Legislative Scrutiny: The United Kingdom Internal Market Bill
The Government response to the House of Lords Constitution Committee
Seventeenth Report of Session 2019-21

Introduction

The Government is grateful to the Constitution Select Committee (the Committee) for taking the time to consider the UK Internal Market Act and provide this thorough report. On 1 January 2021, we will see the single biggest transfer of powers to the devolved administrations in history, as the EU structures fall away and new powers transfer to administrations in Scotland, Northern Ireland, Wales, and across England in more than 100 policy areas which intersect with devolved competence.

However, the EU rules regulating trade will also cease to apply to the UK at the end of the Transition Period in December 2020, which creates the potential for damaging levels of regulatory divergence between the four parts of the UK.

The UK Internal Market Act is therefore needed to protect seamless trade and opportunities across all four corners of the United Kingdom. It guarantees UK companies can trade unhindered in every part of the UK while maintaining world-leading standards for consumers, workers, food and the environment.

We have exceeded the customary two month response time in this case because we wanted to respond to all of the Committee's recommendations fully. This was not possible when areas of the Act were still being debated in Parliament, and we wanted to avoid pre-empting any of these developments. Now that the Act has been granted Royal Assent, we are confident that our response should fully address all of your concerns.

The UK Internal Market Act was the result of extensive consultation. Our consultation period of four weeks was in line with the principles for a Government consultation and represented an ambitious plan to engage businesses of all sizes across the whole United Kingdom, as well as academic experts and representatives of the devolved administrations.

We received a total of 302 responses from a wide range of stakeholders including businesses, charities, local government, industry and trade bodies, academics, Trade Unions, political organisations and individual citizens. In addition to this we hosted 14 roundtables (attended by over 120 businesses and over 50 Business Representative Organisations and Trade Unions) and 248 direct calls with businesses and 138 direct calls to Trade Associations and Business Representative Organisations from all four parts of the UK. In total, the UK Government (UKG) directly engaged with 339 stakeholders. We will continue to work with businesses, academics, parliamentarians and the devolved administrations as we begin to implement the Act.

The Committee raised concerns about the way in which the UK Internal Market Act would interact with existing devolution arrangements, for example, seeking justification for the power to provide financial assistance and further clarity on the interaction between the Act and the review on intergovernmental relations. The creation of the financial assistance power, in addition to the devolved administrations' existing powers, will allow the Government to complement and strengthen the support given to citizens in Scotland, Northern Ireland and Wales without taking away responsibilities from the devolved

administrations (DAs). This Act, and our wider approach to protecting our internal market, has been designed to facilitate cooperation across the UK. It protects our common causes, such as the setting of high standards in our economy and works in concert with the Common Frameworks programme.

Indeed, it is a key objective of the Common Frameworks programme to agree consistent regulatory standards; but in practice, as we have acknowledged on the face of the Act, there may be cases where divergent approaches could be agreed through a Common Framework. In the small number of cases where the market access principles apply to divergence agreed by a consensus under a Common Framework, the Government has amended the Act to be clear that Sections 10 and 18 may be used to exclude this agreement from the market access principles, subject to agreement from the Secretary of State, and following a consensus agreement under the Common Framework that this is appropriate.This process will ensure that the market access principles in this Act can work to guarantee certainty and a seamlessly functioning internal market, whilst providing a means to respect agreed limited divergence under the Common Frameworks programme.

Chapter 3 of the report focuses on oversight and market access, raising concerns over the scope of delegated powers and consultation with devolved administrations over their use. The Government has carefully considered the report's findings, as well as those of the Delegated Powers and Regulatory Reform Committee (DPRRC), and has made a number of amendments to improve transparency and accountability in relation to the power to provide financial assistance and the delegated powers. Specifically, on delegated powers, the Government introduced a one-month consent period for the devolved administrations before using the power to: amend the list of delegated powers for non-discrimination; amend the list of legitimate aims; and modify exclusions. On the Financial Assistance Power, Baroness Penn has provided assurance to Peers on the Government's intention to engage with the devolved administrations on the use of the power, including on the UK Shared Prosperity Fund.

The Committee's report states that Part 5 of the Act is inconsistent with the Government's international commitments to the Withdrawal Agreement and the Northern Ireland Protocol. Following the in-principle agreement with the EU on all issues relating to the Northern Ireland Protocol, the Government has since removed Clauses 44, 45 and 47.

Furthermore, this Act was compatible with the ECHR and the Minister who presented the Act has given a statement of compatibility pursuant to the Human Rights Act in the usual way. The Government published an ECHR memorandum, which set out the Government's analysis of the ECHR implications of the Act.

We have considered the Report's findings and recommendations in great detail. Amendments made by the Government to the Act have sought to address the Committee's primary concerns, and both Lord True and Lord Callanan discussed these issues with your members during the thoughtful debates at both Committee and Report Stage.

The full response to the Committee's recommendations is set out below. Please note that as the Act has received Royal Assent, we refer to Sections rather than Clauses, and Act rather than Bill in our response.

Chapter 1: Introduction

The Committee report included a number of criticisms that consultation on the Bill was too limited, and that the devolved administrations in particular were not sufficiently consulted.

Government response:
The UK Government published a White Paper on the UK Internal Market and held a four-week open consultation prior to the introduction of the Act to Parliament. Businesses of all sizes and from a wide range of sectors were engaged with across all four parts of the UK, and engagement also took place with academic experts and devolved administration representatives. Consultation responses were received from all three devolved administrations, from a number of devolved legislature committees and from a wide range of stakeholders including businesses, charities, local government, industry and trade bodies, academics, Trade Unions, political organisations and individual citizens. These were carefully considered as the Act was drafted.

It is regrettable that the Scottish Government formally withdrew from the UK internal market workstream in March 2019. We would like to make clear that we would welcome a resumption of these discussions. Technical discussions on the content of the Act took place at official level with the Welsh Government and the Northern Ireland Executive.

Chapter 2: The UK Internal Market and Devolution

Recommendation (Paragraph 30, Chapter 2)
The lack of specificity about the consultation requirements in the Bill is problematic. The Government must set out the process for consultation with the devolved administrations on the management and adjustment of the internal market arrangements.

Government response:
We will, of course, ensure that the DAs have sufficient time to consider proposals and that any responses are fully taken into account, in line with our commitments through the Devolution Memorandum of Understanding. The Government has made a number of amendments to increase engagement and consultation with the DAs.

We added a statutory consultation requirement for UKG to consult with the devolved administrations before using delegated powers (within Parts 1 to 3 of the Bill). Going further, we introduced a one-month consent period for DAs before using the power to amend the list of relevant requirements for non-discrimination, amend the list of legitimate aims, amend the list of exclusions, or to issue, revise, or withdraw statutory guidance.

The Government introduced a one-month consent requirement to ensure that the Secretary of State seeks to obtain DA consent in respect of the chair and panel of the OIM. Finally, the Government also made a non-legislative commitment to hold Ministerial meetings, on an annual basis, to discuss matters relating to the UK internal market.

Recommendation (Paragraph 31, Chapter 2)
The Government should explain why a joint decision-making process for adjusting the proposed internal market arrangements was not included in the Bill.

Government response:

The Act sets out that this will be done through the introduction of secondary legislation, in consultation with the devolved administrations and with parliamentary scrutiny through affirmative resolution procedure. Any proposals will be debated and scrutinised, meaning MPs from all parts of the UK will be able to scrutinise and vote on any proposed changes, if they are brought forward. The Government will consult closely with the DAs, in a way consistent with the commitments set out in the devolution MoU between the UK Government and the devolved administrations.

The changes outlined above make further commitments to consultation and engagement with the DAs.

In relevant areas, the Common Frameworks programme will provide structures through which the Government and the devolved administrations can engage appropriately. Among other things, this could include the use of powers under Sections 10 and 18 of the Act.

Recommendation (Paragraph 35, Chapter 2)
The Government should explain why the Competition and Markets Authority (CMA) is the right body to have oversight of the monitoring of the UK internal market and why an Office of the Internal Market (OIM) could not have been established independently, under the joint control of the UK Government and the devolved administrations.

Government response:
The CMA has a global reputation for promoting competition for the benefit of consumers, and ensuring markets work well for consumers, businesses and the economy. The decision to establish the OIM in the CMA recognises the possibility of building on the CMA's existing technical and economic expertise, which will support the development of the UK internal market. The Government has been clear that certain bespoke governance and accountability arrangements will nonetheless apply to the OIM, recognising shared interests in the internal market. For example, the Secretary of State will be required to seek the consent of the devolved administrations for all OIM Panel appointments, a duty that does not apply to CMA Panel or Board appointments. Both the Secretary of State and devolved administrations will also be among the bodies consulted by the CMA in relation to its policy on enforcing information-gathering notices.

Recommendation (Paragraph 36, Chapter 2)
The Government should seek to make the Office of the Internal Market more clearly accountable to the different legislatures in the UK.

Government response:
Before appointments to the Office for the Internal Market are made, the Secretary of State must seek the consent of Scottish Ministers, Welsh Ministers and the Department for the Economy in Northern Ireland. Further, the Government has ensured that the advice and reporting provisions of the Office for the Internal Market will be available to all four administrations and legislatures on an equal basis. The OIM's regular reporting such as the yearly 'health of the market' reviews will be laid before the devolved legislatures and the UK Parliament for consideration in parallel with the wording of the OIM's statutory objective put beyond doubt that it operates for the benefit of all parts of the UK, and that each administration's requests should be given the same degree of consideration.

Recommendation (Paragraph 39, Chapter 2)
The Government should explain why such a broad power for the UK Government to spend money in devolved territories has been included in this Bill.

Government response:

This new power will make sure that the UK Government is well positioned to deliver financial assistance following the Transition Period and to replace any EU structural funding, at a minimum maintaining levels of investment across all four parts of the UK.

The power will cover infrastructure, economic development, cultural and sporting activities, projects and events, and will support educational and training activities and exchanges both within the UK and internationally. This would allow for the UK Government to invest strategically in all four corners of the United Kingdom - opening up the possibility to invest in a range of areas in the future.

It will enable the UK Government to deliver investment more flexibility, dynamically and in partnership with the devolved administrations and other partners.

The response to COVID-19 has shown the UK Government can work strategically and at scale to save jobs and support communities throughout the UK working alongside devolved administrations to keep citizens safe and supported no matter where they live in the UK. Indeed, COVID-19 has demonstrated the value of a responsive UK Government. And this power is essential as we continue to support businesses and communities to recover from the impacts of the pandemic.

Recommendation (Paragraph 43, Chapter 2)
The Government should explain how it intends to use the power in clause 48 to spend in devolved territories, what the processes would be for consulting the devolved administrations and how any such spending would affect block grant funding.

Government response:
The Government intends to continue to work in partnership with the devolved administrations to make sure that this new power is used to best effect. This new power does not take away responsibilities from the DAs.

Recommendation (Paragraph 44, Chapter 2)
If the Government intends to use the power to spend money in devolved areas for limited purposes, it must justify the broad scope of the power, which could be used with less restraint by future governments. In any event, to ensure practical cooperation around the use of the power, the Bill should be amended to include a requirement that ministers, in exercising their power to spend directly in devolved areas, consult with the relevant devolved administration.

Government response:
The devolved administrations will continue to develop policy tailored to specific issues or concerns within devolved areas. This additional power will ensure the UK Government can also invest in these areas across the UK, to the benefit of businesses and communities, delivering innovative, inter-regional projects and using its unique position to drive the economy.

It allows for the UK Government to invest strategically across the whole of the United Kingdom. It creates possibilities for the UK Government to tackle economic and social disparities and level up across the whole of the UK; opens up opportunities to improve connectivity across the UK by supporting infrastructure projects between the nations; and creates possibilities to support cultural and sporting events and projects which help to strengthen identities across the United Kingdom, in a respectful and inclusive manner.

The House of Lords considered an amendment from Lord Thomas which would have added a consent and consult requirements for financial assistance in devolved areas. At Commons Consideration of Lords Amendments, this amendment was rejected by the Commons. In the second round of Lords Consideration of Commons Amendments, a similar amendment to add requirements to consult with DAs and publish details of the use of the power was not put to a division following reassurances by the minister that in exercising the power the Government will work with stakeholders, including the devolved administrations. The discussion was supported by how devolved administrations would be engaged on the UK Shared Prosperity Fund. This approach to working with devolved administrations and other partners will help to make sure that UK Government investments and devolved administrations' spending will deliver effective outcomes for the people of Scotland, Wales and Northern Ireland.

Recommendation (Paragraph 50, Chapter 2)
The UK Government must work intensively with the devolved administrations to amend and clarify the proposals in the Bill in order to give the best chance of securing the legislative consent of the devolved legislatures.

Government response:
The UK Government has offered engagement on both a bilateral and multilateral basis to all of the devolved administrations, with the intention of clarifying the intention of the Act and understanding and addressing the concerns raised by each of the DAs. Detailed discussions have taken place with the Welsh Government (WG) and Northern Ireland Executive and have led to meaningful engagement on all parts and Sections of the Act. The Government also carefully considered the model amendments proposed by the WG (and tabled in the House of Lords by Baroness Findlay) and engaged in detail with the WG on these proposals. It is regrettable that the Scottish Government previously withdrew from meaningful discussion on the internal market workstream, and that they have declined repeated offers from the UK Government to take part in technical discussions on the Act.

In addition to engagement with the devolved administrations, the Government has been willing to engage with the devolved legislatures, with Government Ministers appearing at the Scottish Parliament's Finance and Constitution Committee and the Senedd's External Affairs and Additional Legislation Committee to answer questions on the UK Internal Market Act.

Recommendation (Paragraph 61, Chapter 2)
The Government should explain why the Bill does not mention common frameworks and how it expects the arrangements for the UK internal market will relate to the common frameworks.

Government response:
The Government did agree to include mention of Common Frameworks in the Act. The Government has been clear that the market access principles set out in the UK Internal Market Act will work in tandem with Common Frameworks. We recognise the importance of Common Frameworks in our future regulatory landscape. As Government Ministers have said in Parliament, we remain fully committed to the Common Frameworks programme and are keen to provide the greatest possible clarity on our continuing commitment to the programme. At the same time, we recognise that it is important to respect the flexibility of Common Frameworks, pay close attention to the interests of other parties involved in the Common Frameworks programme, and protect the voluntary and consensus-driven nature of the programme.

It is a key objective of Common Frameworks to agree consistent regulatory standards; but in practice, there may be cases where divergent approaches could be agreed through a Common Framework.

Following debates in both Houses and significant engagement with interested parties, the Government made amendments to the Act to clarify that in cases where the market access principles do apply to divergence agreed under a Common Framework, Sections 10 and 18 may be used to exclude this agreement from the market access principles. The Secretary of State would be able to use the provisions of Sections 10 and 18 to exclude this divergence from the market access principles following a consensus agreement under the Common Framework that this is appropriate.

While we do not currently expect that such cases are likely to arise very frequently, the Government's amendment provides an appropriate way to ensure that the market access principles in this Act can give certainty and a seamlessly functioning internal market, whilst providing a means to respect divergence agreed under the Common Frameworks programme. In the interests of transparency, the Government will also be asking the independent OIM to report on any such interactions.

Recommendation (Paragraph 64, Chapter 2)
The Government should explain why, given the devolved administrations are required by the devolution statutes to comply with international agreements ratified by the UK, the Bill is needed to ensure adherence to common standards for goods and services arising out of such agreements.

Government response:
The mutual recognition and non-discrimination principles for goods and services underpin the UK internal market. These principles will prevent internal trade barriers between parts of the UK.

We do not set our domestic standards through international trade agreements. Standards for goods and services are determined domestically and reflected through trade negotiations. The Government has been very clear that any future trade deal must uphold our high regulatory standards and work for UK consumers and businesses.

The purpose of the Act is to support the functioning of the UK internal market and will not alter the devolved statutes regarding adherence to international agreements.

Recommendation (Paragraph 70, Chapter 2)
We recommend that the commencement of the United Kingdom Internal Market Bill should not take place before the conclusion of the review of intergovernmental relations and the publication of the Dunlop review.

Government response:
The Chancellor of the Duchy of Lancaster has stated publicly the Government's ambition is to conclude the joint review of intergovernmental relations (IGR) as soon as possible, and publish Lord Dunlop's review of Union Capability. However, it must be noted that while the review will deliver the overarching architecture for IGR and vehicles to consider cross-cutting issues, governance of the UK internal market exists predominantly at the departmental-level and is not dependent on the conclusion of the review.

At departmental level, following Government amendments, consultation requirements with the devolved administrations are now attached to powers in the UK Internal Market Act, relating to Part 1-4, the Government has proposed an annual meeting with the devolved administrations to consider the UK internal market system once in operation.

More broadly, the Government has made positive progress with the devolved administrations on the review. The Chancellor of the Duchy of Lancaster and his counterparts took stock of progress at the meeting of the Joint Ministerial Committee (EU Negotiations) on 3 December. Ministers had an initial discussion on an overall package of reforms and proposed meeting again in the coming weeks to consider finalising a product, including arrangements for a secretariat, machinery and dispute avoidance and resolution. Whilst this work reaches its final stages, the Government also recently announced, by written ministerial statement on 10 November, measures to improve reporting by the UK Government on intergovernmental activity on GOV.UK and to the UK Parliament.

Recommendation (Paragraph 72, Chapter 2)
We welcome the remarks of the Chancellor of the Duchy of Lancaster about listening to the concerns of and working with the devolved administrations on the Bill. These words need to be followed by actions: by amending the Bill, providing clarity and reassurance about some of its provisions, and taking steps to improve intergovernmental relations.

Government response:
Following Government amendments, the Bill now includes a requirement to seek the consent of the devolved administrations prior to any use of the power. If consent is not received within one month, the Secretary of State must publish a statement explaining why he has proceeded in the absence of consent. Government also introduced a requirement to review and report to Parliament within 5 years on the impact and effectiveness of any use of this power. Additionally, the Government has proposed an annual meeting with the devolved administrations to consider the UK internal market system once in operation.

More broadly, the Government's approach to intergovernmental relations (IGR) through the review of IGR is to create a system that secures strategic cooperation on all cross-cutting domestic issues, which includes those relating to the UK internal market. The Government welcomes discussions with the devolved administrations on finalising the format of the relevant engagement structures, in line with our joint thinking on the IGR review where the work to conclude it is reaching its final stages.

Chapter 3- UK Market Access and Oversight

Recommendation (Paragraph 78, Chapter 3)
The Government should explain how the consultation process for amending the relevant requirements for goods would work and how disputes would be resolved.

Government response:
The Government introduced an amendment in the Lords, which was agreed, to remove the power to amend the list of relevant requirements for mutual recognition.

These power remaining would allows BEIS SoS to amend the relevant requirements within scope of the non-discrimination principle, as necessary.

The Act now includes a requirement to seek the consent of the devolved administrations prior to any use of the power. If consent is not received within one month, the Secretary of State must publish a statement explaining why he has proceeded in the absence of consent. Government also introduced a requirement to review and report to Parliament within 5 years on the impact and effectiveness of any use of this power.

Any amendments brought forward under these powers would be done through secondary legislation, using the affirmative procedure. This means MPs from all parts of the UK will be able to scrutinise and vote on any proposed changes if they are brought forward.

The Government will consult closely with the DAs, in a way consistent with the commitments set out in the devolution MoU between the UK Government and the devolved administrations. We would, of course, ensure that the devolved administrations have sufficient time to consider proposals and that any responses are fully considered. The exact length and nature of the consultation will depend on the specific changes proposed. This would initially be done at official level when plans are at a sufficiently formative stage to allow the consultation to be meaningful, and we would expect that process to be confirmed by letters exchanged between Ministers.

Recommendation (Paragraph 79, Chapter 3)
We agree with the DPRRC that the power in clause 3(8) has not been justified and should be removed from the Bill.

Government response:
At Report Stage in the House of Lords, the Government proposed an amendment, which was agreed, to remove this power from the Act.

We have been listening to the concerns raised in the House of Lords, including through your Committee Report, about the delegated powers in the Act. While our position remains that the majority of the powers in the Act are needed, in this particular case we are now content that the removal of the power will not substantially undermine the operation and flexibility of the internal market system.

We have therefore removed this power, in combination with further changes to the remaining powers to introduce mandatory devolved administration consultation and a dedicated review within five years. This will provide the highest degree of transparency and scrutiny for the powers.

Recommendation (Paragraph 81, Chapter 3)
The Government should set out its reasons for protecting existing, and not future, divergence and explain the types of divergence clause 4 would protect against that will not be addressed through common frameworks

Government response:
The EU rules regulating trade, in the context of which the devolved settlements were established, will fall away with the EU ecosystem at the end of the Transition Period.

As regulatory powers are transferred back to UK Government and the devolved administrations at the end of the transition period, there will be new potential for damaging levels of regulatory divergence between the four parts of the UK.
This Act is a forward-looking piece of legislation that aims to ensure frictionless trade, movement, and investment between all nations of the UK after we leave the EU. The policies that different parts of the UK choose to pursue in the future is a matter for each administration. This Act ensures that these local policies can be pursued while maintaining seamless trade in the UK internal market.

In the limited areas where divergence currently exists, businesses have adapted to these

regulations and bringing them within scope has the potential to disrupt this. It would not make sense for the mutual recognition principle to retrospectively apply in these areas.

Common Frameworks provide an agreed approach to ensuring regulatory coherence across the UK in specific policy areas. However, they are not alone sufficient to protect the UK internal market.

They tend to be sector-specific, they do not address the totality of economic regulation or the cumulative effects of divergence, for example if the consequences of regulatory difference in one sector affects other sectors. Common Frameworks will be agreed in areas of returning EU Law, these are by definition areas in which the DAs formerly lacked the ability to legislate. As such, Common Frameworks are distinct from any existing areas of divergence protected by Section 4 of the Act.

The UK Internal Market Act builds upon and complements Common Frameworks, providing a structural underpinning and additional protections to the status quo of intra-UK trade, ensuring certainty for businesses and investors in the form of a 'safety-net' of regulatory coherence. This means that the areas without a Common Framework will still benefit from a low-level regulatory coherence underpinning. Crucially, market coherence will be provided for issues that fall around or between individual sector-focused frameworks.

Recommendation (Paragraph 82, Chapter 3)
The Government should set out its reasons for protecting existing divergence and explain how it would expect the term "substantive" to be applied to future divergence in regulatory requirements.

Government response:
The purpose of this Section is to provide that existing statutory provisions, in force the day before the Bill reaches royal assent, will not be relevant requirements for the purpose of the mutual recognition principle for goods.

As a result of being a former member of the EU, the majority of devolved law relating to goods and services is harmonised. However, in the limited cases where the law is not harmonised, businesses have become accustomed to the different devolved law as it stands and bringing it into scope has the potential to cause disruption operation. It would not make sense for the mutual recognition principle to have reach back effects.

For this reason, the principles only capture new requirements, passed after the UKIM Act. However, if a requirement is re-enacted or only has changes that are of a technical nature, which would not alter the effect of the requirement on the good, then this would not be within scope. This would not be "a substantive change". A change of the law which would alter or change the policy effect, and the effect the requirement has on the good, would be classed as a substantive change.

Recommendation (Paragraph 86, Chapter 3)
The Government should explain why the Bill does not amend the devolution statutes explicitly to limit the competence of the devolved legislatures in respect of the non-discrimination principle.

Government response:
This is about creating a UK-wide scheme that provides businesses with the certainty they need as we leave the EU. The aim was to treat legislation emanating from the UK

Parliament in the same way as legislation passed by the devolved legislatures, and of course creating a new competence limb in the devolution statutes would not have done this.

It is important to note that 'no effect', the term used in Section 5(3) of the Act, is different from the concept of 'not law' used in the devolution statutes, and this is important in allowing a requirement to continue in effect so far as it is not discriminatory. This would not have been the case if the Act had amended the devolution statutes in the way suggested here.

We note, of course, that it is the Government's view that it was necessary to establish the UKIM Act as a protected enactment. This protects the internal market from change, and again provides the certainty that businesses need. It goes without saying that there is no constitutional equivalent for the UK Parliament.

Recommendation (Paragraph 87, Chapter 3)
The Government should explain whether clause 6 seeks to constrain Parliament's law-making power. If clause 6 is not intended to constrain Parliament, the Government should explain why it is not framed more accurately as a limitation only on the devolved legislatures.

Government response:
The intention of the Act is that Section 6 will apply to primary legislation passed by the UK Parliament in the same way as it will apply to primary legislation passed by the Scottish Parliament, the Senedd or the Northern Irish Assembly. The difference, of course, is that the constitutional principle of parliamentary sovereignty means that it will be open to the UK Parliament to explicitly disapply the operation of Section 6.

Recommendation (Paragraph 88, Chapter 3)
The Government should explain why clause 6 treats legislation intended for England differently from that passed by the devolved legislatures.

Government response:
This is not the intention of the legislation. The nature of our constitution is such that the UK Parliament will always be able to legislate over existing legislation, but the Act does aim, so far as possible within those constitutional constraints, to treat all domestic legislation in the same way. The UK Government will of course be cognisant of the importance of the market access principles in proposing any future primary legislation.

Recommendation (Paragraph 90, Chapter 3)
We agree with the DPRRC that the broad power in clause 6(5) has not been justified and should be removed from the Bill.

Government response:
This power would allow BEIS SoS to amend the relevant requirements within scope of non-discrimination, as necessary. This would be done through secondary legislation, using the affirmative procedure. This means MPs from all parts of the UK would be able to scrutinise and vote on any proposed changes if they are brought forward.

The Government intends these principles to be a bedrock of our internal market for decades to come, and that businesses will be able to trust in them and rely on them as they grow our economy. The Government recognises that setting up this overarching system is ambitious; and because of this is keen to ensure the legislation can be fine-tuned if needed, including

through as the system beds in. The power contained in 6(5) is needed to provide this.

In addition, the Government believes that as the economy changes when we leave the Transition Period, and there are developments in exciting new sectors, it will be important to be able to respond to new innovations that are not currently foreseen. We want to create the conditions for true entrepreneurship across the UK, and the flexibility allowed here is a small but important part of that.

The Government has introduced a package of amendments in the Lords which provide additional scrutiny and transparency for the use of this power, including a requirement to seek the consent of the devolved administrations prior to any use of the power. If consent is not received within one month, the Secretary of State must publish a statement explaining why he has proceeded in the absence of consent. Government also introduced a requirement to review and report to Parliament within 5 years on the impact and effectiveness of any use of this power.

Furthermore, the Act has been drafted to uphold the sense of equity between the different parts of the UK and place equal obligations on the UK Government when acting for England, as to the devolved administrations.

Recommendation (Paragraph 91, Chapter 3)
If clause 6(5) remains in the Bill, the Government should explain how the consultation process for amending the non-discrimination principle would work and how disputes would be resolved.

Government response:
This power would allow BEIS SoS to amend the relevant requirements within scope of non-discrimination, as necessary. This would be done through secondary legislation, using the affirmative procedure. This means MPs from all parts of the UK would be able to scrutinise and vote on any proposed changes if they are brought forward.

The Government would expect to consult closely with the DAs, in a way consistent with the commitments set out in the devolution MoU between the UK Government and the devolved administrations. We would ensure that the devolved administrations have sufficient time to consider proposals and that any responses are fully taken into account. This will initially be done at official level when plans are at a sufficiently formative stage to allow the consultation to be meaningful, and we would expect that process to be confirmed by letters exchanged between Ministers

Further to the amendments that the Government introduced, we would then seek the consent of the DAs in line with the requirements of clause 6(7) to (9). If consent is not received within one month, the Secretary of State must publish a statement explaining why he has proceeded in the absence of consent. Government also introduced a requirement to review and report to Parliament within 5 years on the impact and effectiveness of any use of this power.

Recommendation (Paragraph 94, Chapter 3)
The Government should explain its reasons for the narrower set of legitimate aims in clause 8(6) compared with the equivalent provisions in EU law.

Government response:
The market access principles have been designed to take account of the UK's unique circumstances, reflecting that our market consists of four highly integrated, highly aligned parts. Conversely, EU provisions deal with 27 countries, so it is right that the list of legitimate aims in this Bill is more narrowly focussed.

We believe the list of legitimate aims will allow each nation of the United Kingdom to meet their goals and targets. Expanding the list of legitimate aims that can be used to justify indirect discrimination would erode the benefits of the UK internal market and increase costs for business and consumers. This is clearly inconsistent with our policy objectives.

Furthermore, while our list of legitimate aims is narrower than the EU's list, we are not applying the EU's stringent proportionality test, but our bespoke test of whether a measure can 'reasonably be considered necessary' to fulfill a particular aim.

Finally, it is important to remember that the market access principles do not prevent UKG or the DAs from adopting divergent rules for goods. There won't be legal obstacles to introducing new rules like those you see at an EU level. The market access principles will simply curtail the application of new rules to the extent they give rise to harmful barriers to trade.

Recommendation (Paragraph 95, Chapter 3)
The House may wish to consider amending the list of legitimate aims in clause 8(6) to include some of the other purposes listed in Article 36 of the Treaty on the Functioning of the European Union.

Government response:
The market access principles have been designed to take account of the UK's unique circumstances, reflecting that our market consists of four highly integrated, highly aligned parts. Conversely, EU provisions deal with 27 countries so it is right that the list of legitimate aims in this Bill is more narrowly focussed.

We believe the list of legitimate aims will allow each nation of the United Kingdom to meet their goals and targets. Expanding the list of legitimate aims that can be used to justify indirect discrimination would erode the benefits of the UK Internal Market and increase costs for business and consumers. This is clearly inconsistent with our policy objectives.

Furthermore, while our list of legitimate aims is narrower than the EU's list, we are not applying the EU's stringent proportionality test, but our bespoke test of whether a measure can 'reasonably be considered necessary' to fulfill a particular aim.

Recommendation (Paragraph 96, Chapter 3)
We agree with the DPRRC that the power in clauses 8(7) has not been justified and should be removed from the Bill.

Government response:

The Government intends these principles to be a bedrock of our internal market for decades to come, and that businesses will be able to trust in them and rely on them as they grow our economy. The Government recognises that setting up this overarching system is ambitious; and because of this is keen to ensure the legislation can be fine-tuned if needed, including through as the system beds in. The power contained in 8(7) is important in providing this.

The legitimate aim test covers a narrow list of public policy objectives for regulators which would justify a potentially indirectly discriminatory rule. However, the list is a closed one and so there is a possibility that a need for another justification arises in relation to future goods and goods trade which could not have been foreseen now.

Any changes will be done through secondary legislation, using the affirmative procedure. This means MPs from all parts of the UK will be able to scrutinise and vote on any proposed changes if they are brought forward.

In addition, the Government introduced a package of amendments in the Lords which provide additional scrutiny and transparency for the use of this power, including a requirement to seek the consent of the devolved administrations prior to any use of the power. If consent is not received within one month, the Secretary of State must publish a statement explaining why he has proceeded in the absence of consent. Government also introduced a requirement to review and report to Parliament within 5 years on the impact and effectiveness of any use of this power.

Recommendation (Paragraph 97, Chapter 3)
If clause 8(7) remains in the Bill, the Government should explain why there is no duty to consult the devolved administration in respect of the power in clauses 8(7). In our view the Act should be amended to include such a duty.

Government response:
The Government agrees with this recommendation, and has introduced a package of amendments in the House Lords which provide additional scrutiny and transparency, including by grounding in legislation existing commitments to consultation. The amendment will require the Government to seek the consent of the devolved administrations in respect of the power in Section 8(7). If consent is not received within one month, the Secretary of State must publish a statement explaining why he has proceeded in the absence of consent. Government also introduced a requirement to review and report to Parliament within 5 years on the impact and effectiveness of any use of this power. The Government has provided these safeguards also for the other key powers in Parts 1 and 2.

Recommendation (Paragraph 98, Chapter 3)
The Government should set out its reasoning for protecting existing divergence and explain how it would expect the term “substantive” to be applied to future divergence. As with clause 4, the Government should explain what purpose is served by clause 9 that could not be achieved using common frameworks.

Government response:
The purpose of this Section is to provide that existing statutory provisions, in force the day before the Act reaches royal assent, will not be relevant requirements for the purpose of the non-discrimination principle for goods.

The EU rules regulating trade, in the context of which the devolved settlements were established, will fall away with the EU ecosystem at the end of the Transition Period. Membership of the EU single market resulted in extensive harmonisation of our regulations relating to goods and services and also included protections against discrimination based on the origin of goods.

As regulatory powers flow directly to UK Government and the devolved administrations at the end of the transition period, there will be new potential for damaging levels of regulatory divergence or discrimination between the four parts of the UK.

In the limited areas where divergence or discrimination currently exist, businesses have become accustomed to these regulations as they stand and bringing them into scope of the market access principles would have the potential to disrupt this.

If a requirement is re-enacted with changes that are of a technical nature, which would not affect the way in which it affects the good, then this would not be classed as substantive. A change of the law which would alter or change the policy effect, and the effect the requirement has on the good, would be classed as a substantive change.

Common Frameworks provide an agreed approach to ensuring regulatory coherence across the UK in specific policy areas. They provide a mechanism for collaborative policy making in devolved areas between the UK Government and devolved administrations following the end of the Transition Period. However, they are not sufficient to protect the entire UK internal market. Common Frameworks will be agreed in areas of returning EU Law, these are areas in which the DAs formerly lacked the ability to legislate. As such, Common Frameworks are distinct from any existing areas of divergence protected by Section 4 of the Act.

They tend to be sector-specific, they do not address the totality of economic regulation or the cumulative effects of divergence, for example if the consequences of regulatory difference in one sector affects other sectors.

The UK Internal Market Act builds upon and complements Common Frameworks, providing a structural underpinning and additional protections to the status quo of intra-UK trade, ensuring certainty for businesses and investors in the form of a ‘safety-net’ of regulatory coherence. This means that the areas without a Common Framework will still benefit from a low-level regulatory coherence underpinning. Crucially, market coherence will be provided for issues that fall around or between individual sector-focused frameworks.

Recommendation (Paragraph 99, Chapter 3)
The Government should justify why there is no consultation requirement for the exercise of the power in clause 10(2). In our view the Bill should be amended to include such a duty.

Government response:
This power is necessary to allow the Secretary of State to effectively manage the list of exclusions based on evidence available at that time in order to address any emerging and dangerous threats. The Government has introduced an amendment to require the consent of the devolved administrations to be sought when looking to make any regulation under the power granted by Section 10. If consent is not received within one month, the Secretary of State must publish a statement explaining why he has proceeded in the absence of consent. In addition, the Government also introduced a requirement to review and report to Parliament within 5 years on the impact and effectiveness of any use of this power.

Any proposals to amend the scope will be subject to Parliamentary scrutiny through the

affirmative procedure and will be debated in both houses. This means MPs from all parts of the UK will be able to scrutinise and vote on any proposed changes if they are brought forward.

Recommendation (Paragraph 100, Chapter 3)
We agree with the DPRRC that the power in clause 10(2) to amend schedule 1 is inappropriately wide and should be removed from the Bill.

Government response:
It is only right that the list of areas excluded from either or both of the market access rules be kept under close review. We are proposing very limited areas of regulation that are excluded from mutual recognition, and only where there is justification that local approaches are necessary to account for specific health and safety considerations.

Section 10 gives the Government the ability to amend the list of exclusions by statutory instrument if justification for additional exclusions is identified, and that instrument is subject to a vote in Parliament following scrutiny and debate. This is necessary to make sure that we can react swiftly to unforeseen outcomes that could not have been predicted, or in response to emerging threats to human, animal or plant health. Without the power in Section 10 it would not be possible for the Government to give effect to divergence agreed under the Common Frameworks programme. The Government's amendment clarifies that the delegated powers under Section 10 may be utilised to, among other things, make provision to reflect Common Framework agreements by excluding divergence agreed through the Common Frameworks process from the operation of the market access principles, where all parties to the Common Framework are in agreement.

In addition, the Government introduced a package of amendments in the Lords which provide additional scrutiny and transparency for the use of this power, including a requirement to seek the consent of the devolved administrations prior to any use of the power. If consent is not received within one month, the Secretary of State must publish a statement explaining why he has proceeded in the absence of consent. Government also introduced a requirement to review and report to Parliament within 5 years on the impact and effectiveness of any use of this power.

Recommendation (Paragraph 102, Chapter 3)
The Government should explain the need for this power to issue guidance and set out what it could contain and how it would operate. If the Government can justify the power, it should be accompanied by a requirement to consult the devolved administrations before guidance can be issued or changed.

Government response:
Section 12 gives the Secretary of State a power to issue guidance on the operation of the market access principles to the appropriate audience. The power is important to indicate Parliament's intention that regard be had to the guidance by those to whom it is addressed. The aim of the guidance is to provide clarity to traders and regulators on the operation of the market access principles. Making it statutory will provide traders and regulators with greater certainty.

The guidance will explain how the market access principles will be given effect through the UK's existing enforcement regime and will be published online for traders and regulators. The guidance could, for example, explain how traders can benefit from the mutual

recognition principle. It could include practical information on determining which regulatory rules apply and how to find them; and how the regulator of those goods could approach the compliance requirements in their area. Before issuing, revising or amending the guidance, the Secretary of State will consult the devolved administrations and will engage with other key stakeholders.

Recommendation (Paragraph 103, Chapter 3)
The Government should explain how it would expect the term "substantive" to be applied to future divergence in regulatory requirements.

Government response:
The purpose of this Section is to provide that existing statutory provisions, in force the day before the Bill reaches royal assent, will not be relevant requirements for the purpose of the mutual recognition principle for goods.

As a result of being a former member of the EU, the majority of devolved law relating to goods and services is harmonised. However, in the limited cases where the law is not harmonised, businesses have become accustomed to the different devolved law as it stands and bringing it into scope has the potential to cause disruption.

For this reason, the principles only capture new requirements, passed after the UKIM Act. However, if a requirement is re-enacted or only has changes that are of a technical nature, which would not alter the effect of the requirement on the service, then this would not be within scope. This would not be "a substantive change". A change of the law which would alter or change the policy effect, and the effect the requirement has on the service, would be classed as a substantive change.

Recommendation (Paragraph 105, Chapter 3)
The Government should justify why there is no consultation requirement for the exercise of the power in clause 17(2). In our view the Bill should be amended to include such a duty.

Government response:
The Government has considered the concerns raised on this point and tabled an amendment at Report Stage to include a duty to seek the consent of the devolved administrations when exercising this power. If consent is not received within one month, the Secretary of State must publish a statement explaining why he has proceeded in the absence of consent. Government also introduced a requirement to review and report to Parliament within 5 years on the impact and effectiveness of any use of this power.

Recommendation (Paragraph 106, Chapter 3)
We agree with the DPRRC that the power in clause 17(2) to amend schedule 2 is inappropriately wide and that it should be removed from the Bill.

Government response:
It is only right that the list of services excluded from either or both market access rules be kept under close review. This is both to address any issues which may arise in the immediate aftermath of the UKIM Services framework coming into force and to react to developments in the services market which could not be foreseen when the Bill was introduced. The way services are traded and regulated has evolved since the Provision of

Services Regulations 2009 were introduced, and it may be appropriate to bring some of the excluded sectors into scope of these rules in due course.

Of course, the way services are traded will also continue to evolve in future and new services sectors may emerge. There must be flexibility to consider whether these services should fall under these rules or not.

However, the Government has listened to the concerns expressed and provided two safeguards. Firstly, we have introduced a devolved administration consent requirement before the power may be exercised. If consent is not received within one month, the Secretary of State must publish a statement explaining why he has proceeded in the absence of consent. The Government has also introduced a requirement to review and report to Parliament within 5 years on the impact and effectiveness of any use of this power.

Without the power in Section 18 it would not be possible for the Government to give effect to divergence agreed under the Common Frameworks programme. The Government's amendment clarifies that delegated powers under Section 18 may be utilised to, among other things, make provision to reflect Common Framework agreements by excluding divergence agreed through the Common Frameworks process from the operation of the market access principles, where all parties to the Common Framework are in agreement.

Recommendation (Paragraph 107, Chapter 3)
If clause 17(2) remains in the Bill, it should not allow for regulations under the made affirmative procedure.

Government response:
Having listened carefully to the concerns raised on the floor of the House and in the various reports prepared by committees, the Government has introduced an Amendment at Report stage removing the made affirmative procedure from this power. That power may only now be exercised using the draft affirmative procedure.

Recommendation (Paragraph 108, Chapter 3)
The Government should set out whether it considers that clause 19 restricts devolved competence. It should explain why the Bill does not amend the devolution statutes explicitly if the intent is to limit the competence of the devolved administrations in this way.

Government response:
This is a new legislative scheme for the whole of the UK, and one of its driving aims was to treat legislation throughout the UK in the same way, so far as is possible within the constitutional settlement. This is about creating a UK-wide scheme that provides businesses with the certainty they need as we leave the EU. The aim was to treat legislation emanating from the UK Parliament in the same way as legislation passed by the devolved legislatures, and of course creating a new competence limb in the devolution statutes would not have done this.

It is important to note that 'no effect', the term used in Section 20(1) of the Act, is different from the concept of 'not law' used in the devolution statutes, and this is important in allowing a requirement to continue in effect so far as it is not discriminatory. This would not have been the case if the Act had amended the devolution statutes in the way suggested here.

We note, of course, that it is the Government's view that it was necessary to establish the

UKIM Act as a protected enactment. This protects the internal market from change, and again provides the certainty that businesses need.

Recommendation (Paragraph 109, Chapter 3)
The Government should explain whether clause 19 seeks to constrain Parliament's law-making power. If clause 19 is not intended to constrain Parliament, the Government should explain why it is not framed more accurately as a limitation only on the devolved legislatures.

Government response:
The intention of the Act is that Section 20 will apply to primary legislation passed by the UK Parliament in the same way as it will apply to primary legislation passed by the Scottish Parliament, the Senedd or the Northern Irish Assembly. The difference, of course, is that the constitutional principle of parliamentary sovereignty means that it will be open to the UK Parliament to explicitly disapply the operation of Section 20.

Recommendation (Paragraph 110, Chapter 3)
The Government should explain why clause 19 treats legislation intended for England differently from that passed by the devolved legislatures.

Government response:
This is not the intention of the legislation. The nature of our constitution is such that the UK Parliament will always be able to legislate over existing legislation, but the Act does aim, so far as possible within those constitutional constraints, to treat all domestic legislation in the same way. The UK Government will of course be cognisant of the importance of the market access principles in proposing any future primary legislation.

Recommendation (Paragraph 111, Chapter 3)
We agree with the DPRRC that the power in 20(7) has not been justified and should be removed from the Bill.

Government response:
The list of legitimate aims covers a limited range of worthy objectives for regulators which would justify a requirement that may have an indirectly discriminatory effect. However, the list, as drafted, is a closed, exhaustive list. There is a possibility that a need to add to, remove from or vary this list arises in the future, for example in relation to future types of services regulation, which could not have been foreseen now.

In order to allow the Government to quickly and effectively adapt to changing circumstances, the power has therefore been included in the Bill to add, vary or remove legitimate aims if needed.

Any changes will be done through secondary legislation, using the affirmative procedure. This means MPs from all parts of the UK will be able to scrutinise and vote on any proposed changes if they are brought forward.

In addition, the Government introduced a package of amendments in the Lords which provide additional scrutiny and transparency for the use of this power, including a requirement to seek the consent of the devolved administrations prior to any use of the power. If consent is not received within one month, the Secretary of State must publish a statement explaining why he has proceeded in the absence of consent. Government also introduced a requirement to review and report to Parliament within 5 years on the impact and

effectiveness of any use of this power.

Recommendation (Paragraph 112, Chapter 3)
If clause 20(7) remains in the Bill, the Government should justify not including a requirement to consult the devolved administrations in respect of the power in clause 20(7). In our view the Act should be amended to include such a duty.

Government response:
Having considered the concerns raised by peers on this topic, the Government has introduced an amendment at Report Stage to include a duty to seek the consent of the devolved administrations when exercising the power in Section 21(8). If consent is not received within one month, the Secretary of State must publish a statement explaining why he has proceeded in the absence of consent. The Government also introduced a requirement to review and report to Parliament within 5 years on the impact and effectiveness of any use of this power.

Recommendation (Paragraph 117, Chapter 3)
The Government should explain why the Competition and Markets Authority may refuse to report on a provision which might affect the UK internal market and what reasons it would consider acceptable for such a refusal.

Government response:
To effectively perform its functions set out in Part 4 of the Act, it is vital that the CMA is able to filter and prioritise requests to the Office for the Internal Market. This will ensure the CMA and the Office for Internal Market is not overburdened by requests for reporting and limit accepted requests to those relevant to its statutory objectives. There are a range of potential reasons that the CMA could give if it considered that a request should be rejected. These could include resourcing limitations, overlap with previous or upcoming reporting or lack of relevance to the Office of the Internal Market's statutory remit.

Recommendation (Paragraph 118, Chapter 3)
The Competition and Markets Authority should be required to consult the UK Government and the devolved administrations on its approach to these duties.

Government response:
Section 39 sets out that the CMA produce advice or information about how it expects to approach the exercise of its functions set out in Part 4. The Government does not consider it necessary to place a statutory duty to consult the devolved administrations and UK Government in the development of this advice. However, in practice, as with similar advice or guidance produced by public bodies, the CMA would seek the views of the UK Government and devolved administrations on draft advice ahead of publication.

Recommendation (Paragraph 124, Chapter 3)
We agree with the DPRRC that clauses 44(5) and 45(3)(e) are of extraordinary breadth and relate to matters which should not be the subject of secondary legislation. They are constitutionally inappropriate and should be removed from the Bill.

Government response:
Following intensive and constructive work over the past weeks by the UK and EU, we now have an agreement on all issues in relation to the Protocol on Ireland and Northern Ireland. As we have mutually agreed solutions, the Government has withdrawn what were clauses 44 (export declarations), 45 and 47 (state aid) of the UK Internal Market Act.

Recommendation (Paragraph 125, Chapter 3)
We recommend that clause 53(2) is removed from the Bill.

Government response:
This element is necessary to enable the operation of the powers contained within the Act so as to avoid inconsistency within the legislation were those powers to be used; ensuring that there are no new barriers to UK internal trade.

Recommendation (Paragraph 134, Chapter 3)
The implications of the provisions of the United Kingdom Internal Market Bill for Northern Ireland are potentially significant. They are also contested and difficult to assess without knowing how they will be used.

Government response:
The Act takes limited and reasonable steps to create a safety net in domestic law to ensure that the UK Government is always able to deliver on its commitments to the people of Northern Ireland by:

- ensuring that businesses in Northern Ireland will have full unfettered access to the rest of the United Kingdom; and
- ensuring that there is no confusion or ambiguity in UK law about the interpretation of the state aid elements of the Northern Ireland Protocol.

Chapters 4 - International Law

The Committee's report included a number of criticisms of what were clauses 44, 45 and 47 of the UK Internal Market Act, arguing that the powers contained within them were inconsistent with the UK's international obligations under the Withdrawal Agreement and Northern Ireland Protocol. What were clauses 44, 45 and 47 have now been removed from the Act.

Following intensive and constructive work over the past weeks by the UK and EU, we now have an agreement on all issues in relation to the Protocol on Ireland and Northern Ireland.

As we have mutually agreed solutions, the Government has withdrawn what were clauses 44 (export declarations), 45 and 47 (state aid) of the UK Internal Market Act.

We tabled a new clause requiring the Government to set out domestic guidance for how the provisions agreed with the EU on the application of State Aid under the Protocol will work in practice.

However, we welcome the fact that the original Clauses 42, 43 and 46 which were removed by the House of Lords in Committee were restored. These contained, inter alia, important commitments to the unfettered access of goods from Northern Ireland to Great Britain, which implemented the Government's Manifesto and were in accord with a number of agreements, including that leading to the reforming of the Northern Ireland Executive.

Chapter 5- Judicial Review

The Committee raised concerns that clause 47 seeks to alter the scheme provided in the Human Rights Act without wider consideration of its constitutional implications and

compliance with the UK's international obligations under the Convention. Clause 47 has now been removed from the Act.

Government response
This Act is compatible with the ECHR and the Minister presenting this Act has given a statement of compatibility pursuant to the Human Rights Act in the usual way. The Government has published an ECHR memorandum, setting out the Government's analysis of the ECHR implications of the Act. What was clause 47 has now been removed from the Act.

Chapter 6- The Government and the Rule of Law

Recommendation (Paragraph 207, Chapter 6)
The Government should set out how, if at all, it plans to amend the Ministerial Code to clarify ministers' duties regarding the rule of law and adherence to international law and treaty obligations.

Government response:
The Ministerial Code sets guidance for Ministers about how the Prime Minister expects them to conduct themselves. It does not itself create legal obligations but refers to the overarching duty on Ministers to comply with the law.

The Ministerial Code does not prevent Ministers from introducing legislation for MPs and Peers to debate.

Recommendation (Paragraph 219, Chapter 6)
Civil servants are under a duty to comply with the law. The Government should not put them in a position where they risk breaching that duty.

Government response:
All Civil Servants are expected to carry out their role with dedication and a commitment to the Civil Service and its core values, as set out in legislation: integrity, honesty, objectivity and impartiality.In acting with integrity, the Code requires civil servants to comply with the law and uphold the administration of justice. The Cabinet Secretary said he was content for civil servants to work on the Bill and support Ministers in their duties as it passed through the House.

Civil Servants remain bound by the obligations in the code and have a duty to support the government of the day.