Wales and Scotland would all welcome that and would take part in it. What we want to see is a willingness by the UK Government to accept that rather than to be the sole arbitrators, essentially, in any dispute, and that is where it is at the moment. In any dispute that exists, the UK Government can say, “Nothing to see here, move along,” and there is not a resolution. There are ways to resolve this; it would be nice to see them happening.

Q45 **Wendy Chamberlain:** You mentioned the Welsh Government there. My understanding is the Welsh Government have been working quite closely with Members of the Lords in relation to the amendments that are going through there. What engagement has the Scottish Government been having directly with the House of Lords?

Michael Russell: I took part in the Welsh and Scottish Government briefing of peers who were interested in this. We did that before under the withdrawal Bill. Although I believe the world would be better served by this Bill not existing, we have said that if there are amendments that



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the Welsh Government have put forward, we encourage people to support them. Indeed, I have spoken with and continue to support a group of peers doing this process—one or two are Liberal Democrat peers, I have to say—and to provide them with information from the Scottish Government that I hope will help them undertake their task in the House of Lords. I am particularly interested in seeing where, for example, the amendment from Lord Hope will go at Report stage today.

Q46 **Wendy Chamberlain:** That takes us on to common frameworks. In terms of dispute resolution, could it be argued that the common frameworks could generally help avoid disputes? What is your understanding of the impact that the Bill has had on common frameworks development?

Michael Russell: Common frameworks development will not come to fruition unless they are relied upon to be essentially the backbone of what we are trying to do here. I was interested in Mr Lamont's question when he said the Scottish Government could refuse to implement or walk away from the common frameworks. That applies to every partner, all four partners. Any of them could say, "We do not want to be a part of this." We need to have a dispute resolution mechanism, and that has been agreed as part of the common frameworks, in each of the common frameworks. I think you could build upon that to have an intergovernmental dispute resolution procedure. The trouble is that, if you do not give the common frameworks the space to breathe and become the foundation for this, it will not happen.

Q47 **Wendy Chamberlain:** Professor Keating, do you have anything to add in relation to anything I have asked so far?

Chair: It will have to be very quick, Professor Keating.

Professor Keating: Yes. On the Joint Ministerial Committee set-up, the problem there is that the Westminster Government always have the last word. There needs to be something more horizontal, some procedure, some better research mechanism, some better arbitration mechanism, and something the Welsh Government have suggested, a Council of Ministers with qualified majority voting, something like that. Maybe it will not be needed all the time, but if the Westminster Government can always have the last word, that affects not just the last word but everything that goes before it.

Chair: Thank you ever so much. That is all we have time for, but I thank you both. Cabinet Secretary, it is always good to see you again at the Committee, and you, too, Professor Keating. If there is anything else you could help us with in this very short look at the Internal Market Bill, we would be happy to hear from you. Thank you for your time.

Examination of Witnesses

Witnesses: Paul Scully MP, Iain Stewart MP and Bruno Williams.



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Q48 **Chair:** We now go over to UK Government Ministers, and I believe it is Minister Scully who will introduce this session, and perhaps introduce his other guests, too.

Paul Scully: Thank you very much, Mr Wishart. It is a pleasure to have the opportunity to come to you and give evidence to the Committee about the UK Internal Market Bill.

It is an essential piece of legislation. It ensures that there are no barriers to trade within the United Kingdom after the end of the transition period, including trade between Great Britain and Northern Ireland, importantly. Unfettered trade between all four nations is essential to ensuring our economic recovery, protecting jobs and enabling continued investment in this country. As you will be aware, the UK Internal Market Bill was introduced to Parliament on 9 September, and the House of Commons voted in favour of the Bill by 340 votes to 256. I would like to thank the honourable Members of the House for recognising the importance of the Bill. It is a necessity in securing the economic future of the country.

It has now entered Report stage within the House of Lords, and prior to this the Lords voted in favour of removing clauses 42 and 44 during the Committee stage, both of which were connected to the Northern Ireland protocol. Clearly, I am disappointed that the House of Lords has voted to remove these clauses, and the Government will re-table these clauses when the Bill returns to the Commons. There has been a large amount of scrutiny of the Bill in both Houses, and it continues in the Lords today. I thank the honourable Members for their dedication to this task, and this is part of that.

To respond to the points that have been raised to date, the Government have tabled a number of amendments to the UK Internal Market Bill during the House of Lords Report stage. A significant number of these amendments relate to part 4 of the Bill, which concerns the operation of the Office for the Internal Market. These amendments will ensure a stronger role for the devolved Administrations and Governments in the OIM, and ensure that it benefits all parts of the UK on an equal basis.

Furthermore, amendments have been brought forward to ensure the Bill operates effectively; namely, they are going to guarantee increased transparency on spending under the Government's new financial assistance powers, and also consultation requirements with regard to the devolved Administrations for delegated powers in parts 1 to 3. We believe these changes will ensure the Bill operates in a way that will benefit businesses and consumers in all parts of the UK, and I look forward to discussing these with the Committee.

Chair: We are very grateful. With you is Scotland Office Minister Mr Stewart. Welcome back to the Committee.

Iain Stewart: Thank you, Chair.



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Q49 **Chair:** I believe we have Bruno Williams from the Cabinet Office on the line on Zoom, who will be available if required for any of the questions that are being put by Members of the Committee. Thank you both for attending in person here today.

Minister, the Scottish Government, the Welsh Government, the Northern Irish Assembly, the Labour party, the Liberal party, the Constitution Committees of both Houses of Parliament, the TUC, practically every public body in Scotland, the Church of England and the House of Lords are just a fraction of the voices that say this Bill is either not necessary, a power grab or constrains devolution. How have they managed to get it so wrong?

Paul Scully: Mr Wishart, I believe that if you look at the White Paper that we originally tabled, the response to the White Paper, the response to the debate and the consultation that we had with businesses, first, they were astounded that these structures were not in place in the first place, because what they want is continuity. They want to make sure there is some legal framework, not to be confused with the common frameworks, around these aspects to give them certainty, to make sure they cannot just sell goods and services into another nation, and another area covered by another devolved Administration, but importantly, ingredients. For example, if you were making something in Scotland using English wheat, or vice versa, that those complicated supply chains have a degree of consistency about them that businesses could easily understand.

Q50 **Chair:** We have tried to find a constitutional expert or academic who would put the case for the Internal Market Bill; we had great difficulty securing them. All of them have said that the market access principles of mutual recognition and non-discrimination cut across the very principles of devolution and introduce wide-ranging constraints on devolved competence. Surely they are right. This is exactly what the Bill does, doesn't it?

Paul Scully: No, not at all. The Bill is based on mutual recognition and non-discrimination. We have taken the example of the Australian system. You were talking about different international systems before. It has worked well there for many years. Obviously, any decisions that have been taken to date, some of the examples that we keep hearing, whether it is about tuition fees, minimum alcohol prices, smoking bans and the like, anything that has been devolved and decided to date is specifically excluded from this Bill.

Q51 **Chair:** It is as we go forward, isn't it? There will be a rush to the bottom when it comes to standards across the United Kingdom. If it is decided, for example, in some English region that there is a product that they have and they want access to the Scottish market, this will have to be accepted regardless of what the Scottish Government's own standards are, as democratically decided.

Paul Scully: The Scottish Government can clearly continue to regulate, indeed, as the Welsh Assembly has done. For example, in the Welsh



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Assembly it is interesting that their stages of recycling would otherwise not allow cars from other parts of the UK to be sold into the Welsh market. It is a matter of consistency, as I said, but you can clearly regulate for your own market, as long as it does not discriminate against one of the other nation's products. We do want to continue. This Bill interacts with common frameworks, which I know we will talk about later, because it is through common frameworks and other agreements that we will continue the commitment that we have made to keeping standards at their very highest.

Q52 Chair: We keep hearing various Ministers and Secretaries of State say it is a power surge. If it is a power surge and there are new powers to the Scottish Parliament, why does this Bill re-reserve state aid, removing it from being a devolved power and competence? Why make it an enacted Bill, placing it beyond any modification by the Scottish Parliament? If it is a power surge, why does it legislate to allow UK spending on devolved issues, which are not subject to schedule 5 of the Scotland Act?

Paul Scully: In terms of state aid and subsidy control, the European Union has had the ability to spend money across the devolved Administrations for the last 40-odd years. The UK Government believe that subsidy control is a reserved power. I know we disagree on that between the Scottish Government and the UK Government, but the UK Government have a very clear position that subsidy control is a reserved power. Ultimately, it is about a strategic approach to the whole UK, and that is why we take the approach that we do. We want to be able to build on our view as we move from state aid to subsidy control. We want to have a subsidy control regime that is built upon the WTO regime, and we will clearly work with the devolved Administrations as we develop that.

Q53 Chair: That seems to be the heart of the issue. It is because that is what the UK Government want. It is not a matter of consulting, negotiating and coming to an arrangement with the Scottish Parliament. This is a top-down, do-as-we-say Bill, isn't it?

Paul Scully: No, not at all. As I said, the devolved Administrations have never been able to set their own subsidy control rules. It has always been dealt with under the EU state aid rules and their framework. It is important that we as a UK Government want to continue that strategic approach, albeit under a domestic subsidy control framework, and that will come through Parliament. That means UK politicians from all nations will be able to have their say as we develop that in consultation with the devolved Administrations.

Q54 Chair: It is not working, is it, because the Scottish Parliament overwhelmingly rejected the legislative consent motion when it was put to the Scottish Parliament? Only the Scottish Conservatives backed it. Is that going to be ignored?

Paul Scully: Clearly, we take note of that. The point is I really regret the fact that, over the last few months, the Scottish Government have not remained part of the internal market conversations we have had with the Welsh and Northern Irish Administrations and representatives. Clearly,



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the common frameworks conversations have gone on, but I would respectfully ask the Scottish Government to return to those talks, because it is by having these conversations that we can come up with an agreed position that retains the strategic approach we want to take, but with the absolute agreement of all those nations.

Q55 Chair: Lastly from me, hasn't the game been given away this week when the Prime Minister described devolution as a disaster and the biggest mistake that Tony Blair made? Isn't that the UK Government's general view of devolution, and this is why we have this Bill, to constrain devolution in order to try to ensure that Scottish democracy is put firmly back in its place? This is what it is all about, isn't it?

Paul Scully: No, this is not a power grab, whether it is implicit, or explicit, or subtle, however you want to describe it. This is enabling continuity for business. One of the reasons I am the Bill Minister on this, as a BEIS Minister, is predominantly about giving businesses certainty as we go on. The Prime Minister was really clear in Prime Minister's Questions that devolution is a good thing, that exercising power close to people who are affected by it is a good thing, and he did that when he was the Mayor of London. However, he was concerned—and I do not want to spend our hour getting into the politics of it—about the Scottish Government. As a London MP, I will leave that debate to others.

Chair: Thank you for that. As an exercise in consensus building, you could not have gone any way further to antagonise the Scottish Government with this, but we will leave it at that right now.

Q56 John Lamont: It is not difficult to antagonise the Scottish Government, just for the record. Good afternoon, Ministers. During my previous discussion with Mr Russell we were talking about the importance of the UK internal market and the £51.2 billion-worth of goods and services that Scotland sells to the rest of the UK, which accounts for about 60% in value of all Scottish exports. It is, therefore, important that Scottish businesses are able to continue to trade freely with the rest of the United Kingdom. Do you agree that that is the primary objective of this Bill, to protect the opportunity and the ability for businesses to trade from Scotland across all parts of the UK?

Paul Scully: That is absolutely the core of it, Mr Lamont. It is absolutely core to be able to have that ability to be able to trade freely, and importantly, to make sure that businesses totally understand that. By having the legislation in place, they do not have to have any sense of confusion whatsoever, because it is there in black and white.

Q57 John Lamont: Ultimately, if businesses cannot trade and they cannot do what they do now, that could potentially impact on jobs in my constituency and across Scotland, so I agree with you that it is very important that we do not allow any barriers to be put up for Scottish businesses.

In terms of the frameworks, again in response to my earlier questions, the previous witnesses suggested that their preference was to use the



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framework mechanism as an alternative to the UK Internal Market Bill. However, it has been quite widely reported that the Scottish Government have been quite difficult in that negotiation process and were not properly engaging, and there was certainly the risk that the frameworks were not going to be agreed. Are you able to give any comment on what engagement there had been with the Scottish Government on the negotiation of the frameworks prior to the publication of the UK Internal Market Bill?

Paul Scully: I might, if I may, defer to Minister Stewart and Bruno Williams, the official who is stepping in for Minister Smith, as they have had a more direct approach to that. Do either of you want to come in?

Bruno Williams: Thank you. I am the deputy director of the frameworks division in the Cabinet Office, and from our perspective I can confirm that—

Chair: We are going to have to get your line fixed, Mr Williams. We could barely hear you. We will ask the technicians to look at that. Minister Stewart, do you want to comment on that?

Iain Stewart: The point I would make is that the common frameworks sit alongside the provisions in this Bill. They are not alternatives. It is not a binary choice, one or the other. The common frameworks are a very useful mechanism for agreeing joint standards and regulations across the whole UK, and we can point to many examples on food labelling and a whole range of issues where that would make sense. But I do not think we can rely on common frameworks on their own, because they are sector specific and they may leave gaps in other parts of the economy. The provisions in UKIM are a safety net underpinning these common frameworks, but our strong intention will be that the vast majority of agreements will be through the common frameworks. As I say, businesses will have certainty that there is this underpinning mechanism.

In the engagements I have had with businesses and business groups in Scotland there is very strong support for this Bill. The one comment that stands out in all the discussions I have had is, "This Bill takes the whole issue of the UK market off our risk register." That is the attitude of business. This is a continuity mechanism that the existing, unfettered trade that we have in the UK can continue and they do not have to worry about what is happening. The other point I would make is when the original Scotland Act was drafted and passed back in the late 1990s it was not envisaged at any point that we would not be part of the EU single market. That is why this Bill is necessary, to replicate those provisions and that certainty in Scotland and the whole UK after the transition period ends.

Q58 **John Lamont:** Lastly from me, Professor Keating said in response to one of my questions that it has never been about Westminster grabbing powers. Just for the record, can you confirm that that is the case, that Westminster is not grabbing powers and, in fact, around 111 new powers will be passed to the Scottish Parliament as a consequence of this



process?

Paul Scully: Yes, I can absolutely confirm that. I refer back to my original answer—you are right when you talk about the 111 powers coming back—the fact in terms of subsidy control that none of the devolved Administrations has ever been able to exercise that themselves, so it comes back to that strategic role. None the less, this is underpinning the common frameworks. It is, I suppose, getting to the Rumsfeldian underpinning of tackling unknown unknowns, and these kinds of things, and it is about business certainty, at the end of the day.

John Lamont: It is the certainty of jobs.

Q59 **Deidre Brock:** Minister, you mentioned that the Government have introduced amendments providing a stronger role for the devolved Administrations around the Office for the Internal Market. Could you expand on that a little for us?

Paul Scully: The thing with the Office for the Internal Market is it is there very much to allow devolved Administrations to be consulted in the same way that this Parliament, acting for England, is a devolved Administration. The Office for the Internal Market is basically accessible for all Administrations equally. There are a number of amendments amending the OIM's objective under clause 29, which accounts for a number of different points made through the debate in Committee in the Lords. We are going to make it explicit, should it go through, that the OIM must consider the interests of all parts of the UK, wherever it operates and whenever it operates, and that it must act even-handedly regardless of whether it is engaging with the UK Government or a devolved Administration. Secondly, we are also going to make it clear that the OIM must consider the interests of UK consumers, as well as producers and suppliers, when it operates.

Q60 **Deidre Brock:** The Office for the Internal Market still does not have any strong statutory powers, does it? Ultimately, where is the dispute mechanism? Professor Keating has asked about that in quite some detail. Ultimately, where does it go? Is it just the JMC?

Paul Scully: Yes, effectively we want to be able to use current intergovernmental frameworks to be able to tackle disputes rather than setting up a separate body to do that. The OIM has a specific role of being able to produce reports, make recommendations to each of the devolved Administrations equally, as I said, but we do have intergovernmental mechanisms already in place, which we believe are better suited for dispute resolution.

Q61 **Deidre Brock:** Ultimately, the Westminster Government would have the final say, would it not? It has the powers, as pointed out again by Professor Keating, and I think the Cabinet Secretary as well. It ultimately has the power to do that. It is very unclear in the legislation as to the final resolution in that sort of situation. You mentioned consulting the devolved Administrations. There is no attempt to get agreement with the devolved Administrations within the legislation. This is something I have



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had problems with in the Agriculture Bill and Fisheries Bill as well. In some areas on those Bills that compromise was reached and the devolved Administrations were given the commitment that an agreement would have to be reached before a decision was ultimately made.

Paul Scully: If one of the disagreements comes within the common frameworks, clearly that is the place to have the mechanisms, within those particular common frameworks. I suppose there is a dichotomy between the two sides of the debate that we have heard. First of all, we heard that this Bill is not necessary, in which case there is no dispute mechanism. We are clearly, as a Government, saying it is necessary, but we do not want to set up another extra body that will, therefore, be debated and have a binary situation that we are setting now, whereas it comes back to the unknown unknowns that I was talking about. We want to be able to develop that with the intergovernmental mechanisms such that we can do this through dialogue with the devolved Administrations.

Q62 **Deidre Brock:** Why not insist on an agreement between all of the Administrations before a decision can ultimately be made on an issue?

Paul Scully: As I say, part of the amendments that we are setting are on increased involvement by the DAs within the Office for the Internal Market. The Office for the Internal Market will be able to support the dispute resolution with Administrations equally.

Q63 **Deidre Brock:** Mr Stewart, I think we will be more easily able to understand the finer points of this if we know a little more about the Scotland Office's role in setting up the internal market. Did the Scotland Office get everything it asked for out of this Bill? I suppose I should ask first whether the Scotland Office was even consulted on the contents of this Bill.

Iain Stewart: Indeed, we were. As my colleague Minister Scully said, this is primarily a business and economic measure rather than a constitutional one. As I have also alluded to, I was heavily involved in engagement, as was the Secretary of State and Minister Duguid, on liaising with individual businesses, with business groups, and with a wide range of stakeholders. Yes, we were very closely involved in the consultation and shaping, but it is not our departmental Bill; it is an economic Bill.

Q64 **Deidre Brock:** What did the Scotland Office ask for but not get in this Bill?

Iain Stewart: I am not aware of anything.

Q65 **Deidre Brock:** Okay. It does not seem to me to be a particularly ambitious Bill for Scotland.

Iain Stewart: I would disagree with you on that. The strong view from businesses in Scotland and businesses in England who have operations in Scotland is that they wish to continue the existing unfettered access, and that to have barriers put in place that are not there now would amount to a significant risk for them.



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Q66 **Deidre Brock:** What provisions did you arrange to be put in place to amend the arrangement if it appears not to be in Scotland's interest?

Iain Stewart: Like any piece of legislation, it can be revisited in future years. I would point to the evolution of devolution in that regard. The Scotland Act 1998 has been upgraded on a number of occasions since then, most significantly in the Scotland Act 2016, which added significant additional fiscal and welfare powers over and above those that were envisaged in the original Act.

Q67 **Deidre Brock:** I would like to ask both of you about the Office for the Internal Market again. What do you think of the suggestion that some of the concerns around its make-up could be addressed if the members of that office were appointed equally by each of the four Administrations, and perhaps any two of those four could veto a nominee of one of the others? Do you think this could make the Internal Market Bill work more fairly and that it could cause ultimately less discontent if there was a perception that we were going to get a fair crack at the whip, basically, as devolved Administrations? Frankly, at the moment that is not the perception.

Paul Scully: When you ask whether it is ambitious for Scotland, it should not be ambitious for an individual nation within the devolved Administrations. This is something that makes the UK work as a single market.

Q68 **Deidre Brock:** But you would appreciate it is our country, so obviously we are ambitious for the interests of Scotland. This is the Scottish Affairs Committee.

Paul Scully: I understand, which is why the dialogue about the common frameworks, why these conversations need to happen. I will return to what I said originally. I would respectfully encourage the Scottish Government to come back to the internal market conversation so that we can continue that dialogue.

Q69 **Deidre Brock:** I noted that you mentioned that, Minister, and regretting the Scottish Government not being part of the conversations on the Internal Market Bill. I note that the UK Internal Market Bill was shared with the devolved Administrations only late in the evening on the night before its publication. That does not suggest to me that the UK Government are that interested in the devolved Administrations' opinions.

Paul Scully: We are very interested. We have had productive conversations with representatives from Wales and Northern Ireland over many, many months now.

Deidre Brock: Eventually.

Paul Scully: As I say, right the way through the White Paper and beyond. You are talking about a specific scenario, but the rest of the conversation for years has been getting to that place. In terms of the Office for the Internal Market, it is based within the CMA because we believe the CMA has the requisite experience and skillset to be able to



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make the judgments that provide the reports that provide the support for the devolved Administrations. As I say, we are bolstering that to make sure the devolved Administrations have greater say.

In terms of the appointments, the appointments are made in the same way that we appoint the members of the board of the CMA, to make sure that we have the skillset.

Deidre Brock: The UK Government appoints them.

Paul Scully: The Secretary of State in BEIS, as the sponsoring Department, ultimately has the say, but we want to make sure that the devolved Administrations—

Chair: We are going to have to move on, because I know Minister Stewart has to leave us at 4 o'clock.

Q70 **Andrew Bowie:** I am sure the Ministers would both agree with me that it is very hard to have constructive dialogue with one of the parties if they choose to walk away from the table. It is good that the Welsh and Northern Irish Executives have decided to stick around and actually discuss with the UK Government how best to improve the common frameworks, unlike the Scottish Government who have chosen to walk away from the table.

I want to focus my question, as I did with Secretary Russell, on part 6 of the Bill, namely the ability of the UK Government to spend directly in Scotland when this Bill becomes law. Why do you think, Minister Scully and then maybe Minister Stewart, the Scottish Government have such an aversion to this part of the Bill?

Paul Scully: That is an interesting point. I will pass over to Minister Stewart on their position, but they are probably misreading it. It comes down to the idea about whether it is a power grab or a power surge, and we believe that strategic spending has to be a good thing for each of your constituents and for each of the constituent nations within the UK, but it is clearly replacing those EU spending powers within the UK. I will pass over to Minister Stewart who has more direct involvement.

Iain Stewart: I must say I am rather bemused and saddened by the reaction of the Scottish Government to this, because the fact is that there already is a large degree of UK Government spending in Scotland on devolved areas. I would point, for example, to the City Deal and Regional Growth Deal programmes, where both Governments put in money, together with local authorities and other partners, for projects that by and large are determined locally. It is not the case of the UK Government saying, "We are going to splash money here, there and everywhere." The projects are locally generated. They go through the normal appraisal process and are then funded either jointly or primarily by one Government or another.

I regularly make announcements about UK Government funding academic research programmes in Scottish universities. There is a whole range of things. This spending power is complementary to what the Scottish



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Government do. It is not intended to replace anything. It is complementary and there will be, in the future, a wide range of investment programmes that we wish to see.

Let me give you a hypothetical but credible example. We have HS2 being built between Crewe and London. That will in itself give a benefit to Scotland. We could get more from that line if, for example, we upgraded the signalling system on the west coast main line north of Crewe to Glasgow and to Edinburgh. If that was deemed to be a good investment, the UK Government would be able to spend money in Scotland on upgrading that infrastructure. That is a project that would have benefit to the whole United Kingdom.

That is a type of programme that we envisage using this provision for and, as I said, I think it would be of enormous value to the whole UK.

Q71 Andrew Bowie: Of course, Ministers, you would agree that, as you have said, it would not be a case of the UK Government determining by themselves what projects to spend money on but it would be with the engagement of relevant bodies and directly with local authorities. Would you agree that this could be a very good thing, in terms of increasing and improving the relationship between Scottish local authorities and the UK Government?

Iain Stewart: Yes, absolutely. I am not short of asks from councils in Scotland as to whether I have money to give them for project X, project Y, project Z, and I wish I did have a large stash of money in my office.

Your point is an important one. It is looking at how all levels of government can properly engage and make those investment decisions. As I said, we already have a good system through the City Deals and Regional Growth Deals, which I think has been a fantastic innovation. We will be setting out in due course how that framework will operate for these investments but, for me, it is very much a case of collaboration.

Q72 Andrew Bowie: Minister Stewart, earlier on there was an inference that any moneys that come as a result of the UKIM Act, as it will be, and any moneys spent directly by the UK Government in Scotland will lead to a reduction in the Barnett consequential that are received by the Scottish Government. Are you able to confirm that that will not be the case and this will be complementary to the moneys that the Scottish Government already receive as a part of the Barnett formula?

Iain Stewart: Yes. This is complementary or supplementary money. There is nothing in the UKIM Bill or Act, as it would become, to change the operation of the Barnett formula.

Q73 Chair: What I do not understand about this is that, if there is extra money to be spent in devolved areas, why not just give it to the Scottish Government who are democratically responsible for the spend?

Iain Stewart: As I alluded to in the example I gave on improving the signalling system, that would be a cross-border project.



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Q74 **Chair:** That is your priority. The Scottish Government have responsibility for that particular issue.

Iain Stewart: On that, there are a number of transport projects that are of UK-wide significance, so it is important that the UK Government have the ability to do that. I cannot see that that sort of investment would be unwelcome. It is a project that would increase the capacity of the rail line up to Glasgow and Edinburgh. With more trains able to run faster, the Scottish Government could then say, "That is great. We can double the frequency in the Glasgow to Edinburgh corridor" or whatever it was, so it is—

Q75 **Chair:** I am sure it would be welcome, but it is just this principle. The Scottish Parliament is designed for democratic control over spending priorities that have been rightly devolved to them. Why not just give it to them and they can decide that, surely? That is what people elect Governments for.

Iain Stewart: Our aim would be to work in a collaborative way. It is not helpful when the Scottish Government disengages from the connectivity review, which the Prime Minister set up to look at these strategic transport corridors, not just rail but roads, maritime, aviation. They have just disagreed, "We are taking our ball away and we are not playing." That is not a helpful or mature way to approach these matters.

Chair: I just think schedule 5 of the Scotland Act has served the Scottish Parliament pretty well since the inception of devolution, and I don't see why we have to muck about with it. Anyway, we will leave it there and we will go across to Sally-Ann Hart.

Q76 **Sally-Ann Hart:** Good afternoon to the Ministers. I want to look at the Scottish Parliament's reasons, first, for not giving consent to the Bill. Do you accept the Scottish Government's reasons for not giving consent to the Bill and what actions are you taking to address the Scottish Government's concerns?

Iain Stewart: I think in a number of areas the objections are politically motivated, and I do not propose to get into a debate this afternoon on those. We may need a very long session to explore those in detail. There has been significant correspondence between the UK Government and the First Minister on that, rebutting some of the, I think, confected grievances that have been put up about the Bill.

There are a number of areas where we have looked to clarify matters on some of the principles. Take, for example, the minimum unit pricing for alcohol. There were concerns expressed that the Bill, as it was drafted, would cut across the ability of the Scottish Parliament to legislate for matters like that. We did not think it did but, to be absolutely certain, we introduced an amendment to put it beyond any doubt that that was the case, so there are specific examples where we have a constructive dialogue and make the appropriate amendments.

Sally-Ann Hart: Thank you. I do not know if Paul Scully wanted to add anything.



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Paul Scully: Not directly, because Minister Stewart has answered the question pretty comprehensively. He talked about the minimum alcohol change, the amendment that we put through. In the first session it was talked about the teaching standards and the GTC's concerns.

As I said in the Chamber when this first came up in debate at the parliamentary stages, I talked about the fact that I did not believe it necessary to have the change that was suggested. We want to make sure that we can dot the i's, cross the t's and make sure that we are responding to concerns, even if we do not accept them to be actually part of the Bill but would worry a substantial part of a particular profession.

In that spirit we have tabled an amendment in the Lords to recognise the long history of differences in the regulation of teaching across the UK, which excludes the teaching profession in its entirety from the recognition provisions of part 3 of the UKIM Bill. That has been tabled. I just want to show and discuss the fact that we are listening. We do want to make sure that we can work collaboratively with all the devolved Administrations.

Q77 **Sally-Ann Hart:** The internal market of the United Kingdom of Great Britain and Northern Ireland is nationwide covering the four nations system, which we must protect. The Internal Market Bill is something that affects the whole of the United Kingdom, ensuring unfettered access and equality across the four nations. Bearing in mind that Minister Stewart mentioned that we do not want to go into the political reasons, are you surprised that the SNP is not wanting unfettered trade and unfettered access across the UK?

Iain Stewart: Let me put it politely. Very little about the SNP surprises me. The SNP's goal is to end the United Kingdom. The SNP is not devolutionist. Mike Russell has said that. Its goal is to separate Scotland from the rest of the UK. That in itself will place barriers for commerce across the UK.

The point you made at the beginning is that this is a UK-wide system. Very often the conversation centres on, "Well, would Scotland have to take products or services from other parts of the UK that it did not want?" I would look at it through the other end of the telescope. This actually preserves the right of Scottish-based companies to sell their products and services throughout the rest of the UK. It is guaranteeing that free market access for Scottish businesses, and they cannot be discriminated against by any other part of the UK, so it is having that level playing field. As I say, business already enjoys that within the UK. This Bill is about making sure that continues.

Q78 **Mhairi Black:** Could either Minister tell me why, if there is no attempt to undermine devolution in this Bill, there is an entire section dedicated to explicitly writing down and mentioning devolved areas?

Iain Stewart: There are no powers being removed from the Scottish Parliament.

Q79 **Mhairi Black:** That is not what I asked, though. Why is there an entire



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clause dedicated to specifically mentioning devolved areas if this Bill does not actually undermine devolution?

Iain Stewart: Is this referring to the financial assistance?

Mhairi Black: Section 46, yes.

Iain Stewart: As I said in answer to an earlier question, that is to allow complementary spending on programmes that have UK-wide significance. Another example would be whatever scheme we put in place to replace the Erasmus scheme. That would be in the field of education but would be a UK-wide system that Scottish schools can participate in. There are lots of examples of these complementary spending areas that do not in any way change the ability of the Scottish Parliament to spend in these areas.

Q80 **Mhairi Black:** Further on from that, I wrote down a quote that you said earlier. You said that the logic behind this Bill is an economic one, not a constitutional one, so with that in mind if I can focus again on section 46, it explicitly outlines water, electricity, gas, transport, health, court and prison facilities and housing. It would have been quicker just to write “devolved areas”, so I do not understand what the UK Government’s economic interests in these devolved areas are.

Iain Stewart: There will be a whole range of programmes that are to the general economic benefit of the United Kingdom and—

Mhairi Black: Does that not undermine what—

Iain Stewart: —there are lots of examples of the UK Government spending in devolved areas throughout the devolution period. For example, I think it was in 2000—but I may be wrong in the year—that the UK Government basically wrote off the City of Glasgow’s historical housing debt.

Q81 **Mhairi Black:** Another thing that was mentioned earlier is the Scotland Act. Section 28 of the Scotland Act outlines that the UK Parliament can still make any legislation for Scotland regardless of what is devolved. It says, “It is recognised that the Parliament of the UK will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament.” Given the fact that this UK Government have already shown that they are quite prepared to go ahead with legislation, even where they do not receive consent from the Scottish Parliament, can you understand why there might be some bad will or worry with regards to the future of this Bill in terms of what might be imposed?

Iain Stewart: First of all, I would make the point—and we could spend a long period debating the differences between a devolved constitutional arrangement and a federal one, and I join you in paying tribute to Professor Keating whose works I also studied at university, albeit a good number of years before yourself, Mhairi—that the Sewel Convention, which is what you are effectively referring to, does contain an ability for the UK Government to legislate even if there is not a legislative consent motion, where that matter has UK-wide significance. As I said in many



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answers, maintaining that free market unfettered and without new barriers is an important economic provision for the whole UK.

Q82 **Douglas Ross:** Thank you to both Ministers for your evidence today.

We had four witnesses at our Committee session today. One witness, Professor Keating, has said the following, "This is not about Westminster trying to grab powers back". The Minister from the Scottish Government would not give an unconditional yes or no to that. Can I try to find out where all four witnesses are? Minister Scully, do you agree, yes or no, with that comment from Professor Keating today, "This is not about Westminster trying to grab powers back" in relation to the UK?

Paul Scully: Yes.

Q83 **Douglas Ross:** Minister Stewart, yes or no, do you agree with Professor Keating on the UKIM Bill, "This is not about Westminster trying to grab powers back"?

Iain Stewart: Yes.

Q84 **Douglas Ross:** I am grateful because we now have three of our four witnesses today agreeing to that statement, and the only person who would not give an unconditional yes or no answer to that was an SNP politician representing a nationalist Government, and I think that is very telling.

Could I also ask a question that I also put to the Minister, Mike Russell, from the Scottish Government? I read out a quote from Audrey Baxter of Baxters Food Group in my Moray constituency. Minister Stewart, you have said several times today how the business community welcome this Bill and how important it is. Audrey Baxter, executive chairman and chief executive of Baxters Food Group, welcomed the UK Government's internal market legislation, "which will preserve and protect the current trading conditions. This will continue to guarantee a level playing field for companies like ours and is crucial to our continued success." First of all, do you agree with Audrey Baxter's statement or do you agree with the SNP Scottish Government Minister, Mike Russell, who says that what she has said is wrong?

Paul Scully: I agree with Audrey Baxter and, indeed, this is exactly what underpins the entirety of the UK Internal Market Bill to do exactly what Audrey Baxter has outlined there.

Q85 **Douglas Ross:** Minister Stewart and Minister Scully, can you try to answer why a Scottish Government Minister would say that a business representative in Scotland was wrong to say that?

Iain Stewart: I very much agree with what Audrey Baxter said and, indeed, that is replicated among many different individual businesses and sectors, be it retail, be it defence manufacturing, a whole range of businesses and sectors I have engaged with. I do not know what Cabinet Secretary Russell was referring to.



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I can give another example of why it is important. In my constituency in Milton Keynes, I am very proud to have an AG Barr factory making Irn Bru and other wonderful drinks. Its ability to transfer ingredients and materials north and south of the border to their operations in Scotland is incredibly important. It is businesses like that that would be adversely affected if we did not have this level playing field.

- Q86 **Douglas Ross:** Minister Stewart, I think you are aware of representations I personally made to the Scotland Office, to the Cabinet Office and through to BEIS about a number of concerns that have been raised by individual teachers in my Moray constituency, across Scotland and indeed unions. I think I picked it up correctly but the audio wasn't great. I now understand that an amendment has been tabled in the House of Lords to alleviate the concerns of the teaching profession to exclude teaching from the duties and requirements of the UKIM Bill. Could you confirm that, and does that not show that the UK Government are listening to representations to improve this Bill?

Paul Scully: Absolutely. I did not agree with the premise of the concern in the first place but, none the less, we want to make sure that we are listening and that is reflected in this Bill. That is why we have made teaching an exclusion in the amendment that we tabled in the House of Lords.

- Q87 **Douglas Ross:** I am grateful to Minister Scully for answering that, but back to Minister Stewart, this is something that has been raised as a concern in Scotland. The Scotland Office has taken on these concerns across Government and we have come up with a solution that answers the concerns of teachers in Scotland. Is that correct, Minister Stewart?

Iain Stewart: That is absolutely correct and it is an example of the engagement we have had. Your representations and the representations from many teachers in Scotland have been very clear. As Minister Scully says, we thought the Bill's original provisions were sufficient but to put it beyond doubt, like on the minimum unit pricing for alcohol, we have tabled this amendment this afternoon.

Chair: Thank you, Douglas. Wendy Chamberlain, a bit more time for you this time.

- Q88 **Wendy Chamberlain:** Thank you to both Ministers for attending today. I noted the same things as Mhairi Black, in terms of an economic or a constitutional Bill and, indeed, the reference made to the Scotland Act. I believe there were opportunities to better align this Bill with the approach taken in the Scotland Act. Indeed, I tabled clauses to that effect during its Report stage in the Commons.

My first question is: if the Joint Ministerial Council is the suggested dispute solution—which I understand from evidence today that it is—given that it has not met during the pandemic, as indeed this Committee has heard already, how do current processes need to improve and, indeed, is that being taken into consideration in relation to the integrated review?



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Iain Stewart: The broader question of intergovernmental relations is also being reviewed—I do not have a specific date but I understand an announcement on that will be coming soon—to make sure that the mechanisms for intergovernmental relationships are streamlined and improved.

Q89 **Wendy Chamberlain:** Minister, when you say “soon”, how soon do you mean, given that we are told this Bill is absolutely required as we leave the EU, which happens in a month and a half?

Iain Stewart: As I say, I do not have a particular date given to me but I think it will be sooner rather than later. I am conscious that the word “soon” is a flexible term in political dialogue, but I do not think it is an undue period of time.

Q90 **Wendy Chamberlain:** Is there an acceptance that the JMC in its current form is potentially not the best dispute resolution mechanism?

Iain Stewart: The intergovernmental review is a much broader look at intergovernmental relations and, inevitably, there are learning points from how Governments have interacted over Covid and a range of other matters. That is being worked on and, as I say, I do not think you will have a huge amount of time to wait.

Q91 **Wendy Chamberlain:** Minister Scully, if common frameworks are key, what impact has this Bill had on their development? Secondly, if this Bill is needed in addition to common frameworks to deal with cross-sector issues, why are the examples in the White Paper all based within individual sectors? Can you give me a cross-sector example that the Bill is absolutely required for?

Paul Scully: Essentially, the common frameworks have been developing. I might bring Bruno Williams in in a minute because he has, as I say, represented the Cabinet Office who have been dealing with the common frameworks. We are launching another three or four before Christmas to look at the different sectors.

This effectively underpins all the common frameworks. It gives businesses the certainty they need to set up in its own framework with a small “f” for the internal market. Mr Williams, I don’t know if you want to comment on anything about the common frameworks.

Bruno Williams: There is the question that was put to me previously from Mr Lamont, which I did not get a chance to come back on before my audio gave out. If I can start with that one, the question was about the extent to which relations between the Governments are functioning on the framework development side.

From an official-level perspective, we have good relations with all the devolved Administrations and we meet regularly at deputy director level. That is monthly through a project board to talk about development of the common frameworks, and there are other structures at official level that sit underneath that, so there is a great deal of contact.



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Chair: Sorry, Mr Williams, we are really struggling to hear you. I do not think we are going to be able to continue. I know we have been trying to get a good connection for you, and I do not think we have been particularly successful, so we are going to have to leave it there.

Q92 **Wendy Chamberlain:** What I picked up there, interestingly, is that Mr Williams was talking about a good level of engagement on this with the devolved Administrations, so thanks for that.

My final question is to Minister Scully again. Speaking to my colleagues in the Lords, there is real concern about the breadth of the CMA's powers and, indeed, I raised this in an urgent question yesterday to Minister Hands. There is a concern that the Internal Market Bill could potentially be used by outside interests, such as US investors, in a trade deal to challenge the devolved Administrations. I would like to understand your views on that. Is that possible within the Bill? What engagement have you had with the Department for International Trade on such an issue, which is potentially hugely concerning?

Paul Scully: It is not something I recognise, Ms Chamberlain, but I will certainly write to you on that.

In terms of your previous question, I cannot give you a specific answer on a cross-sector example. Effectively, because the common frameworks—I talked about the fact that we were introducing new ones—cannot be there for every single example, the Internal Market Bill is acting as the bedrock between all those common frameworks and tying them together. Hopefully that is helpful.

Wendy Chamberlain: If the common frameworks are for the different sectors and we need this from a cross-sector perspective, it would be helpful if we could have some clarity on what that might look like. Perhaps you might like to write to me on that as well.

Q93 **Deidre Brock:** You spoke earlier about the ability this Bill gives the UK Government to bypass the Scottish Government and spend directly in Scotland with local authorities and others.

Serious questions have been raised by the National Audit Office and the cross-party Public Accounts Committee over the distribution of the Stronger Towns Fund in the run-up to the UK general election last year. I think it was the Committee that commented that justifications from Ministers for selecting individual towns were vague and based on sweeping assumptions. What guarantees or structures will be in place to ensure that such spend is justified and completely transparent to taxpayers?

Iain Stewart: If I may answer, the precise mechanism for this will be set out in good time. What I would point to as a good scrutiny mechanism is the one we have for the City Deal and Regional Growth Deal funds, that any projects have to go through the proper appraisal and audit processes by both the Scottish Government and the UK Government. There is a mechanism for scrutinising that as the deal programmes evolve. Cabinet Secretary Matheson and I gave evidence to



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the Scottish Parliament Local Government and Communities Committee a couple of weeks ago, where we explored these points.

I am not saying that will be the exact mechanism that is used, but it is an example of the type of audit and scrutiny process that we have.

Q94 **Deidre Brock:** How did the Stronger Towns Fund circumvent that audit and scrutiny process, and how are we to be sure that that will not be repeated?

Iain Stewart: If you will forgive me, I am not an MHCLG Minister, so I cannot comment on that.

Deidre Brock: Of course, okay. Thank you.

Q95 **Chair:** Just to finish things off, what happens now? We have the Bill in the House of Lords with the amendments. It is going to come back here. Presumably, the Government will get their way and it will be passed here. We have both the Welsh Assembly and the Scottish Parliament saying that they are not prepared—and I think we have heard that very clearly from the Cabinet Secretary today—to put forward a legislative consent motion. What happens then?

Iain Stewart: As I say, the Sewel Convention does contain provisions that the UK Parliament can legislate without an LCM from a devolved Administration. I would contend that politics has taken precedent over common-sense provisions that are there to ensure we do not have any barriers in the economic market among all parts of the UK.

It is important, as we have said throughout this session, that business has that certainty when the transition period ends at the end of this year, so it is important that we have that provision in place.

Paul Scully: I am working in BEIS, and one of my roles is working on business readiness with ministerial colleagues at the end of the transition phase. There is clearly a lot to do in a short period of time. This, though, is something where we would dearly love to have full consent and we are carrying on the conversations with Scottish and Welsh colleagues in the DAs, but we need to give businesses that certainty.

Q96 **Chair:** What is going to happen with those responses is that the UK Parliament will ignore the Scottish and Welsh Assemblies and proceed with this Bill regardless of their reservations. What do you think that does to the whole view of devolution in Scotland?

Paul Scully: What we need to do is give businesses the certainty. We need to explain—

Chair: I know, but what does it do to the Scottish people?

Paul Scully: I totally appreciate there is a political interplay here and the fact of the matter is that we are coming at it from a business certainty point of view. The Scottish Government are coming at it from a separatist point of view and—



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Q97 **Chair:** Do you think that type of language helps?

Paul Scully: I think there is no doubt about it. I think it has been pretty well stated that the Scottish Government clearly want independence, and the mechanisms they have used throughout this have been for that aim. What we want to do is make sure that the UK can stay together in a business sense and let politics have its interplay elsewhere. But, none the less, as of 1 January, we want to make sure that Scottish, English, Welsh and Northern Irish businesses can have access to each other's markets.

Q98 **Chair:** You mentioned independence. Minister Stewart, ignoring the views of the Scottish Parliament and the devolution process is only going to help independence, isn't it?

Iain Stewart: No. I think what we have to do is divorce the political confessions that, if I may politely—

Q99 **Chair:** Do you think that helps, too?

Iain Stewart: Forgive me, Mr Wishart, over the course of this last hour we have been able to deal with some very specific concerns that different groups in Scotland have had on the specific measures in the Bill, like the issue Mr Ross raised about recognition of teaching qualifications. We have been able to have a perfectly co-operative and constructive dialogue on that.

I am afraid, if you go right back to the beginning to the disengagement of Scottish Government officials from the whole process, that indicated right from the word go that, whatever the details of the UKIM Bill, your party would not want to play ball with this and would use it as a lever for independence. Our role is to make sure that we protect jobs in Scotland from any unnecessary barriers. We are all going to have to pull together to bounce back from coronavirus, and this Bill is part of that.

Chair: I am grateful to you for giving us these extra few minutes, and thank you for your time. We will see what happens now. I think we are all keeping an eye on how this plays out in Scotland.

Can I thank you both for the very courteous way you have answered all our questions today? Obviously, if there are any further questions this Committee has on this issue, we will come back to both of you, but thank you very much for your attendance today.