

## Briefing for Lords Committee stage: environmental implications of the United Kingdom Internal Market Bill

28 October 2020

### Amendments needed to protect environmental standards

The UK internal market must be based on high environmental standards and support the progressive improvement of them. However, the measures set out in the UK Internal Market Bill, combined with the lack of functioning common frameworks or a non-regression provision, could lead to a deregulatory race to the bottom and a chilling effect on attempts to improve environmental standards across the UK. Individual jurisdictions must be able to introduce, implement and enforce regulation to protect and improve the environment if we are to tackle climate change and address nature's decline.

Whilst governments will not be legally prohibited from introducing new requirements for goods and services, under the market access principles set out in the bill, incoming goods from other parts of the UK will not have to meet them if standards remain lower elsewhere. In contrast, EU law has provided, in certain carefully controlled circumstances, scope to go beyond its commonly agreed standards in order to protect the environment. There are a number of examples of this, including the banning of particular types of packaging such as metal drinks cans and allowing only sustainably managed timber to be traded or processed in a particular member state. However, there is no possibility of exception to mutual recognition requirements for environmental purposes in the UK Internal Market Bill which we believe is a serious omission.

The Minister for Small Business, Consumers and Labour Markets has stated that "we want to make sure that we get the balance right between having the benefits of the UK internal market and having legitimate aims on an environmental basis, on public health or on any number of other areas."<sup>1</sup> But as no derogation for environmental protection currently exists in the bill, the aims of environmental protection and the operation of the internal market are not balanced. A wider system of derogations – allowing an individual jurisdiction to refuse mutual recognition on the justification of legitimate public policy objectives, and specifically on the grounds of measures to protect the environment – is needed to support innovation and ambitious approaches across the UK.

The measures set out in this bill could therefore affect the ability of all administrations within the UK to achieve their environmental ambitions and keep improving environmental standards. Examples include:

**Single use plastic items:** the Welsh government is proposing to introduce a ban on the sale of nine single use plastic items while the UK government is proposing to ban three. The mutual recognition principle would mean that the Welsh government would not, in effect, be able to properly regulate the sale of the additional six products, if they were manufactured elsewhere in the UK. For example, producers in England would be able to sell the six products in Wales irrespective of the higher Welsh environmental standards. The Welsh government has stated that "a ban that could only apply to Welsh produced plastics would undermine the policy and render it ineffective".<sup>2</sup>

**Phase out of sales of house coal and wet wood:** the UK government has confirmed plans to phase out the sales of house coal and wet wood from next year in England to cut pollution.<sup>3</sup> However, if the bill comes into force before these bans do, then they will be less effective since the sale of materials originating from another part of the UK would not be banned. House coal or wet wood originating in Wales, Scotland or Northern Ireland could be sold in England because the ban would be disappplied in relation to their sale.

### **Greener UK supports the following amendments:**

#### **Amendment 52: Environmental derogation for market access principles**

This important amendment corrects the oversight to include any exceptions and derogations that allow all four UK nations to put in place sensible and proportionate measures to protect the environment and tackle climate change. Without such an amendment, individual governments will be disincentivised from improving existing standards and implementing new higher standards, which are essential if we are to respond effectively to the climate and ecological crises.<sup>4</sup>

**Amendments 50 and 51** also expand the system of public interest exceptions and allow for the pursuit of legitimate public policy objectives including environmental protection.

**Amendment 35** would helpfully update the definition of a legitimate aim in relation to non-discrimination to include the protection of environmental standards.

#### **Amendment 166: Financial assistance must be consistent with environmental and climate goals**

The bill would enable UK government ministers to provide direct financial assistance across the UK on a range of otherwise devolved matters, including to promote economic development and provide infrastructure. These powers would be subject to very few restrictions. In order to tackle the nature and climate emergencies we face, the state must not risk supporting projects, companies or industries that threaten to undermine progress towards meeting environmental and climate goals. It is critical that, if and when ministers choose to exercise these powers, they are required to do so in a manner that is both consistent and compatible with any environmental and climate goals and targets applicable in the relevant part, or parts, of the UK. This amendment would ensure this is the case.

#### **Amendment 169: Economic development: climate and nature emergency impact statement**

This amendment would require the production of a climate and nature emergency impact statement for any proposal for financial assistance. This helpful measure would ensure that individual projects consider their long term sustainability – including avoiding or mitigating potential negative impacts and maximising the benefits for delivering a green economy – and will enable governments across the UK to better understand the aggregate impacts of such financial assistance and assess them against the goals and targets to which they have committed themselves.

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## Endnotes

<sup>1</sup> [Hansard](#) (22 September 2020)

<sup>2</sup> The UK Government's White Paper on a UK Internal Market: [Welsh Government Analysis](#)

<sup>3</sup> Gov.uk press release (21 February 2020) [Government takes action to cut pollution from household burning](#)

<sup>4</sup> [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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