

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

18 November 2020

Amendments needed to support improvements to environmental standards

The UK internal market must be based on high environmental standards and must 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.

At Lords Committee stage, the Minister of State at the Cabinet Office stated that "devolved Administrations will continue to have the ability to regulate in devolved areas to support our common goal of maintaining and indeed improving high regulatory standards."¹ However, the bill includes measures which undermine confidence that such upward innovation will be possible going forward.

Whilst governments will not be legally prohibited from introducing new environmental requirements for goods and services, under the market access principles set out in the bill, incoming goods from other parts of the UK implementing lower standards will not have to meet these new requirements. In contrast, EU law has created coherent shared mechanisms for agreeing EU-wide law and policy to achieve its shared and stated objective of achieving a high level of environmental protection.

EU law has also 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 derogation from mutual recognition requirements for environmental purposes in the UK Internal Market Bill. This 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."² 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 and combat climate change – is needed to support innovation and ambitious approaches across the UK.

At Lords Committee stage, the Minister for Climate Change and Corporate Responsibility stated that "exclusions have been tightly defined to areas where the market access principles would adversely affect, or prevent the proper functioning of, the UK internal market" and that exclusions are "intentionally narrowly drafted to ensure that there are no

unnecessary trade barriers”.³ **We ask that you press ministers to explain on what basis the government has come to the decision that certain policy areas would create unnecessary trade barriers, whilst others are considered necessary?** The government added exclusions for fertilisers and pesticides to Schedule 1 of the bill during its Commons passage “thus allowing for local environments to be considered and protected”.⁴ How did government calculate that this exception was required?

The measures set out in the UK Internal Market Bill could 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”.⁵

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.⁶ 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 disapplied in relation to their sale.

Ban on the sale of peat for horticulture: environmental organisations have long called for a ban on the sale or use of peat for horticulture, both in order to protect the high levels of biodiversity and threatened species that peatlands host and to avoid the extraction and release of high levels of soil-based carbon. Regulating products is an important policy lever at the disposal of governments to take action against climate change and environmental destruction. However, any attempt to ban the sale of products containing peat by one of the four nations’ governments could be undermined by the failure to match these efforts in the other jurisdictions; their producers could actively continue to sell products containing peat in a market where it would be otherwise banned.

Greener UK supports the following amendments:

Amendment 23: 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.⁷

Amendment 21 also expands the system of public interest derogations and allows for the pursuit of a range of public policy objectives including environmental standards and protection. **Amendments 10 and 11** would helpfully update the definition of a legitimate aim in relation to non-discrimination to include the protection of environmental standards.

However, these amendments would not also cover the other market access principle of mutual recognition.

Amendment 1: Common frameworks process

The lack of reference to common frameworks in the UK Internal Market Bill is another concerning omission. Common frameworks are being developed by the UK and devolved governments to enable the functioning of the UK internal market and manage policy divergence. At Lords Committee stage, the Minister of State at the Cabinet Office stated that “the market access proposals here are designed not to replace but to complement the common frameworks”.⁸ This amendment would ensure the market access principles do not apply to areas where a decision to diverge from harmonised rules has been agreed through the common frameworks process and also ensures that regulations cannot be made in areas where the common frameworks process has not yet concluded.

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Endnotes

- ¹ [Hansard](#) (26 October 2020)
- ² [Hansard](#) (22 September 2020)
- ³ [Hansard](#) (28 October 2020)
- ⁴ [Hansard](#) (22 September 2020)
- ⁵ The UK Government’s White Paper on a UK Internal Market: [Welsh Government Analysis](#)
- ⁶ Gov.uk press release (21 February 2020) [Government takes action to cut pollution from household burning](#)
- ⁷ [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)
- ⁸ [Hansard](#) (26 October 2020)

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