

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

19 October 2020

We ask that you press the government during the Second Reading debate to explain how its proposals will guard against the lowering of standards. 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 when appropriate.

While the failure to respect international law has deeply concerning implications for the environment and environmental law, there are additional issues raised by this bill that will directly affect environmental ambition across the UK.

The UK Internal Market must be based on high environmental 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 the risk of 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 During the passage of the bill in the House of Commons, the Minister for Small Business, Consumers and Labour Markets stated that measures will be introduced "in a way that preserves our high standards, whether environmental, food or animal welfare".²

However, the bill does not give legislative effect to these commitments. On the contrary, the measures set out in this bill will make it harder to achieve them and could affect the ability of all administrations within the UK to achieve their environmental ambitions and keep improving environmental standards. This is because the market access principles risk undermining the effectiveness of environmental laws since there are not sufficient derogations in the bill to prevent this perverse outcome.

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."³ 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. It is also required to more properly address the need for improving environmental standards to tackle climate change and nature's decline. Action is urgently needed – nature is in crisis with 41% of UK species in decline and more than one in 10 threatened with extinction.⁴

Devolved powers to innovate

Environmental matters generally fall within devolved competence. 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 governments to innovate and push environmental standards and regulation upward, without creating market distortions, excessive regulatory divergence or unnecessary costs for business.

But the bill fails to give confidence that such upward innovation will be possible going forward. 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. This risks rendering such measures ineffective in both practice and effect, and creating a chilling effect on their creation in the first place. This will disincentivise individual governments from improving existing standards and implementing new higher standards, which are essential if we are to respond effectively to the climate and ecological crises.⁵

This seems to run counter to the Secretary of State for Business, Energy and Industrial Strategy's foreword to the UK Internal Market Bill White Paper, which stated that its proposals will "protect[...] devolved powers to innovate".⁶ Whilst the bill may not encroach on devolved competence as a matter of law, it does so in fact with potentially seriously harmful consequences for environmental protection. The bill fails to create the proper framework, safeguards and assurances needed to ensure that all four nations of the UK will be able to legislate ambitiously, progressively and effectively to protect the environment. 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".⁷

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.⁸ 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.

The UK government must 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.

Lack of common frameworks or legally binding baselines

A combination of the mutual recognition of regulations with a lack of functioning common frameworks across the UK could therefore create a deregulatory race to the bottom, particularly without a universally recognised baseline which all countries are committed to uphold and progressively improve on. 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 carefully controlled circumstances, scope to go beyond this common baseline in order to protect the environment – examples have included 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 bill.

We ask that you press the government to clarify how it intends to ensure that the measures in the UK 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 and mitigate climate change. Currently the bill does not include any exceptions and derogations that allow all four UK nations to put in place sensible and proportionate measures to do this – this oversight must be corrected.

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.

Ensure financial assistance powers are exercised in line with environmental and climate goals

Clause 48 of the bill sets out provisions that 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, thereby assuming powers previously held by the EU. These powers to provide assistance 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 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.

For more information, please contact Sarah Williams, head of Greener UK unit, Green Alliance

e: swilliams@green-alliance.org.uk

t: 020 7630 4515

Endnotes

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

² [Hansard](#) (29 September 2020)

³ [Hansard](#) (22 September 2020)

⁴ [State of Nature](#) report (2019)

⁵ [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)

⁶ BEIS (July 2020) [UK Internal Market](#)

⁷ The UK Government's White Paper on a UK Internal Market: [Welsh Government Analysis](#)

⁸ Gov.uk press release (21 February 2020) [Government takes action to cut pollution from household burning](#)

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