



HOUSE OF LORDS

Delegated Powers and Regulatory Reform  
Committee

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29th Report of Session 2019–21

**United Kingdom  
Internal Market Bill:  
Government Response**

**Fire Safety Bill:  
Government Response**

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### *The Delegated Powers and Regulatory Reform Committee*

The Committee is appointed by the House of Lords each session and has the following terms of reference:

- (i) To report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny;
- (ii) To report on documents and draft orders laid before Parliament under or by virtue of:
  - (a) sections 14 and 18 of the Legislative and Regulatory Reform Act 2006,
  - (b) section 7(2) or section 19 of the Localism Act 2011, or
  - (c) section 5E(2) of the Fire and Rescue Services Act 2004;and to perform, in respect of such draft orders, and in respect of subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001, the functions performed in respect of other instruments and draft instruments by the Joint Committee on Statutory Instruments; and
- (iii) To report on documents and draft orders laid before Parliament under or by virtue of:
  - (a) section 85 of the Northern Ireland Act 1998,
  - (b) section 17 of the Local Government Act 1999,
  - (c) section 9 of the Local Government Act 2000,
  - (d) section 98 of the Local Government Act 2003, or
  - (e) section 102 of the Local Transport Act 2008.

### *Membership*

The members of the Delegated Powers and Regulatory Reform Committee who agreed this report are:

[Baroness Andrews](#)

[Lord Blencathra](#) (Chair)

[Baroness Browning](#)

[Lord Goddard of Stockport](#)

[Lord Haselhurst](#)

[Lord Haskel](#)

[Baroness Meacher](#)

[Lord Rowlands](#)

[Lord Thurlow](#)

[Lord Tope](#)

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### *Publications*

The Committee's reports are published by Order of the House in hard copy and on the internet at [www.parliament.uk/hldprcpublications](http://www.parliament.uk/hldprcpublications).

### *General Information*

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### *Contacts for the Delegated Powers and Regulatory Reform Committee*

Any query about the Committee or its work should be directed to the Clerk of Delegated Legislation, Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020 7219 3103. The Committee's email address is [hldellegatedpowers@parliament.uk](mailto:hldellegatedpowers@parliament.uk).

### *Historical Note*

In February 1992, the Select Committee on the Committee work of the House, under the chairmanship of Earl Jellicoe, noted that "in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion" (Session 1991–92, HL Paper 35-I, paragraph 133). The Committee recommended the establishment of a delegated powers scrutiny committee which would, it suggested, "be well suited to the revising function of the House". As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed experimentally in the following session. It was established as a sessional committee from the beginning of Session 1994–95. The Committee also has responsibility for scrutinising legislative reform orders under the Legislative and Regulatory Reform Act 2006 and certain instruments made under other Acts specified in the Committee's terms of reference.

# Twenty Ninth Report

## UNITED KINGDOM INTERNAL MARKET BILL: GOVERNMENT RESPONSE

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1. We considered this Bill in our 24th and 26th Reports of this Session.<sup>1</sup> The Government have now responded by way of a letter from Lord Callanan, Minister for Climate Change and Corporate Responsibility at the Department for Business, Energy and Industrial Strategy. The response is printed at Appendix 1.

## FIRE SAFETY BIL: GOVERNMENT RESPONSE

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2. We considered this Bill in our 25th Report of this Session.<sup>2</sup> The Government have now responded by way of a letter from Lord Greenhalgh, Minister of State for Building Safety, Fire and Communities at the Home Office. The response is printed at Appendix 2.

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1 [24th Report](#), Session 2019-21 (HL Paper 130) and [26th Report](#), Session 2019-21 (HL Paper 148).

2 [25th Report](#), Session 2019-21 (HL Paper 141).

## **APPENDIX 1: UNITED KINGDOM INTERNAL MARKET BILL: GOVERNMENT RESPONSE**

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### **Letter from Lord Callanan, Minister for Climate Change and Corporate Responsibility at the Department for Business, Energy and Industrial Strategy, to the Rt Hon. Lord Blencathra, Chair of the Delegated Powers and Regulatory Reform Committee**

I am writing in response to the recommendations made in the DPRRC Report on the UK Internal Market Bill. I would like to take the opportunity to thank you for your recommendations and look forward to discussing in more detail as we enter Report stage in the Lords. The Government has closely considered your recommendations and am pleased to provide the below response and reassurances on the powers in question.

I would like to firstly emphasise the importance of these powers for the ongoing dynamism of our internal market, and also to emphasise that the Government will not take lightly its responsibility in administering these powers. The Bill aims to ensure a smooth transition for businesses as they are no longer subject to EU constraints, even where these constraints were in devolved areas. It will guarantee the continued functioning of our Internal Market, ensuring that trade remains unhindered in the UK and supporting jobs and livelihoods as we recover from Covid-19. We recognise that this is an ambitious new system, and the Government will ensure that it works as well as possible for businesses and devolved administrations.

As the system embeds in our law and trade, we will be constantly monitoring this, engaging with stakeholders and devolved administrations to ensure it is working as well as possible within our constitutional framework. Where the system is not working as intended, the Government needs to be able to make necessary amendments for the benefit of all parts of the UK. In line with normal arrangements for secondary legislation covering devolved matters, UKG will of course engage with the devolved administrations in the spirit of the Devolution Memorandum of Understanding.

### **Mutual Recognition and Non-Discrimination - Principles for Goods**

I note specific concerns highlighted in the Report around Clauses 3(8) and 6(5), and the recommendations to remove the Secretary of State's power to make regulations to amend both clauses. The clauses list the types of statutory requirements that are within the scope of the mutual recognition and non-discrimination principles for goods.

The impact of these recommendations would be that amendments to this list would instead require primary legislation.

The Government has also tabled an amendment to remove the power in 3(8) on mutual recognition, which says that 'the Secretary of State may make regulations to amend subsection (3) so as to add, vary or remove a paragraph of that subsection.' The Government recognises the strength of Peers' concerns about the number and extent of delegated powers, and therefore is prepared to remove this power, in combination with the further changes on transparency and accountability we are proposing.

The Government is also fully committed to ensuring that the use of the power in clause 6(5) is subject to effective oversight and consultation. Any use of the power would require an affirmative regulation to be made in Parliament, ensuring that Parliament will have the opportunity to scrutinise and vote on any changes. Consultation with colleagues in the devolved administrations would also be required for any change to the relevant requirements.

In line with the Government's commitment to scrutiny and accountability around the powers, we have also tabled an amendment to place a duty on the Secretary of State to review the exercise of the delegated powers in Parts 1 and 2, covering both goods and services. For goods, these would be the powers to amend the relevant requirements for non-discrimination, as well as the powers to amend legitimate aims and exclusions lists. For services, this would cover the legitimate aims and exclusions powers. This means the Government will be held accountable on how its powers on these matters are used, providing a transparent explanation as to why they have been exercised (if that is the case) and what impact it had on the functioning of the internal market.

### **Mutual Recognition and Non-Discrimination - Legitimate Aims**

I also note the recommendation in the Report around clauses 8(7) and 20(7) and the power to adapt the list of legitimate aims. I must emphasise the importance of ensuring that the Government has the flexibility to adapt and improve the Bill to address any challenges or inconsistencies which arise during the implementation phase. The current list of legitimate aims ensures that both UK and devolved administrations Ministers are not constrained by the rules against indirect discrimination when rapid action is required, for example, to address a food or feed safety or public health emergency.

The list of legitimate aims is narrow to ensure that limited barriers to free trade can be created - but this means that Ministers will need the flexibility provided through clauses 8 and 20 to respond swiftly to the feedback received. The Government believes it is a better approach to start with a short list and retain the ability to respond to feedback, than entrench a very long list of legitimate aims which could facilitate the growth of barriers to free trade. Government will be working closely with businesses and consumers on this, to ensure that the UK internal market continues to function smoothly and to maximise certainty as we depart the Transition Period.

I would, however, again like to provide reassurance of the Government's commitment to scrutiny on use of these powers. I have therefore tabled an amendment requiring the UK Government to consult the devolved administrations before amending the descriptions of legitimate aims and exclusions under Clauses 8(7), 10(2), 17(5) and 20(7). Similarly, existing requirements to consult under Part 4 will now explicitly require this to include the devolved administrations. Taken together, I believe these amendments make clear that the UK government will act reasonably and in good faith when exercising its capacity to adjust the functioning of the regime.

### **Market Access Principle - Exclusions**

The recommendation in the Report to remove the power in Clause 10(2) would mean that the Secretary of State could no longer make regulations to amend Schedule 1 of the Bill, which contains provisions excluded from the application of the market access principle. Again, this may make it impossible for the Government

to respond to business and wider stakeholder feedback and act rapidly to adjust the list of exclusions. This would be needed if implementation shows the need for a review, or if further areas are identified that need exclusion due to a shifting economic landscape. This would be the case, for example, if the application of the market access principles to a new technology would pose a threat to public security or the environment.

As with the other powers in this Bill, Government is fully committed to ensuring that the use of this power is subject to the necessary oversight and scrutiny. Any use of this power would require an affirmative regulation to be made in Parliament, ensuring that all MPs from all parts of the UK can provide scrutiny and vote on changes. As noted above, the amendment requiring the UK Government to consult the devolved administrations also extends to amending the descriptions of exclusions under Clause 10(2).

### **Mutual Recognition and Non-Discrimination - Services exclusions**

I now address the recommendation in the Report in relation to the regulation-making power in Clause 17. This is the power to amend Schedule 2 by the affirmative resolution procedure, to add, amend, or remove services or requirements to those currently excluded from the principles of mutual recognition and non-discrimination.

Whilst the Government's position is still that a power to amend Schedule 2 is needed, we recognise the exceptional importance of Parliamentary scrutiny and the strength of feeling from many colleagues across the House about the overall extent of the powers in this Bill. Having reflected upon the considerations set out in this Report, and by colleagues on the floor of the House, the Government has reassessed the balance between the need to make changes to Schedule 2 with the need to give Parliament sufficient opportunity to scrutinise any such changes. We have therefore decided it would be possible to make all the necessary changes using the draft affirmative procedure and are removing the power in Clause 17(4) of the Bill to make regulations using the made affirmative procedure for three months from section 17 coming into force.

As mentioned above, I have also tabled an amendment requiring the UK Government to consult the devolved administrations before amending the descriptions of legitimate aims and exclusions which extends to clause 17(5). Alongside this, the duty on the Secretary of State to review the exercise of the delegated powers in Parts 1 and 2 also covers the legitimate aims and exclusions powers for services. This again demonstrates the Government's commitment to scrutiny and transparency on use of these powers, and our objective for the Bill to work in the interests and on behalf of the whole of the UK.

### **Power to set penalties**

I now address the power of the Competition and Markets Authority to set penalties in Clause 40 for failure to comply with an information notice under clause 38. The Government is committed not to take any steps to bring this power to set financial penalties into effect by commencing the clause until there is clear and credible evidence that there is a need to do so to enable the CMA to fulfil its internal market functions under the Bill. It is also proposed to amend clause 40 to specifically require the Secretary of State to consult with the devolved administrations before making the necessary regulations alongside other persons the Secretary of State considers appropriate.

## **Northern Ireland clauses**

We note the recommendation to narrow 43(8) such that it would be used only for the purposes of changing the definition of qualifying NI goods, when there are changes to the 2018 Act. The report also recommended removing clauses 44(1) and 45(1). Noting the Government's stated intention to re-introduce the Part 5 provisions, following the votes in the House, I nonetheless wish to comment on these recommendations.

I would firstly like to provide reassurance in relation to the power in 43(8) on unfettered access to UK internal market for Northern Ireland goods. The UK Government has been unequivocal in its commitment for unfettered access for qualifying Northern Ireland goods moving to the rest of the UK market, and to guaranteeing this in legislation before the end of the year. The definition of a qualifying Northern Ireland good has been set out in draft secondary legislation, and will maximise certainty and avoid disruption for Northern Ireland businesses moving goods to the rest of the UK at the end of the Transition Period. This first phase approach is intended to be a bridge to a longer-lasting regime that will focus its benefits on Northern Ireland businesses.

We are working with the Northern Ireland Executive and businesses to ensure that the next phase of the regime - which will come into force during the course of 2021 - focuses its benefits specifically on Northern Ireland businesses. As part of this, in line with representations made to us by business, we would want to be able to provide the benefits of unfettered access to goods moving from Northern Ireland to Great Britain however they make that journey. That is the flexibility the power provides - and it seems against the interest of traders in Northern Ireland to unduly limit that possibility at this time.

The powers in clauses 44(1) and 45(1) are a safety net or insurance policy in the event that we do not reach agreement with the EU in the Joint Committee. Without these powers, in the scenario where no agreement is reached, there would be risk of damaging consequences coming into force as a result of the legal defaults in the Protocol. The application of EU State aid law through Article 10 of the Northern Ireland Protocol is novel and complex. Without the regulations that Clause 45 provides for, it will be the European Commission which interprets the scope of the Northern Ireland Protocol and there will not be any legal certainty until it does so. Even then, it will be on a case-by-case basis which is not conducive to legal certainty.

A commitment to consult on these powers would create further delays which cuts across the stated need for the powers to provide a safety net and certainty. In any event, the powers cannot be commenced until they have been approved by a motion in the House of Commons and a take note debate in the Lords. Any regulations under clauses 44 and 45 will also be subject to Parliamentary approval.

Ultimately, however, it is the Government's priority to engage through the Joint Committee to secure the outcomes needed for the Protocol to work for the people and businesses of Northern Ireland, such that the powers are not required to be deployed in practice.

Thank you again for these recommendations and I trust this letter has addressed your points of concern with the Bill. I look forward to discussing in more detail at Report.

**12 November 2020**

## APPENDIX 2: FIRE SAFETY BILL: GOVERNMENT RESPONSE

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### Letter from Lord Greenhalgh, Minister of State for Building Safety, Fire and Communities at the Home Office, to the Rt Hon. Lord Blencathra, Chair of the Delegated Powers and Regulatory Reform Committee

I am writing in response to the Delegated Powers and Regulatory Reform Committee's Twenty-Fifth Report (published on 14 October), where it has considered the delegated power in clause 2 of the Fire Safety Bill.

The Government has considered very carefully the Committee's report. We note the Committee has asked for an explanation as to whether there may be a need to remove a type of premises from the Fire Safety Order in future and, if not, to narrow the wording of the delegated power on clause 2.

As set out in the Delegated Powers Memorandum, the Government considers that this power is necessary to reflect the most up to date evidence of fire safety risks. It is very difficult to predict what these risks might be and how they may occur, for example from new materials or new methods of construction.

However, we do envisage some scenarios where the power to remove might be required in future, for example:

- It is possible that certain type of premises, or constituent parts used in the construction of buildings might be superseded by new designs or materials. If this were to be the case, then it may be necessary to remove certain premises or materials from the Fire Safety Order, but this would be dependent on the circumstances and an assessment of the impact on safety – an impact which can be assessed through the consultation and Parliamentary process set out in clause 2.
- It may be the case that in future a different regulatory regime for specific types of premise might be adopted and therefore the provisions in the FSO would not need to apply. This could, for example, be to take a more holistic approach to covering certain types of licensed premises in a single Act covering building safety, fire safety, requirements for employees to meet before employment and licensing considerations.

It is the Government's view that these powers are justified and necessary in this context and the Government has been transparent in communications with stakeholders and with Parliament about its potential use.

I am copying this letter to members of the Delegated Powers and Regulatory Reform Committee, and to the Rt Hon James Brokenshire MP, Bill Minister in the Commons.

I am also copying this letter to Lord Rosser, Lord Kennedy, Lord Paddick, Baroness Pinnock and Lord Judge.

A copy of this letter will be placed in the libraries of both Houses.

**12 November 2020**

### APPENDIX 3: MEMBERS' INTERESTS

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Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://www.parliament.uk/hlregister>. The Register may also be inspected in the Parliamentary Archives.