

Briefing for Commons Second Reading: environmental implications of the United Kingdom Internal Market Bill

14 September 2020

We ask that you press the government during the Second Reading debate to explain how its internal market will guard against the lowering of standards and instead create a platform for improving them. Individual jurisdictions must be able to introduce, implement and enforce regulation to protect and improve the environment when appropriate.

While deeply concerned about the implications for the environment and environmental law of a failure to respect international law, there are additional issues raised by this bill that directly affect the structure and effectiveness of environmental law.

The UK Internal Market must be based on high standards and support the progressive improvement of them – it is crucial that none of the UK legislatures are hampered in their ability to move at faster speeds in introducing and implementing much needed environmental legislation. The significance of the internal market rules for environmental standards may easily be overlooked in current circumstances but decades of experience underline its long term importance; building the right framework now will reduce avoidable conflicts in future.

The UK government has stated that the UK's existing high standards across areas including environmental standards, workers' rights, animal welfare and food standards will underpin the functioning of the internal market.¹ However, the bill does not give legislative effect to this commitment. On the contrary, the measures set out in this bill could affect the ability of all administrations within the UK to achieve their environmental ambitions and keep improving environmental standards.

Previously the UK government and devolved administrations have been aligned behind a common baseline of minimum EU standards. This baseline has been kept high in part by the requirement for environmental protection measures to aim at a high level of protection. It is worth noting too that EU law has also provided, in certain circumstances, scope to go beyond these in order to protect the environment and human health.

Environmental matters generally fall within devolved competence and there have been a number of examples from the devolved administrations of innovative policies that deliver legitimate public policy objectives and specifically progressive environmental rules and regulations. For example, Wales was the first country in the UK to introduce a charge on carrier bags. Within the UK, a high common baseline has enabled the ability of governments to innovate and push environmental standards and regulation upward, without creating market distortions, excessive regulatory divergence or unnecessary costs for business.

Mutual recognition without a shared and binding agreement to high and continually improving measures to protect the environment could disincentivise improvements on the part of individual governments. Parts of the UK could be forced to accept lower standard goods which would undermine their own sectors or they could be faced with legal challenges as to whether a particular measure was a "necessary" means of pursuing a legitimate public policy objective.

The Welsh government already has identified the danger that the proposed framework could inhibit them and others from pursuing higher levels of environmental ambition, which are essential if we are to respond to the climate and ecological crises.² This ‘chilling effect’ on moving forward could become a serious, even if not intended, brake on progress in the UK.

A combination of the mutual recognition of regulations and a lack of functioning common frameworks across the UK could create a de-regulatory race to the bottom, particularly without a universally recognised baseline which all countries are committed to uphold and progressively improve on. Furthermore, the bill provides very little scope for any of the legislatures in the UK to adopt environmental standards which go beyond those in other parts of the UK, despite EU law enabling Member States to take precisely these steps, in carefully controlled circumstances (Article 36 TFEU).

The UK government must therefore set out how it intends to avoid such an occurrence or put in place clear measures that allow each of the governments in the UK to move at the speed they consider appropriate and through a mechanism that allows jurisdictions to take alternative action when they consider it necessary, subject to appropriate controls.

We ask that you press the government to clarify how it intends to ensure that the measures in the United Kingdom Internal Market Bill:

Allow the pursuit of legitimate environmental policy objectives

This bill must not prevent or deter any part of the UK from introducing or implementing measures that are designed to protect and enhance the environment (both domestically and overseas), improve public health or mitigate climate change. Both outright restrictions and measures that have a ‘chilling effect’ should be excluded from the bill.

Both principles of mutual recognition and non-discrimination should be considered together with the legitimate pursuit of other public policy objectives, including to protect and improve the environment.

Ensure environmental standards are not weakened

As a minimum, all four UK jurisdictions must make a binding legal commitment not to regress on their current environmental standards. The inclusion of such a commitment in the bill will ensure that governments in the UK do not reduce regulatory standards and secure competitive advantage, and will provide a baseline from which individual jurisdictions can go beyond.

Measures should also be introduced to facilitate dialogue and information exchange about shared progressive ambition and upward movement in individual jurisdictions, as part of transparent and inclusive governance mechanisms across all the governments in the UK including on common frameworks.

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Endnotes

¹ Gov.uk news story (9 September 2020) [UK Internal Market Bill introduced today](#)

² [Letter](#) from the Counsel General and Minister for European Transition to the Chancellor of the Duchy of Lancaster & Secretary of State for Business, Energy and Industrial Strategy (7 July 2020)

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