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Dear Prime Minister,

Now the Internal Market Act is more than two and a half years old, its effects are becoming clearer, and, as environmental and public health organisations, we believe the specifics of this legislation are causing unintended negative consequences for policy-making across the UK, especially with regard to goods with environmental impacts.

There are important benefits to aspects of the mutual recognition and non-discrimination principles - no-one wishes to see goods or services face arbitrary barriers or costs simply because they originate in one part of the UK rather than another.

However, the way these principles were embodied in the Act – and subsequently interpreted – has led to significant hurdles to progress and added to the bureaucratic overheads associated with policy-making in every part of the UK. The Act has also undermined the ability of the devolved institutions to operate in areas which were clearly not reserved under the 1990s Scotland, Wales and Northern Ireland Acts, and their successors.

Other national and transnational single markets operate with much more flexibility and local control than is now the case within the UK, allowing policy innovation and reducing costs. This allows the devolved tiers of government to respond to local conditions much more effectively, and for voters to have more certainty about what parties can do if elected at each tier.

As an example, Hawaii did not need federal permission to ban the sale of sunscreen containing oxybenzone or octinoxate, two chemicals shown to damage coral reefs. On the other side, if UK Ministers wish to ban horticultural peat in England, or any other product where the devolved administrations have not all done the same, the Internal Market Act adds additional unnecessary levels of complication to the process.

To secure the fairness and access principles throughout the UK, we would urge you to consider a review of the Internal Market Act's operation around the following issues in particular.

First, there is a lack of clarity around the point at which the devolved institutions should seek an exclusion on environmental or public health issues, even where

the common frameworks processes are meant to apply. Is it when legislation has been passed (at which point it will be difficult to amend it if no exemption is granted), or is it at the point at which a Bill is proposed or lodged (at which point it would be presumptuous to prejudge the final outcome of Parliamentary consideration and amendment)? This process is in urgent need of clarification.

Relatedly, the provisions of the Internal Market Act do not give certainty where, for example, neither UK Ministers nor the devolved administrations believe an exemption is required. In that situation, any business which believes an exemption under the Act should have been required is free to seek a judicial ruling on it, which would lead to further uncertainty.

Furthermore, where one of the devolved administrations may restrict a good or place conditions on its sale, the Act may only affect such goods produced within the relevant part of the UK, ironically leading to multiple regimes in operation for the same product just in one part of the UK, contrary to the stated intentions behind the legislation.

Another example might be where an item is banned from use within one of the four nations, but is still sold elsewhere. Under the Internal Market Act, consumers or businesses in that nation would still be entitled to buy the item, greatly weakening the effectiveness of any such ban.

Finally, under Section 4 of the Act, policy provisions made prior to this part of the Internal Market Act coming into force are automatically exempt, but changes to those are only automatically permissible if they are not substantive. It is unclear how that test of substantiveness is to be applied, or indeed who makes it. Would, for example, a change to the level of a carrier bag charge be deemed substantive?

Probably the two most urgent areas where change is required are public health and environmental policy. The bulk of the issues raised above could be resolved if legislation made in those two areas, by any of the four administrations, were automatically exempt, where they apply equally in the relevant territory to all businesses trading there, whether based there or elsewhere in the United Kingdom, provided they are within the scope of the relevant devolution legislation, where appropriate.

One of the benefits of the devolution settlement has been policy innovation and the learning of lessons. The most famous examples are in those two broad policy areas: the carrier bag charge (initiated in Wales and then adopted across the UK) and the ban on smoking in public places (initiated in Scotland and then similarly adopted across the UK).

The unintended effects of the Internal Market Act include limitations on how this policy development process can operate in future, to the detriment of all. We would therefore urge a qualified automatic exemption for legislation in those two areas, qualified perhaps by expanding the operations of the Office for the Internal Market to assess whether any relevant future legislation is indeed designed to achieve those shared aims.

As this is a matter of wider public interest, we will be publishing this letter on our website and copying it to other party leaders and the devolved administrations.

We would welcome the opportunity to discuss these issues with you in more detail.

Yours sincerely,

Kat Jones, Director, Action to Protect Rural Scotland  
Eben Muse, Campaigns and Policy Officer, BMC Cymru  
Jason Reeves, Policy Manager, Chartered Institute of Ecology and Environmental Management  
Sam Ward, Head of Climate Cymru  
Ross Evans, Public & Community Affairs Manager, CPRW The Welsh Countryside Charity  
Shivali Fifield, Chief Officer, Environmental Rights Centre for Scotland  
Kim Pratt, Circular Economy Campaigner, Friends of the Earth Scotland  
Liz Murray, Head of Scottish campaigns, Global Justice Now  
Jenny Hawley, Policy Manager, Plantlife  
Owen Derbyshire, CEO, Keep Wales Tidy  
Sandy Luk, CEO, Marine Conservation Society  
Deborah Long, Chief Officer, Scottish Environment LINK  
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Sarah Rees, Chair, Stop Climate Chaos Cymru  
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Giles Bristow, CEO, Surfers Against Sewage  
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