HOUSE OF COMMONS LIBRARY

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UK Internal Market Bill: Lords amendments explained

By Library specialists

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Summary

The UK Internal Market Bill 2019-21 was introduced in the House of Lords on 30 September and completed its passage through the Lords on 2 December 2020. The House of Lords made significant amendments to the Bill.

Many of the debates returned to two key themes as summed up by Conservative peer Lord Garnier in the concluding debate on the Third Reading: the rule of law and "the maintenance of the United Kingdom." Significant amendments were made to address the effects of the Bill on these two areas. This paper summarises the central issues and the reasons for the amendments.

Rule of law

The Lords Second Reading debate focussed on the principle of upholding the rule of law. Lord Judge, Convenor of the Crossbench Peers, moved a motion to express regret that the Bill's Part 5 (which concerns the implementation of the Northern Ireland Protocol) would "undermine the rule of law and damage the reputation of the United Kingdom." Lord Judge said that by supporting it, Parliament – which is responsible for making the law and expecting people to obey the laws it makes – would be knowingly granting power to the Executive to break the law. The amendment was approved on a division by 395 votes to 169. A regret motion does not prevent a Bill from receiving its Second Reading. However, it was an indication that the Lords would seek to change the Bill in fundamental ways.

Northern Ireland Protocol clauses removed

At Committee stage, the Lords resolved to remove clauses that would enable a breach of international law by allowing the Government to interpret the Northern Ireland Protocol and override parts of the UK-EU Withdrawal Agreement. Members voted by 433 to 165 to remove clause 42. According to the House of Lord's Library, this vote was the largest in terms of turnout since remote voting was introduced in the Lords, and the third largest since the House was reformed in 1999.

Members also voted by 407 to 148 to remove clause 44. Further clauses of Part 5 were removed by an agreement through the usual channels. As a result, the rest of Part 5 was also deleted without further votes.

The Government has said that it will reinstate the clauses when the Bill returns to the Commons.

Devolution aspects

The Internal Market Bill's perceived threat to the Union[1] was a prominent theme of Lords' debates and amendments.

[1] That is, the United Kingdom

Peers were concerned that Part 5 (on the Northern Ireland Protocol) weakened the Union, while the Government argued that its intention was to safeguard it.

Concerns were also expressed about intergovernmental relations between the UK Government and devolved administrations. Peers wanted stronger commitments to consult with the Scottish and Welsh Governments and Northern Ireland Executive, and a stronger emphasis on the Common Frameworks programme. Peers were unhappy with the extent of restrictions planned for devolved matters.

At Report Stage, Lords Amendments 1, 19 and 34 related to the Common Frameworks programme were passed, meaning that an agreement reached through this programme, which permits policy divergence, would be excluded from the UK market access principles.

Under the Common Frameworks programme, the UK Government and the devolved administrations have agreed to work towards common approaches in areas that are currently governed by EU law, but that are otherwise within areas of devolved competence. The Lords amendments would, in the words of Baroness Finlay of Llandaff (crossbench), make the market access principles of the Bill "the fall-back, not the default."[2] All three amendments were opposed by the Government.

Market access principles

Various government and opposition amendments were made to parts 1, 2 and 3. These parts set out how the market access principles of mutual recognition and non-discrimination would apply to trade in goods, services and the recognition of professional qualifications.

A significant group of opposition and crossbench amendments removed the delegated powers of Ministers to make regulations regarding market access principles. Primary legislation would instead be required whenever the scope of application of these principles is to be changed.

Whereas previous amendments removed delegated powers, further amendments were made to require the Secretary of State – to differing extents – to consult the devolved administrations before amending the scope of market access principles using these delegated powers.

Government amendments were made to introduce new clauses, which would require the Secretary of State to carry out a review of, and report to Parliament about, the use of amendment powers.

Office for the Internal Market

Government amendments and amendments moved by opposition and crossbench peers were made to Part 4 on Report. The amendments related to the role of the devolved administrations in the governance and processes of the Office for the Internal Market (OIM), and the position of the OIM within the Competition and Markets Authority (CMA).

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2 HL Deb, 18 November 2020, c1435

Financial assistance powers and harmful subsidies

Finally, the Lords resolved to remove Part 6 of the Bill, which was intended to give the UK Government the power to provide financial assistance to any part of the United Kingdom for a wide range of purposes. The main arguments against granting those powers were the effects on the devolution settlement. Also, clause 50 was removed, which would have made subsidy control a reserved competence – making this issue the responsibility of the UK Parliament alone.

1. The UK Internal Market Bill

This paper gives an overview of the main changes to *the UK Internal Market Bill 2019-21* made during its passage through the House of Lords.

1.1 Stages of the Bill

The UK Internal Market Bill was introduced to the House of Commons on 9 September 2020. The Bill had its Second Reading on 14 September. A Committee of the Whole House considered the Bill over four days between 15 and 22 September. The Bill's remaining stages in the Commons were completed on 29 September and it was introduced in the House of Lords on the following day.

The Bill had its Second Reading in the House of Lords on 19 and 20 October. It was then committed to a Committee of the Whole House, which considered the Bill over five sittings between 26 October and 9 November.

The Report stage took place between 18 and 25 November.

The Third Reading debate and votes were held 3 December 2020.

This briefing refers to clause numbers in the Bill as first printed in the House of Lords (Bill 135). The Annex of the briefing contains a Concordance table which follows through the clause numbers as they have changed during the Bill's passage through Parliament.

1.2 The Bill in brief

The UK Internal Market Bill 2019-21 seeks to legislate for an "Internal Market" among all four nations of the UK at the end of the Brexit transition period.

As presented to the Lords, the Bill consisted of 7 parts:

- **Parts 1, 2 and 3** make provisions for market access for goods and services, and the recognition of professional qualifications based on the principles of mutual recognition and non-discrimination. The Bill sets out specific exclusions from these principles and has ministerial powers to alter those exclusions in response to changing market conditions. Schedules 1 and 2 set out exclusions from the market access principles.
- **Part 4** entrusts the Competition and Markets Authority (CMA) with independent advice and monitoring of UK internal market. A new Office for the Internal Market (OIM) within the CMA would fulfil the reporting, advisory, monitoring and information-gathering functions. Schedule 3 sets out the constitution of the OIM panel and task groups.
- **Part 5** on Northern Ireland Protocol, as introduced, seeks to provide access for Northern Ireland goods to the GB market. It also contained ministerial powers to prevent the application of, and unilaterally re-interpret and disapply parts of the Protocol relating to trade and state aid, as well as set aside their legal

obligations under both domestic and international law to enact the Protocol.

- **Part 6** would provide financial assistance powers to the UK Government for a wide range of purposes, including economic development, infrastructure and education, in all four nations of the UK.
- Provisions in **Part 7** reserve for the UK Parliament the exclusive right to legislate on provisions regarding distorting or harmful subsidies. This Part includes provisions that would mean the clauses in Part 5 that allow to re-interpret and disapply parts of the Northern Ireland Protocol could not come into force without the approval of the House of Commons and a take-note debate in the House of Lords.

Further information

Further information on the Bill is available from:

- Bill page on Parliament's website
- Text of the Bill as introduced into the House of Commons on 9 September 2020 (Bill 177)
- Text of the Bill as first printed for the House of Lords (HL Bill 135, 30 September 2020)
- Text of the Bill as amended on Report in the House of Lords (HL Bill 155, 25 November 2020)
- Bill 224 2019-21 (Lords Amendments to the Bill, 2 December 2020)
- Explanatory notes on Lords amendments (2 December 2020)
- Hansard: Debates on the UK Internal Market Bill 2019-21

Further background:

- Commons Library briefing The United Kingdom Internal Market Bill 2019-21 (14 September 2020) describes the Bill as it was introduced in the Commons.
- Lords Library Briefing United Kingdom Internal Market Bill HL Bill 135 of 2019-21 (9 October 2020) covers the amendments to the Bill during the Commons stages and summarises the Bill as it was laid before the Lords (Bill 135).
- Lords Library, United Kingdom Internal Market Bill and the Northern Ireland Protocol: What happened at the Lords committee stage? (17 November 2020) provides an overview of the main amendments during the Lords Committee stage.

Other Commons Library briefings and insights give further context:

- Principles of International Law: a brief guide, 21 September 2020. This paper provides a brief overview of principles of international law, including how it works, its sources, and what happens when states breach their international obligations.
- Update: Can the UK Government spend in areas devolved to Scotland? 29 September 2020. This Insight looks at whether anything in the Scotland Act 1998 (the 1998 Act) prevents the UK

Government from spending in policy areas devolved to Scotland and the proposed new spending powers in the UK Internal Market Bill.

- Internal Market Bill: Reactions from Scottish and Welsh Governments, 1 October 2020
- Commons Library Briefing, The UK-EU Withdrawal Agreement: dispute settlement and EU powers, 3 October 2020

1.3 Main issues during the Lords stages

The Lords held two Second Reading debates, five sittings of the Committee and three Report stage debates on the UK Internal Market Bill. Many of the debates returned to two key themes as summed up by Conservative peer Lord Garnier in the concluding debate of the Third reading: the rule of law and "the maintenance of the United Kingdom". The views of peers on the first theme led up to Part 5 on Northern Ireland Protocol being removed from the Bill as discussed in section 2 below. Concern for the future of the Union informed all the Lords amendments relating to devolution as set out in section 3.

Further sections of this briefing cover specific amendments regarding

- the market access principles;
- independent advice and monitoring by the Office on the Internal Market within the Competition and Markets Authority (CMA);
- financial assistance powers and
- the settlement for harmful subsidies.

2. Rule of law: clauses on the Northern Ireland Protocol

2.1 Overview[3]

Part 5 of the Bill relates to the Northern Ireland Protocol, an integral part of the EU-UK Withdrawal Agreement, an international treaty that has been ratified by both sides, and made applicable in UK domestic law.[4] Part 5 seeks to provide access for Northern Ireland goods to the GB market.

Part 5 was a source of huge controversy when it was introduced in the Commons and throughout its progress in the Lords. This is principally because Part 5 empowers Ministers to prevent the application of, and unilaterally reinterpret and disapply parts of the Protocol, as well as ignore their legal obligations under both domestic and international law to enact the Protocol.

While conceding that the use of powers given in Part 5 may break international law "in a limited and specific way"[5], the Government have always argued that such powers are only included as a "safety net". The Prime Minister, Boris Johnson, on 10 September argued that such a safety net was needed to:

> Protect our country against extreme or irrational interpretations of the protocol that could lead to a border down the Irish sea in a way that I believe, and I think Members around the House believe, would be prejudicial to the interests of the Good Friday agreement and prejudicial to the interests of peace in our country[6]

The Government published two statements seeking to justify its approach. Firstly, a legal position statement on 10 September (to which the Law Society and Bar Council responded to in a joint briefing). Secondly, the Government released a policy paper on 17 September, setting out that it would only ask Parliament to support the use of powers in Clauses 44, 45 & 47 of the Bill, if "the EU being engaged in a material breach of its duties of good faith or other obligations". The paper listed examples of what the Government thought could constitute such behaviour.

The House of Lords were not moved by these arguments. As set out in the sections Lords Stages, the Lords removed all of the clauses in Part 5 (clauses 42-47) that related to the Northern Ireland Protocol. The Lords objected to these clauses of the Bill in the strongest terms, and voted against them with historic majorities. The Government has said that it will reinstate the clauses when the Bill returns to the Commons.

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3 This section of the briefing refers to clause numbers as printed in HL Bill 135, the text introduced to the House of Lords, before Part 5 of the Bill was removed at the Lords Committee stage.

4 For more information on what is the Protocol, see Commons Library CBP 'The October 2019 EU UK Withdrawal Agreement'.

5 HC Deb, 29 September 2020, col 200.

6 HC Deb, 10 September 2020 Vol 679 c618

Box 1: Northern Ireland Protocol clauses as introduced in the Commons

Clause 11

Clause 11 applies the market access principles of mutual recognition and non-discrimination to qualifying Northern Ireland goods (QNIGs) so they can be freely placed on the market in Great Britain (GB)

Section 8C of the EU (Withdrawal) Act 2018 (as amended), gives powers to Ministers by regulation to enable access for QNIGs and to define what they are.

When the Bill was first introduced to the Commons, the statutory instrument defining QNIGs had not been laid. The SI was later laid on 7 October 2020, under the draft affirmative procedure meaning that the regulations need to be approved by both Houses of Parliament before they can come into force.

The Commons formally approved the regulations on 16 November 2020. The Lords debated the regulations on 30 November 2020. A Lords Library briefing explores the regulations and their interaction with this Bill in more detail.

Clauses 42-46[7]

- **Clause 42** places a duty on appropriate authorities to have "special regard" for several matters when exercising their duties in relation to the Northern Ireland Protocol (NIP), or in relation to the movement of goods within the UK. The matters authorities should have special regard for are:
  a) the need to maintain Northern Ireland's integral place in the UK's internal market;
  b) the need to respect Northern Ireland's place as a part of the UK's customs territory; and,
  c) the need to facilitate the flow of goods between Great Britain and Northern Ireland.
- **Clause 43** sought seeks to ensure unfettered access to the UK internal market for qualifying Northern Ireland goods by preventing any new barriers being created. It did this by restricting UK authorities from using their powers after the transition period in a way that might result in the introduction of checks, controls or administrative processes for goods moving from Northern Ireland to Great Britain. However, Clause 43 provides for 3 scenarios where authorities can implement new checks and processes if they are necessary for:
  — ensuring access to GB for qualified Northern Ireland goods (see commentary on Clause 11 in section 6.1 for more details);
  — where goods have been declared for a voluntary customs procedure; and
  — to secure compliance with, or to give effect to, any international obligation or arrangement to which the UK is a party (whenever the UK becomes a party to it)

  This clause was amended in the Commons Committee Stage to add two further scenarios where new checks and process can be introduced (see the next section for details).

- **Clause 44** gave Ministers powers to make provision about the application of exit procedures to goods when moving from Northern Ireland to Great Britain, including making provision disapplying, or modifying the application of, exit procedures, stating or restating the application of exit procedures. Certain exit procedures are mandated by the EU's customs code that applies to Northern Ireland under the Protocol.
- **Clause 45** gave the Secretary of State an enabling power to make regulations that can interpret Article 10 of the Protocol, and further disapply and modify its effects, including disapplying it entirely. Article 10 applies EU state aid rules to "measures which affect that trade between Northern Ireland and the EU" (so potentially not just subsidies given in NI, but UK-wide).
- **Clause 46** required that no one apart from the Secretary of State may notify or inform the European Commission of State aid, or proposed State aid, where required under Article 10 of the Protocol. This reflects the status quo, namely that this function is presently performed by the Foreign Secretary via the UK Mission in Brussels. The Secretary of State will be subject to Regulations made under clause 43(1) when interpreting Article 10.

[7] The Lords have removed Clauses 42-47 from the Bill.

Clause 47

This clause provided that clauses 44 and 45 and any regulations made under them had effect notwithstanding any incompatibilities or inconsistencies with "relevant international or domestic law". The clause defined this phrase using an extraordinarily broad range of domestic and international law, including the Protocol itself and the Withdrawal Agreement.

Clause 47 neutered how the Withdrawal Agreement is given supremacy and direct effect in domestic legislation through the EU (Withdrawal) Act 2018.

The clause ensured domestic courts would still have to give full force and effect to these regulations even if those were in conflict with all relevant domestic and international laws, and international law as a whole.

It restricted and potentially precluded entirely domestic judicial review of section 44 or 45. A restriction of this kind is known as an "ouster clause."

2.2 Amendments in the Commons

Three substantive amendments to the Bill that related to the Northern Ireland Protocol were passed during the Commons Committee stage before these were removed in the Lords.

Clause 42

Amendments were made to clause 42 (then clause 40) to add VAT or excise duty in connection with the Northern Ireland Protocol, and biosecurity threats to the list of reasons for which new checks, controls or processes would be allowed.

It has been reported that the Government may introduce a new taxation bill that could contain further powers to modify how VAT declarations may work for goods moving from GB to NI.

Clauses 44, 45 & 47: Commons approval

A government amendment to require Commons approval for the commencement of clauses 44, 45 and 47 was agreed to without division.

This amendment meant that the Secretary of State could not bring these clauses into force unless:

- The House of Commons had approved a motion that the relevant sections on or after a specified date.
- A motion to take note of the specified date had been tabled in the House of Lords.

Clause 47: judicial review

Government amendments relating to judicial review were made at Committee stage to clause 47 (then clause 45). These were agreed to without division. Clause 47, as introduced, would have potentially precluded domestic judicial review. A restriction of this kind is known as an "ouster clause", because it seeks to eliminate the supervisory jurisdiction of the Senior Court.

The government amendments give some limited opportunities for judicial review – they would allow a three-month window for claims to be brought against regulations made under clauses 44 and 45; and the courts could make a declaration of incompatibility with the Human

Rights Act 1998 in respect of such regulations, but could not strike them down.

2.3 Lords stages

Lords debate at Second Reading

Previous briefing papers have covered in detail the rule of law implications of the Bill, as originally introduced. These debates primarily focus on the powers in Part 5 of the Bill to disapply international and domestic legal obligations. Part 5 was removed by the House of Lords.

For example, the House of Lords Library's Briefing Paper when the Bill moved to the House of Lords covers in detail the arguments on the specific clauses allowing breaches of international law, including developments since the Commons debates.

During the Second Reading in the Lords, a majority of the Lords made similar arguments about the powers provided in the Bill and their incompatibility with international law. In particular, many speakers reiterated the point that to breach international law in this way could cause damage for the UK's international reputation. Some also expressed concern over the Bill's apparent incompatibility with the rule of law. For example, Lord Judge (Crossbench) made the following argument:

> When those responsible for making the law—that is, us the Parliament, we the lawmakers, who expect people to obey the laws we make—knowingly grant power to the Executive to break the law, that incursion is not small. The rule of law is not merely undermined, it is subverted. There is one consequence, and the damage is to our standing in the world.
>
> …
>
> The rule of law is no less an ingredient of the legal relationship between nations as it is domestically. Let us get ourselves rid of the myth, the spin, that when the rule of law internationally is damaged, the rule of law domestically is nevertheless quite unscathed. It is absurd. The rule of law is indivisible. And let us disabuse ourselves of a further myth or spin that actions already taken have not diminished virtually to extinction the assertion by the Minister in the other place that we are a beacon around the world for the rule of law and international law. The light given by that beacon is being extinguished.[8]

Others took a different view, such as Lord Mancroft, who suggested that the rule of law issue was not "black and white", and that some states internationally are not interested in this issue because "business is business".[9] Lord Lilley, in support of the powers in the Bill, gave examples of when other states, including the UK, had previously breached international law.[10] Viscount Trenchard also made similar comparisons.[11]

8 HL Deb 19 October 2020, cc1286-1288
9 HL Deb 19 October 2020, c1344
10 HL Deb 19 October 2020, cc1306-1307
11 HL Deb 19 October 2020, cc1372-1373

For commentary on contributions in the Lords during the Committee Stage see the Lord's Library In Focus article.

Vote on Lord Judge's amendment

In the House of Lords Second Reading debate, Lord Judge moved an amendment to the main motion. The amendment was approved on a division by 395 votes to 169. This "motion to regret" expressed the Lords' dissatisfaction with Part 5 of the Bill. The Lords resolved that, if enacted, Part 5 would "undermine the rule of law and damage the reputation of the United Kingdom." Part 5 of the Bill contained provisions to do with the implementation, or otherwise, of the Withdrawal Agreement's Protocol on Northern Ireland.

A motion to regret on a Bill is relatively unusual, as indeed is any division at Second Reading in the House of Lords. They are more commonly attached to Statutory Instruments, as a means of the Lords registering dissent in a way that does not prevent the instrument from being made.

A motion of regret does not prevent a Bill from receiving its Second Reading. However, it can be taken as an indication that the Lords will seek fundamental changes to the Bill in Committee or on Report.

As explained below, the Lords went on, in Committee, to remove the whole of Part 5 from the Bill in a series of decisions taken on 9 November 2020.

Lords stages

On 9 November 2020, at the end of its Committee Stage consideration the House of Lords voted by a majority of 268 to remove clause 42 from the Bill, and by a majority of 259 to remove clause 44.

The usual channels agreed that the other clauses in Part 5 (clauses 43, 45, 46 and 47) were consequential on the two that were removed. As a result, the rest of Part 5 was also deleted without further votes. Another group of amendments, tabled by Lord Judge, tidied up references to Part 5 elsewhere in the Bill.

The UCL Constitution Unit has described these votes as two of the three largest Lords defeats since the chamber's 1999 reform. The third took place at the bill's second reading on 19 October 2020, when as mentioned in Section 2.1 the Lords voted by a majority of 226 to express regret that "Part 5 of the bill contains provisions which, if enacted, would undermine the rule of law and damage the reputation of the United Kingdom".

According to the House of Lord's Library, the vote to remove clause 42 was the largest in terms of turnout since remote voting was introduced in the Lords, and the third largest since the House was reformed in 1999. For commentary on contributions in the Lords during the Committee Stage see the Lord's Library In Focus article.

After the Clauses were removed by the Lords, the Government responded by saying "we will re-table these clauses when the bill returns to the Commons".

2.4 EU response to Part 5 of the Bill

The introduction of the Internal Market Bill in September led the European Commission to launch infringement proceedings against the UK for a breach of the Withdrawal Agreement (WA). For an overview of the EU's infringement powers see Box 2 below.

At the request of the EU, an extraordinary meeting of the UK-EU Joint Committee which oversees the WA was held on 10 September to discuss the Bill and its repercussions. The WA is co-chaired by Cabinet Office Minister Michael Gove for the UK and European Commission Vice-President Maroš Šefčovič for the EU.[12] Following the meeting, the Commission issued a statement, describing the clauses in the Bill relating to the application of the Northern Ireland protocol as (if they became law) "an extremely serious violation of the Withdrawal Agreement and of international law". The Commission said this would "undermine trust and put at risk the ongoing future relationship negotiations". As well as breaching substantive provisions of the protocol if adopted, the Commission said that the legislation itself breached the "good faith" obligation of the WA (Article 5) given that it would jeopardise the attainment of the objectives of the WA.[13]

On 11 September Vice-President of the European Commission Mr Šefčovič sent a letter to Michael Gove restating the Commission's views on the Bill. The letter requested that the offending measures be withdrawn by the end of the month "in order to be able to restore trust and engage in our bilateral discussions in the framework of the EU-UK Joint Committee". On 22 September, Mr Šefčovič said that the EU was "studying all legal options on the table" if the UK did not withdraw the measures.[14] In a statement following the Joint Committee meeting on 28 September, the UK Government said that the measures would not be withdrawn.[15]

In a statement on 1 October, the European Commission President Ursula von der Leyen referred to the Commission's request to the UK to remove the "problematic" parts of the Internal Market Bill by the end of September. As the deadline had lapsed the previous day and the problematic provisions not been removed, the Commission had initiated infringement proceedings against the UK by sending a letter of formal notice to the UK. The letter invites the UK to send its observations within a month.[16]

The UK did not meet the deadline by the end of October and had still not done so at the time of writing.

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12 See Commons library briefing paper 8996, The UK-EU Withdrawal Agreement Joint Committee: functions and tasks

13 European Commission, Statement by the European Commission following the extraordinary meeting of the EU-UK Joint Committee, 10 September 2020.

14 *Financial Times*, Brussels renews legal threat over UK internal market bill, 22 September 2020.

15 UK Government, Meeting of the Withdrawal Agreement Joint Committee on 28 September, 28 September 2020.

16 European Commission, Withdrawal Agreement: European Commission sends letter of formal notice to the United Kingdom for breach of its obligations, 1 October 2020.

Box 2: The EU's infringement powers

Under the WA, EU law and the powers of EU institutions and bodies apply to the UK as if it remains an EU Member State until the end of the transition period (31 December 2020). In particular, the Court of Justice of the EU (CJEU) will have jurisdiction in relation to the UK as provided for in the EU Treaties. The powers of EU institutions and bodies, including CJEU jurisdiction, will also apply in relation to interpretation and application of the WA itself (Article 131). This includes the European Commission's powers to bring infringement proceedings against a Member State where it considers a Member State has failed to fulfil an obligation under the EU Treaties (or the WA in the case of the UK during the transition period). Where the State in question does not respond to a European Commission "Reasoned Opinion" to comply with EU law within a specific period (usually two months) it may decide to refer the matter to the CJEU. Where the CJEU finds that a Member State has failed to fulfil an obligation under the Treaties, the State is then required to take necessary measures to comply. If it does not do so, the CJEU can impose a lump sum fine or ongoing penalty payment.[17]

The European Commission can also bring breaches of the EU Treaties or of the WA that it considers to have occurred before the end of the transition period to the CJEU (and the CJEU can continue to make rulings in this regard) for a further four years after the end of the transition period (Article 87 WA).

Once the transition period ends, a new dispute settlement system comes into operation for where the UK and EU disagree over the interpretation or application of the WA. The UK and EU will initially seek to resolve disputes within the Joint Committee, but can refer matters to a separate arbitration if this is not possible.[18]

Link to future relationship negotiations

EU Governments have indicated that there will be no agreement on the future UK-EU relationship if the contentious measures in the Internal Market Bill remain. On 11 September, Ireland's Foreign Minister Simon Coveney described the measures as "irresponsible", "dangerous" and "eroding trust" and said that there would "not be an agreement if Britain threatens to undermine previous agreements".[19] On 1 October, France's Europe Minister Clement Beaune expressed a similar view that the offending measures would need to be dropped before an agreement was approved.

European Parliament Political Group leaders and the Parliament's UK co-ordination group issued a joint statement on 11 September stressing that the European Parliament would "under no circumstances, ratify any agreement between the EU and the UK" should the Internal Market Bill measures which breach or threaten to breach the WA be retained.[20]

On 22 September, Mr Coveney suggested that if the UK and EU were successful in negotiating a free trade agreement over the coming weeks this would make the legislation irrelevant.[21] This could include agreement on common UK-EU provisions on state aid that might render

17 Articles 258 and 259 of the Treaty on the functioning of the EU (TFEU).
18 For a more detailed account of the new dispute settlement process post-transition and continued EU powers in the transition period see Commons library briefing paper 9016, The UK-EU Withdrawal Agreement: dispute settlement and EU powers
19 Irish Examiner, Simon Coveney: No Brexit deal if Britain threatens to undermine previous agreements, 11 September 2020.
20 European Parliament, Statement of the UK Coordination Group and the leaders of the political groups of the EP, 11 September 2020.
21 RTÉ, Opportunity to address Brexit legislation concerns – Coveney, 22 September 2020.

the issue of how EU state aid rules apply in Northern Ireland under the WA Protocol on Ireland/Northern Ireland less contentious.

Mr Coveney's comments hinted at a scenario, also suggested by a number of commentators, whereby progress in agreeing a UK-EU free trade deal to come in force at the end of the transition period would lead to the UK Government dropping the clauses from the Bill prior to or during the House of Lords stages. Katy Adler of the BBC reported on 1 October that the EU was also hoping for such a scenario, aided by progress in the Joint Committee on implementing the Northern Ireland Protocol.

The UK and EU have been in formal negotiations over their future relationship since March 2020 with the aim of having new arrangements in place on 1 January 2021.[22] These negotiations are ongoing, but will need to be concluded in the coming days to provide time for the EU's internal processes prior to ratification before the end of the transition period on 31 December 2020.

Issues relating to the implementation of the Protocol on Ireland/Northern Ireland also continue to be discussed in the WA Joint Committee. The WA tasked the Joint Committee with taking a number of decisions related to the implementation of the Protocol.[23] These issues are being discussed in the Ireland/Northern Ireland Specialised Committee, a sub-committee of the Joint Committee. A UK Government statement following the fourth meeting of the Specialised Committee on 5 November said that the two parties had "agreed to an intensified process of engagement to resolve all outstanding issues."[24] This could cover the movement of goods: determining the goods at risk of entering the EU market and therefore attracting a potential tariff; movement of food products between Northern Ireland and the rest of the UK, for example the application of EU food safety regulations to consignments for supermarkets. According to a report on 27 November, talks on these issues were progressing well in the Joint Committee and there was confidence on both the UK and EU side that an agreement would be reached by the end of the transition period.

22 See House of Commons Library Insight, UK-EU future relationship: Can a deal be reached in time?, 1 September 2020

23 This is discussed in more detail in Commons library briefing paper 8996, The UK-EU Withdrawal Agreement Joint Committee: functions and tasks

24 UK Government statement, Ireland/Northern Ireland Specialised Committee 05 November 2020, 5 November 2020

3. Future of the Union

The Internal Market Bill's perceived threat to the Union[25] was a prominent theme of Lords debates and amendments.

Opinion polls have shown rising support for independence in Scotland and in Wales. The 2019 Conservative Party manifesto included a commitment to "strengthen the union".

Peers were concerned that Part 5 (on the Northern Ireland Protocol) weakened the Union, while the Government argued that its intention was to safeguard it (see section 2.3 above).

Concerns were also expressed about intergovernmental relations between the UK Government and devolved administrations. Peers wanted stronger commitments to consult with the Scottish and Welsh Governments and Northern Ireland Executive, and a stronger emphasis on the Common Frameworks programme (see section 3.4 below). Peers were unhappy at the extent of restrictions planned for devolved matters.

Both the Scottish and Welsh Governments have expressed reluctance to grant legislative consent to the Internal Market Bill, although the latter says it could do so if the Bill was "substantially amended" to address its "significant concerns".[26] Several peers expressed hope that their amendments could encourage a change of heart.

3.1 Main debate on the Bill

The future of the Union dominated the Lords' first main debate on the Bill on Monday 19 October 2020. That day, the *Financial Times* published a letter from the Archbishop of Canterbury and other senior Anglican bishops headlined "Internal market bill undermines the strength of our union".

The Archbishop repeated his warning in the chamber, stating that:

> This country has different characteristics and needs in its regions and nations. They must be reflected in all our relationships if the union is to survive. There is no watertight door in relationships between economics and constitutional issues. They overflow from one into the other.[27]

Lord Howarth said the Bill was "disrespectful to the devolved Administrations", something he considered "reckless" given the Union was under "great stress from Brexit and Covid."[28]

Lord Hope, a Crossbench peer, observed that "mutual trust between the nations has never been lower than it is now":

> Scotland has refused to give legislative consent to the Bill and Wales, as we have heard, has indicated that it cannot give consent to the Bill in its present form. Of course, this Parliament

25 That is, the United Kingdom of Great Britain and Northern Ireland.
26 See the Welsh Government Legislative Consent Motion
27 HL Deb 19 October 2020, c1293
28 HL Deb 19 October 2020, c1340

> can do what it likes, but a different approach is essential if the union is to hold together against a growing trend towards fragmentation that will—if this Government are not very careful—bring our precious union to an end.[29]

The Liberal Democrat peer Lord German agreed that the Government had to "avoid actions that could lead to the breakup of this union, but to defend the union, you have to have respect for it, you have to have regard for it, and that is simply not apparent from the way this Government are proceeding at this time."[30]

Several peers quoted from the Lords Constitution Committee report on the Internal Market Bill. Baroness Hayter, a Labour frontbencher, said that "despite claims that it would strengthen the integrity of the union while upholding the devolution settlements", the Bill actually – in the words of the Committee – "risks de-stabilising an integral part of the UK's constitutional significance."[31]

Lord Dunlop, a former government minister, said he was "doubtful" the Bill was necessary:

> The European Union (Withdrawal) Act 2018 already provides a mechanism for constraining the ability of the devolved Administrations to diverge, while a common frameworks process is taken forward to agree UK-wide approaches for the powers flowing back from Brussels—a process that has been yielding results. As we have heard, the devolved Administrations are also already required by law to adhere to international obligations, including trade treaties.

He also criticised the Government's approach in bringing forward a Bill in this form, saying it had "reached for the proverbial sledge-hammer to crack a nut." He continued:

> All this strikes me—and the Constitution Committee—as an unnecessarily heavy-handed approach to balancing the demands of free trade within the UK with respect for the roles and responsibilities of devolved institutions. Devolution is now integral to the UK's constitutional arrangements. At a time of national crisis, when it has never been more important for central and devolved Governments to work together effectively, to risk destabilising those arrangements seems careless, to say the least.[32]

The Conservative peer Lord Forsyth was critical of the letter signed by the Archbishop of Canterbury and defended the Bill, which he said:

> protects, enhances and strengthens the union. More than half a million jobs in Scotland depend on the integrity of the internal market, and scores of powers are being returned from a supranational bureaucracy to our elected representatives. The very Act of Union itself was about creating a barrier-free internal market and it has brought about more than 300 years of prosperity.[33]

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29 HL Deb 19 October 2020 c1360
30 HL Deb 19 October 2020 c1394
31 HL Deb 19 October 2020 c1289
32 HL Deb 19 October 2020 cc1335-36
33 HL Deb 19 October 2020 c1323

3.2 Report Stage

Concerns about the future of the Union were also expressed during the Bill's Report Stage on 25 November 2020.

Lord Rooker said there was "no question" the Internal Market Bill would "push the independence movements of Wales and Scotland wider and further, particularly in Scotland, where it is stronger […] I think that we are heading headlong towards the break-up of the union". He also felt the Lords needed to "send a signal" to the House of Commons that "our country, our constitution and the make-up of the union are under direct threat as a result of the Bill."[34]

Lord Cormack also believed "that the union is in peril."[35] Responding for the Government, Lord True said "a secure, stable and functioning market is part of the bedrock of our union":

> It is a unionist principle that we should have a common functioning market; I think that that is assented to by almost all of those who have spoken in our debates. Of course, I repeat my personal commitment and this Government's commitment to the union. My party has always been a unionist party, and we remain as such.[36]

3.3 Lords amendments

Concern for the future of the Union informed all the Lords amendments relating to devolution. These strengthened the degree of consultation necessary between the UK Government and the devolved administrations (see **Section 4**), as well as devolved representation on the Competition & Markets Authority board (see **Section 5**). Speaking to the latter, Lord Thomas said the amendment was designed:

> to strengthen the union and ensure that each nation is accorded proper respect, equality of treatment and a person on this important body who understands the problems in each nation and can bring that expertise to bear for the good of the United Kingdom as a whole.[37]

3.4 Common Frameworks

Lords Report Amendments 1, 19 and 34 all relate to the Common Frameworks programme. All three were opposed by the Government.

Principles governing these voluntary frameworks were agreed between the UK Government and Scottish and Welsh Governments at the Joint Ministerial Committee (European Negotiations) in October 2017, and later by the Northern Ireland Executive. This stated that as the UK leaves the European Union:

> the Government of the United Kingdom and the devolved administrations agree to work together to establish common approaches in some areas that are currently governed by EU law,

34 HL Deb 25 November 2020 c290
35 HL Deb 25 November 2020 c335
36 HL Deb 25 November 2020 c342
37 HL Deb 23 November 2020 c103

> but that are otherwise within areas of competence of the devolved administrations or legislatures.

Common frameworks were to be established to "enable the functioning of the UK internal market, while acknowledging policy divergence." The October 2017 communique also stated that frameworks would "respect the devolution settlements and the democratic accountability of the devolved legislatures," and would therefore:

- be based on established conventions and practices, including that the competence of the devolved institutions will not normally be adjusted without their consent;
- maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as is afforded by current EU rules;
- lead to a significant increase in decision-making powers for the devolved administrations.

The Internal Market Bill does not refer to the Common Frameworks Programme, although the White Paper published in July 2020 argued that these could not "on their own […] guarantee the integrity of the entire Internal Market."

Both the Scottish and Welsh Governments have stated that the Common Frameworks programme renders Internal Market legislation unnecessary.[38]

Lords amendments

Amendment 1 would insert the following new Clause:

> "Common frameworks process
>
> (1) The United Kingdom market access principles shall not apply to any statutory provision or requirement that gives effect to a decision to diverge from harmonised rules that has been agreed through the common frameworks process.
>
> (2) No regulations may be made by a Minister of the Crown with regard to a matter that is under consideration under the common frameworks process while that process in relation to that matter is still in progress.
>
> (3) The "common frameworks process" is a means, established by the Joint Ministerial Committee on European Negotiations, by which a measure of regulatory consistency to enable a functioning internal market within the United Kingdom may be mutually agreed between the United Kingdom and devolved governments."

As the Explanatory Notes for the Lords Amendments make clear, this would amend the Bill so that "any agreement reached through the Common Frameworks process which permitted policy divergence would be excluded from the UK market access principles." The new clause would also prevent UK ministers from making new regulations on policy areas under discussion as part of the Common Frameworks process.[39]

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38 See the Welsh Government Legislative Consent Motion and the Scottish Government Legislative Consent Motion

39 Explanatory Notes on Lords Amendments, p2

Similarly, Amendment 19 Inserts the following new Clause:

> "Common frameworks process
>
> (1) The mutual recognition of authorisation requirements shall not apply to any regulatory requirement that gives effect to a decision to diverge from harmonised requirements that has been agreed through the common frameworks process.
>
> (2) No regulations may be made by a Minister of the Crown with regard to a matter that is under consideration under the common frameworks process while that process in relation to that matter is still in progress."

This requires that the mutual recognition principle in Clause 18 of the Bill "shall not apply to any regulatory requirement that gives effect to a decision to diverge from harmonised authorisation requirements, agreed to through the common frameworks process."[40] Regulations regarding matters still under discussion could also not be made.

Finally, Amendment 34 amends the Bill to give primacy to requirements about professional qualifications in each part of the UK agreed through the Common Frameworks process over the mutual recognition of professional qualifications under section 22(2) of the Bill.

Debates in the Lords

Speaking in support of Amendment 1 during the Bill's Report Stage, Lord Garnier said that "without the new clause […] the common framework system is redundant" and the Bill would "hasten the break-up of the union."[41]

Opposing the Amendment, Lord True said:

> Those of us who care for the union and support devolution should be cautious in echoing the separatist claim that this or that action is being done to undermine devolution when it is not. The debate about effect and perceived effect is legitimate. The claim of bad intent that we have had from some is risky, if not perilous.[42]

Speaking to his own Amendment, Lord Hope said it was difficult:

> to avoid the conclusion that this Government regard devolution as an inconvenience that can simply be ignored when they want to. I regret that very much indeed. I am a unionist and I believe in the union and all that it stands for, and all the values that I hope it will continue to give us in future. But I am afraid we see here an uncompromising, careless and centralist style of government, which divides our United Kingdom into pieces at a time when harmony is most needed. That has no place in our democracy.[43]

Government position

At the Bill's Second Reading in the House of Lords on 20 October 2020, Lord True stated that the Common Frameworks did not "replace the need for this Bill."

> [T]hey are a mechanism for collaborative policy-making in areas of returning EU law which intersect with devolved competence. They

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40 Explanatory Notes on Lords Amendments, p6
41 HL Deb 18 November 2020, cc1455-56
42 HL Deb 18 November 2020, c1464
43 HL Deb 18 November 2020, c1468

> are sector-specific and allow for a deeper level of regulatory coherence, but they do so in a specific set of policy areas. While they remain a crucial part of our regulatory landscape, common frameworks alone cannot guarantee the integrity of the entire internal market.
>
> The Bill ensures that areas without a common framework will still benefit from the regulatory underpinning and, crucially, market coherence will be provided for issues that fall around, or between, individual sector-focused frameworks. The Bill complements common frameworks by providing a broad safety net and additional protections to maintain the status quo of seamless intra-UK trade across all sectors of the economy.[44]

Chloe Smith, Minister of State for the Constitution and Devolution, gave evidence to the House of Lords Common Frameworks Scrutiny Committee on 1 December 2020. Lord Hope told her his Amendments were an attempt to solve the "problem" of reconciling on the one hand "the hard-edged system that you would create in the Bill, and on the other a voluntary system that can accommodate differences" (the Common Frameworks programme).

The Minister replied that the two systems could "coexist": "We see these things as being complementary," she said, "and we see that they will continue to exist together."

Lord Hope also asked if Ms Smith was saying that policy divergence would no longer be permitted. She replied:

> Not in the least. Lord True has been very clear on this point throughout the Lords stages, as we will be in the Commons next week. The two things will be able to continue, and so they should. I have already given a clear justification for why we think the market access principles should apply but, to be clear, we also continue to support policy divergence, because those are the contours of the devolution settlements, which we respect, and there should be no argument about that.

On day three of the Bill's Committee Stage in the Lords, Lord Dunlop said he hoped the Government would:

> think long and hard before overturning in the Commons, on the back of Conservative votes alone, any sensible changes to bring about a better reconciliation within the Bill of the twin aims of UK free trade and respect for devolution. After all, just because you can do something does not mean you should.[45]

And at the Bill's Third Reading in the Lords on 2 December, Lord Garnier urged "the other place to rest content with the Bill as we return it to them. It is in better shape now than it was and it will do less damage to the union and our country's international reputation."[46]

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44 HL Deb 20 October 2020, c1427
45 HL Deb 2 November 2020, c585
46 HL Deb 2 December 2020, c766

4. Market access principles

4.1 Summary of Parts 1, 2 and 3

The Bill sets out two principles that would govern access to the UK market for **goods and services**. The aim of the principles is to allow people and businesses to trade across the UK without having to face different barriers in its different nations.

The first principle would mean that if a good or service can be legally sold in one part of the UK (as it meets the relevant regulations) then it can be sold in any part of the UK. This is the **principle of mutual recognition.**

The second principle would prevent parts of the UK treating goods or service providers from other parts of the UK less favourably than local goods. This is the **principle of non-discrimination.**

The Bill would provide some exclusions to these principles. For instance, existing regulations would not be covered by the Bill retrospectively, unless, they were substantively changed. Also, the mutual recognition principle will not apply to regulations affecting the manner of sale of goods, such as minimum pricing of alcohol. A range of services including healthcare and legal services would also be excluded from market access provisions under this Bill.

As introduced, the Bill would give the Secretary of State the power to modify lists of requirements, legitimate aims, exclusions or exemptions from the market access principles by way of delegated legislation (regulations). This made those powers Henry VIII powers, as those lists would themselves be contained in the *UK Internal Market Act*.[47]

The Bill would also introduce a unified system for the **recognition of professional qualifications** across the UK for professions that are regulated by law, such as architects or accountants. Professionals regulated in one part of the UK would be able to seek recognition of their qualifications in another, allowing them to provide services without the need to requalify.

The principle of equal treatment would be introduced to protect practitioners qualified in one part of the UK from less favourable treatment than locally qualified providers.

In mid-November, the Government published policy statements explaining the intention behind the Bill, including the UK market access principles.

Clause 11 applies the market access principles of mutual recognition and non-discrimination to qualifying Northern Ireland goods so they can be freely placed on the market in Great Britain (see Box 1 above).

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47 'Henry VIII clauses' are clauses in a bill that enable ministers to amend or repeal provisions in an Act of Parliament using secondary legislation, which is subject to varying degrees of parliamentary scrutiny. The Lords Delegated Powers and Regulatory Reform Committee pays particular attention to any proposal in a bill to use a Henry VIII clause because of the way it shifts power to the executive.

4.2 Significant changes in the Commons

The Government moved amendments to Clause 3 on Report in the House of Commons to make it clear that the "manner of sale requirements" relating to the way goods are sold (such as where, when, by whom or under which conditions) would be outside of the mutual recognition principle. Speaking to the amendments, Paul Scully said that they would put "beyond any possible doubt" that alcohol minimum unit pricing-type regulations were not in scope of the mutual recognition principle, unless they were to amount in practice to a complete ban on a good being sold.[48] Concerns had been raised that the mutual recognition principles in the Bill would mean that alcohol imported from elsewhere in the UK wouldn't have to meet Scotland's requirements on minimum unit pricing for alcohol. [49,50]

Clause 12 was added to the Bill at Commons Committee stage. The new clause would require the Secretary of State to issue and publish guidance in relation to the UK market access principles set out in Part 1 of the bill. The Government clarifies that the guidance "[…] will explain how the internal market principles operate within the current regimes and how they apply to the product in scope". The Government says the guidance will support traders and regulators "to understand, comply with and benefit from the principles and provisions in this Bill."[51]

The Government moved amendments to Schedule 1, which sets out cases that are exempt from the market access principles of mutual recognition and non-discrimination. One amendment concerned measures that aim to prevent the movement of a pest or disease to another part of the UK. The Government's amendment means that in assessing whether a measure aimed at preventing the spread of pests or diseases can reasonably be justified as necessary, account would be taken of whether similar threats are addressed with similar severity.[52] Schedule 1 was also amended so that certain measures in relation to fertilisers and pesticides were removed from the operation of the mutual recognition principle for goods.[53]

4.3 Lords amendments to Parts 1, 2 and 3

Debating consumer and environmental protection

During the first three days of the Committee stage the Lords debated clauses pertaining to the functioning of the UK internal market.[54] Peers debated how the Bill deals with consumer and environmental protection and the balance of devolved powers. Several probing amendments were put forward including Baroness Hayter's of Kentish town amendment (1), which would have written into Part 1 of the Bill that its purpose is "to protect and promote the interest of consumers and safeguard the

48 HC Deb 29 September 2020, c189
49 HC Deb 22 September 2020, c866
50 Scottish Government. Alcohol and drugs [accessed on 16 November 2020]
51 HC Deb 22 September 2020, c895
52 HC Deb 22 September 2020, c899
53 HC Deb 22 September 2020, cc 899-900
54 HL Deb 26 October 2020, HL Deb 28 October 2020, and HL Deb 2 November 2020

environment."[55] Lord Callanan, Parliamentary Under-Secretary of State for the Department for Business, Energy and Industrial Strategy said later at the Report stage that the Government had considered the points raised in the Committee and its amendments to Part 4 clarified the consumer focus of the OIM (see section 5.3 below).

Whereas the Government reiterated its commitment to high environmental standards, the opposition argued that with the mutual recognition principle becoming the default position, devolved nations' flexibility to implement higher standards for, for example, single use plastics, would be taken away. Various peers spoke in favour of retaining such flexibility through the Bill. Opposition amendment 10 was passed at Report stage, meaning that market access principles won't apply in cases where the requirement pursues a "legitimate aim" including environmental standards and protection (see below).

An amendment in the name of Lord Stevenson aimed to retain public procurement as a devolved matter exempt from market access principles. Lord Callanan on behalf of the Government clarified that procurement rules are not within the scope of the Bill. He said:

> We believe that the risk of divergence can be effectively managed through a combination of close devolved Administration engagement and use of the common frameworks, and we are working to develop a concordat on expected public procurement practices and policies between the four UK nations.

Most amendments to the Bill were made during the Report stage. Below are the key amendments grouped by theme.

Market access principles not to apply to matters covered by common frameworks

On the first day of the Report stage, a majority of Lords supported amendment 1 of Lord Hope, putting the common frameworks process at the centre of the UK internal market. See section 3.4 above. Consequential amendments 19 and 34 (doing the same for services and professional qualifications) were agreed. The Government opposed these amendments. Baroness Finlay of Llandaff (CB) said that these changes make the market access principles "the fall-back, not the default."[56]

Removal of key delegated powers

The second significant group of amendments concern the delegated powers of Ministers to make regulations regarding market access principles. These allow regulations to modify (what would become) the Internal Market Act, making them "Henry VIII powers." For a detailed overview of these powers in the Bill see section 6.8 of the Commons Library Briefing 9025 The United Kingdom Internal Market Bill 2019-21.

Baroness Hayter (Labour frontbench) explained in The Times on 17 November:

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55 Amendments submitted by backbenchers that are unlikely to be made, but can be used to initiate a debate on an issue and establishing the Government's intentions.

56 HL Deb, 18 November 2020, c1435

> The Lords delegated powers committee has highlighted the bill's excessive use of Henry VIII powers (whereby ministers can take important policy decisions with little challenge) as "extraordinary" and "unprecedented".
>
> Some welcome amendments have been forthcoming from the government, including agreeing to involve the devolved administrations in appointments to the new Office for the Internal Market and to remove the worst of the delegated powers. But we still need to hard wire the role of all four nations into the creation of regulations and their representation on the Competition and Markets Authority board.[57]

Several amendments tabled by Baroness Andrews (Labour) at the Report stage remove powers that would have allowed ministers to, by regulation, amend the scope of market access principles for goods and services and exceptions to these principles. Primary legislation will instead be required whenever the scope of application of these principles is to be changed. The amendments, which were agreed, are in the table below.

Report stage amendments removing ministers' delegated powers

Clause	Delegated power to do what?	Amendment removing the power
3	Amend requirements within scope of the mutual recognition principle for goods	4
6	Amend requirements within scope of the non-discrimination principle for goods	8
8	Amend legitimate aims for which indirect discrimination in relation to goods is justified	9
17	Amend Schedule 2 which contains exceptions from the rules about market access for services	17
20	Amend legitimate aims for which indirect discrimination in relation to services is justified	30

The Government supported amendment 4 to clause 3 but disagreed with the other amendments as they would limit its ability to react quickly to changing economic circumstances. Lord Callanan, said:

> … removing these powers would make it impossible for the Government to respond to business and wider stakeholder feedback and act rapidly to adjust the list of exclusions if implementation shows the need for a review or if further areas are identified that need amending due to the shifting economic landscape.[58]

It is not yet clear whether the Government will seek to reinstate these delegated powers when the Bill returns to the Commons.

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57 Baroness Hayter, Government's Brexit plans threaten to brush aside the devolved administrations, *The Times*, 17 November 2020

58 HL Deb 18 November 2020, c1482

Increased devolved oversight

Further amendments were made to require the Secretary of State – to differing extents – to consult the devolved administrations before amending the scope of market access principles using delegated powers. The delegated powers have been removed by amendments described above (tabled by Baroness Andrews) but the amendments requiring consultation of the devolved administrations remain in the Bill. This presumably anticipates the reinstatement of some of the delegated powers by the Commons at Ping Pong.

Amendments moved by the Government and adopted by the House of Lords require the Secretary of State to consult the devolved administrations before amending regulations.

Amendments tabled by Baroness Hayter were also adopted by the House of Lords, but went further. The amendments oblige the Secretary of State to seek the consent of the devolved administrations before amending regulations. The power can only be exercised without consent after a waiting period of one month, provided that a statement justifying the action is published.

In most cases, the amendments from the Government and Baroness Hayter relate to the same delegated powers. This includes, for example, the power to amend, by regulation, the "legitimate aims" for which indirect discrimination is justified.

Lord Callanan said in support of the government amendments:

> We are therefore introducing these amendments to put beyond doubt our commitment to consult each of the devolved Administrations if any of the relevant powers are used. The consultation requirements and the commitment behind them are clear. However, once consultation is undertaken, the right place for final decisions should be back in Parliament, where parliamentarians from all parts of the United Kingdom can debate and vote on the proposed use of these powers.[59]

Earlier, at a Committee stage debate of 28 October Baroness Hayter explained the reasoning behind amendments seeking devolved consent:

> But the principle, surely, is that the Government cannot simply start down the track of making regulations without first consulting. There was an issue about what consultation is—it is consultation before you even start the process. Handing over a finished draft instrument is not what I call consultation; you start at the beginning of the process. So they should not start down the track of making regulations without first consulting and then seeking to reach consensus with the devolved authorities. In a Bill about making a four-country internal market work, I would have thought that that was obvious—but history shows we need to nail it down.[60]

On the first amendment of Baroness Hayter, amendment 11, the Government was defeated by 319 votes to 242.[61] Peers agreed to the remaining amendments of this group.

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59 HL Deb 23 November 2020, c34
60 HL Deb 28 October 2020, c302
61 HL Deb 23 November 2020, cc55-57

The table below explains which delegated powers the amendments affect.

Delegated powers requiring consultation with devolved administrations after Lords amendments

Delegated power	Agreed amendment tabled by Lord Callanan	Agreed amendment tabled by Baroness Hayter
to amend "legitimate aims" for which indirect discrimination in relation to goods is justified	Amendment 10 to Clause 8	Amendment 11 to Clause 8
to amend exceptions from the rules about market access for services (in Schedule 2)	Amendment 18 to Clause 17	
to amend "legitimate aims" for which indirect discrimination in relation to services is justified	Amendment 31 to Clause 20	Amendment 32 to Clause 20

In a similar vein, Baroness Hayter's amendment 15 to Clause 12 means that the Secretary of State must seek the consent of the devolved administrations before issuing, revising or withdrawing internal market guidance. However, the Secretary of State can publish guidance without consent after one month, provided that a statement justifying the action is published.

Review of amendment powers

Government amendment 16 introduces a new Clause. It requires the Secretary of State to carry out a review of, and report to Parliament about, the use of amendment powers related to UK market access for goods (Part 1). Specifically, the new Clause refers to delegated powers given in the Bill to Secretary of States to, to amend, by regulation:[62]

- the types of measures within scope of the non-discrimination principle;
- the "legitimate aims" for which indirect discrimination is justified;
- the cases excepted from the rules about market access for goods.

Theses delegated powers were removed by amendments tabled by Baroness Andrews. The amendments are discussed above, in sub-section 'Removal of key delegated powers.'

Government amendment 33 introduced a similar new clause to review its amendment powers with regard to market access for services (Part 2) and report to Parliament. This would cover its powers to amend the legitimate aims and exclusions, powers removed by Baroness Andrew's

[62] Clause 6(5); Clause 8(7); Clause 10(2)

amendments. Lord Callanan wrote to the House of Lords Delegated Powers and Regulatory Reform Committee saying:

> 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.[63]

Derogations from the market access principles

In the Report stage peers debated the scope of derogations from market access principles and legitimate aims that could justify such derogations. Baroness McIntosh of Pickering (Conservative) described the Government's exclusions from market access principles proposed in the Bill as "very tightly and prescriptively drawn."[64] In response, Lord Callanan explained that in the Government's view "the internal market framework [was] best served by a set of clear principles which [were] not caveated by the more expansive legitimate aims and exclusions that these amendments introduce."[65]

An opposition amendment extending the scope of legitimate aims was passed. Amendment 12, tabled by Lord Stevenson of Balmacara (Labour frontbench), inserts a new clause 10 which says that market access principles won't apply in cases where the requirement pursues a legitimate aim.

The amendment removes a previous Clause 10, which gave effect to Schedule 1. Schedule 1 – which has also been removed – sets out cases excluded from market access principles, such as taxation or for reasons of public health.

Under the new clause 10 a legitimate aim includes: environmental standards and protection; animal welfare; consumer standards, including digital and artificial intelligence privacy rights; employment rights and protections; health and life of humans, animals or plants; cultural expression; regional socio-cultural characteristics, or equality entitlements, rights and protections. The specific requirement must be proportionate in pursuing the legitimate aim and cannot be a disguised restriction on trade.

Exempted professional qualifications

In recognition of the "historic differences" between legal systems in different parts of the UK, the Bill exempts legal professions from the automatic recognition of qualifications under Clause 22(2) .[66] In the Committee, a government amendment passed which would add patent and trademark attorneys to the list of excluded legal professions.[67]

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63 HL Delegated Powers and Regulatory Reform Committee 29th Report of Session 2019–21, HL Paper 171, 16 November 2020, p3
64 HL Deb, 18 November 2020, c1517 and c1522
65 It's been reported that the amendment passed unexpectedly as the Government failed to oppose it.
66 Explanatory notes, para 36
67 HL Deb, 2 November 2020, c500

Government amendment 36 adds school teaching to the professions the regulation of which is excluded has been agreed.

Other government amendments were made during Lords stages to improve drafting and clarity of provisions of the Bill. See further Explanatory notes on Lords amendments of 2 December 2020.

5. Independent advice and monitoring (the CMA)

5.1 Summary of Part 4

The Government proposes to establish an independent Office for the Internal Market (OIM) within the Competition and Markets Authority (CMA). Part 4 of the Bill (clauses 28 to 41) would give new powers to the CMA to monitor, advise and report on the internal market, supported by enforceable investigatory powers.

The CMA is the UK's main competition and consumer authority. It is a non-Ministerial departmental body sponsored by the Department of Business Energy and Industrial Strategy (BEIS). The CMA's work is overseen by a Board whose members are appointed by the Secretary of State for BEIS.

The reports and advice of the OIM would be non-binding. The Government's policy statement on Part 4 the Bill (17 November 2020) stated that the reports and advice would "support the separate intergovernmental process between the four administrations":

> The OIM's non-binding reports and advice will support the separate intergovernmental process between the four administrations to resolve any potential disagreements on the impacts of regulation on the UK internal market and enable dialogue based on robust evidence. The intergovernmental arrangements underpinning this engagement are subject to the outcomes of the Review of Intergovernmental Relations expected by the end of 2020.[68]

5.2 Significant changes in the Commons

Two new clauses were added to Part 4 during the Commons Report stage: clauses 29 and 30, with corresponding Schedule 3.

Clause 29 would require the CMA to have regard to a new objective when carrying out its functions under Part 4:

> […] to support, through the application of economic and other technical expertise, the effective operation of the internal market in the United Kingdom (with particular reference to the purposes of Parts 1, 2 and 3.)

Clause 30 and Schedule 3 would make amendments to Schedule 4 of the *Business, Enterprise and Regulatory Reform Act 2013* (the legislation establishing the CMA) to allow for the constitution of an OIM panel, OIM panel Chair and OIM task groups. The Secretary of State would appoint members to the OIM panel. The OIM Panel Chair would also be appointed to the CMA Board.

Members of an OIM task group would be selected by the OIM panel Chair to conduct investigations. Schedule 3 provides that each OIM task group must consist of at least three members of the OIM panel. Clause

[68] BEIS, Purpose and role of the Office for the Internal Market, Updated 17 November 2020, accessed 3 December 2020

30 would allow the CMA to authorise an OIM task group to "do anything required or authorised to be done by the CMA" under Part 4 of the Bill.

5.3 Lords amendments to Part 4

Committee stage debate

The House of Lords discussed the Office for the Internal Market on the third and fourth day of Committee (2 and 4 November). The debate focused the role, independence and governance of the CMA and OIM, including:

- Whether the Office for the Internal Market should be established within the CMA or as an independent body.
- The importance of "confidence", "support" and "trust" from the devolved authorities regarding the independence and processes of the OIM.
- Whether the information gathering powers and penalties granted to the CMA were appropriate.

Several peers drew attention to the House of Lords Constitution Committee report on the Bill, which highlighted "significant gaps" regarding how disputes relating to the internal market would be resolved. The Committee concluded that the Government "should seek to make the Office for the Internal Market more clearly accountable to the different legislatures in the UK".[69]

No changes were made to Part 4 during the Committee stage. Several government amendments, and amendments moved by Opposition and cross-bench peers, followed on Report on the issues raised in Committee.

The Explanatory Notes to the Lords Amendments include a section on the financial effects of the Lords Amendment 50, stating that the Bill requires additional expenditure for the delivering of UK Internal Market functions by the CMA.[70]

Amendments on Report

The government amendments moved at Report sought to address concerns raised by the devolved administrations and in Committee regarding the role of devolved administrations in the governance and processes of the OIM. Lord Callanan stated that the changes "make it clear in the statute that the OIM will work in the interests of all parts of the United Kingdom and for all Administrations".[71]

CMA functions and procedures

Government Amendment 38 (to clause 29) would set out in more detail the considerations that the CMA must have regard to when exercising its functions under Part 4. These include a requirement to support the

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69 House of Lords, Select Committee on the Constitution, United Kingdom Internal Market Bill, HL 151 2019-21, 16 October 2020, para 36.
70 Explanatory Notes on Lords Amendments, paras 98-100.
71 HL Deb 23 November 2020.

operation of the internal market for consumer interests and interests of all parts of the United Kingdom. Additionally, the CMA must have regard to the "need to act even-handedly as respects the relevant national authorities". Lord Callanan stated that the amendment took "careful consideration the points raised in Committee and put beyond any doubt concerns around the consumer focus of the OIM" (see section 3.3 above).

The Government also moved several amendments regarding CMA procedures giving greater role and oversight to the devolved administrations. Government Amendment 39 (adding a new clause after Clause 37) would require the CMA to lay its annual plan, proposals for its annual plan and its performance report before the devolved legislatures as well as the UK Parliament. A similar amendment was brought in Committee by cross bench peer Lord Thomas.[72]

Government amendment 40 to Clause 39 would provide that the devolved administrations must be among the bodies consulted by the CMA in relation to its policy on enforcing information gathering notices. Government amendment 41 to Clause 40 would provide that the devolved administrations must be among those consulted by the Secretary of State when making regulations setting the maximum level of penalties for contraventions of information gathering notices.

Liberal Democrat peer Baroness Bowles raised other amendments regarding the investigatory powers and penalties of the CMA, which she described as a "disproportionate and unjustified" burden on small businesses. She argued that they were designed for the CMA's market enforcement powers which are fundamentally different from the OIM's role in overseeing the operation of the internal market (see the discussion below on the placement of the OIM). Lord Callanan stated that the penalty powers in Part 4 would not be commenced unless there is a "clear and credible need for them".

Appointments to the OIM panel

Government amendments 58 to 60 concern appointments to the OIM panel. Government Amendment 58 (to Schedule 3) would require the Secretary of State to consider the need for balance between members with "specific skills, knowledge and experience in the internal market as operating in different parts of the United Kingdom" when appointing members to the OIM Panel.

Amendment 59 to Schedule 3 would require the Secretary of State to seek the consent of the devolved Administrations to proposed appointments to the OIM panel, rather than just a requirement to consult as previously contained in the Bill. Amendment 60 would allow the Secretary of State to proceed with an appointment if one of more of the devolved administrations have not given their consent within one month.

Lord Callanan stated that the amendment built on a model proposal developed by the Welsh Government and tabled by Baroness Finlay

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72 HL Deb 2 November 2020 (Committee stage 3rd sitting, Amendment 125).

during Committee stage.[73] Lord Callanan stated the model strikes a "delicate balance" between ensuring that the OIM can operate independently while all Administrations have "meaningful input" into appointments, but "avoids the risk of a prolonged deadlock".

Liberal Democrat peer Baroness Bowles and Conservative peer Baroness Noakes considered that the Amendment did not go far enough, arguing that the provision to proceed without consent "still leaves all the cards in the Government's hand" and that an administration might withhold consent "for a very good and clear reason".[74]

Appointments to the CMA board

Several Opposition and Cross Bench peers, although welcoming the Government's amendments, felt that they did not go far enough to establish proper confidence from the devolved Administrations in the OIM's as part of the CMA.

Lord Thomas moved amendment 57 which would provide for each of the devolved Administrations to appoint a member to the CMA board. Lord Thomas argued that principles applied to the OIM panel regarding appointments should also be applied to the CMA board. Peers highlighted the "significant change" in role undertaken by the CMA by taking on OIM functions:[75] the CMA was established to carry out wholly reserved functions, whereas the OIM would be tasked with advising and reporting on "matters of the utmost sensitivity relating to devolved competence".[76] Lord Thomas stated that the OIM would be issuing reports and advice that may "go against one part or other" of the UK and therefore must command the confidence of all four nations.

The Government opposed the amendment arguing that appointments by the devolved Administrations to the CMA Board could lead to the politicisation of appointments and compromise independence if those appointees are seen as "representatives". Lord Callanan also stated that changing the wider CMA structures would give the devolved Administrations a "say on reserved matters".

Lord Thomas responded that the devolved Administration appointments would be "independent in the same way that the persons appointed by the Secretary of State would be independent". Baroness Finlay (CB) agreed saying that devolved administration appointments would "create inclusion and cohesiveness". Several peers highlighted that the issues raised here stem from the OIM being positioned as part of the CMA (see discussion below).[77]

Amendment 54 to allow each Administration to appoint a CMA Board member was agreed on division, 285 votes to 224.[78]

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73 HL Deb 23 November 2020; HL Deb 28 October 2020 (Committee Stage second sitting, Amendments 118 and 119).
74 Baroness Noakes (Con), HL Deb 25 November 2020.
75 Lord Fox (LD), HL Deb 23 November 2020.
76 Baroness Finlay (CB), HL Deb 23 November 2020.
77 For example, Baroness Bowles (LD), Baroness Noakes (Con) and Lord Wigley (PC).
78 HL Deb 23 November 2020, Division 2.

Amendment 61 follows and relates to the resignation of CMA board members appointed by the devolved Administration.

The Office for the Internal Market as an independent body

There was strong consensus that the OIM must act independently of the UK Government and the devolved legislatures. However, there were diverging views during the Committee stage debates on whether the OIM should be established as part of the CMA or as a separate body. Several peers argued that there had been a lack of consultation on the Government's approach. The Government stated that the decision to establish the OIM within the CMA was taken after considering a "range of potential delivery models".[79]

At Report Baroness Bowles moved Amendment 50 to add a new clause after Clause 49. The new clause would:

- require the Secretary of State to establish the OIM as an independent body within six months of the provision coming into force and within the existing budget. The Secretary of State would be required to consult and seek consent from the devolved Administrations on appointments to the OIM.
- include new powers for the OIM with respect to investigating and ruling on harmful subsidies (see section 7 below); and
- would require a review of the OIM's competence to be carried out between two to three years, beginning on the day the provision comes into force.

Baroness Bowles summarised three areas of "mismatch" between the functions of the OIM and its fit with the CMA:

1 the CMA is an expert in matters that are reserved, not devolved;

2 the CMA deals with "disturbances to the market caused by market participants", for example cartels or market concentration, which is "culturally very different from looking at the actions of Administrations as they affect markets in the context of devolution".

3 the CMA's position as a body sponsored by BEIS "does not make it neutrally positioned in how it is embedded or perceived, no matter what its objectives may be".

Baroness Noakes agreed that the CMA was not the appropriate place for the OIM (but she did not support the amendment due to the provisions on subsidies). In addition to highlighting the "radically different role" of the OIM, she also argued that putting two different activities into a single organisation risks "that organisation being a jack of all trades and a master of none". She argued that the new role could distract from the CMA's other core competition-based work at a time when the CMA was also taking on additional responsibilities post-Brexit.

The Amendment was opposed by the Government. Lord Callanan reiterated the Government's reasons for choosing to establish the OIM

[79] BEIS, UK Internal Market White paper, 16 July 2020.

within the CMA stating it had relevant economic expertise and well-established relationships with all the Administrations:

> The CMA has an outstanding international reputation as an independent regulator and is already equipped with highly relevant economic expertise, necessary to undertake its new functions in the context of the operation of the UK market. Moreover, the CMA has well-established relationships with all the Administrations, with offices in London, Edinburgh, Belfast and Cardiff. This UK-wide presence will help ensure that the OIM will work in the interests of all parts of the United Kingdom.

Lord Callanan highlighted that the Government had put in place "bespoke arrangements for the OIM" in recognition of its focus on devolved matters. In the Committee stage debate on the topic, Lord Callanan also noted the Government's policy not to set up new arm's length bodies unless other delivery options had been considered.[80]

Amendment 50 to establish the CMA as an independent body was agreed on division with 298 votes to 257.[81]

[80] HL Deb 2 November 2020.
[81] HL Deb 25 November 2020, division 3.

6. Financial assistance powers

6.1 Summary of Part 6

Part 6 of the Bill (clauses 48 and 49) was intended to give the Government the power to provide financial assistance to any part of the United Kingdom for a wide range of purposes, including economic development, infrastructure, cultural and sporting activities, and educational activities. This power was intended to be the legal basis for the UK Shared Prosperity Fund, which will replace EU structural funding in the UK.

These clauses received only minor technical amendments in the Commons, and were not amended in Committee in the Lords. However, on day 3 of Report stage in the Lords, both clauses were removed entirely by amendments moved by Lord Thomas of Cwmgiedd and Lord Purvis of Tweed (Lords amendments 48 and 49), as the new power for the UK Government to provide funding for devolved areas was seen as an attack on the devolution settlement. No further changes were made at Third Reading.

6.2 UK Shared Prosperity Fund

The UK Shared Prosperity Fund is intended to replace the funding that the UK currently receives from the EU structural funds, and which will end on 31 December 2020.[82] It was originally announced in the 2017 Conservative manifesto, but the first substantial information to be released on the Fund's operation was included in Box 3.1 of the 2020 Spending Review. This included the following details:

- The Fund "will operate UK-wide, using the new financial assistance powers in the UK Internal Market Bill";
- It is intended to do largely the same things that the EU structural funds currently do – that is, investment in businesses, cultural and community improvements, and skills;
- The Government will "ramp up funding, so that total domestic UK-wide funding will at least match current EU receipts". This does not match the wording in the March 2020 Budget, which said that the Fund would "at a minimum, match current levels of funding **to each nation** from EU structural funds" (emphasis added).[83]
- The phrase "UK-wide" appears five times, and there is no mention of the devolved administrations, which currently allocate EU structural funds in their respective nations.

Lord Thomas and Lord Purvis argued that this represented an attack on the devolution settlement:

> **Lord Purvis of Tweed**: If the Government have indeed announced their intention to override the devolution settlement and to use this Bill to deliver spending on devolved areas without

[82] More information is available in the Library's briefing paper on the Fund.
[83] HM Treasury, Budget 2020, 12 March 2020, section 2.19

> the agreement of the devolved Administrations, that will indeed confirm the fears that we outlined both at Second Reading and in Committee. I hope that the Minister will be able to say clearly that that is not the case, but I fear from the announcement that has been made today that it is.[84]

Lord Thomas also argued that the financial assistance powers in the Bill were unnecessary, because the Government is already able to spend money in devolved areas if it goes via the devolved administrations:

> **Lord Thomas of Cwmgiedd**: One immediately has to ask why this clause is needed. The Government have done city deals and have provided money, perfectly property, under our existing constitutional arrangements. Why do they need this power? If they were to provide the funds through the existing constitutional arrangements, this power would not be needed. The devolved Governments of Scotland, Wales and Northern Ireland would be involved and the spending programmes would go along the way they have always gone along, this fund being an additional fund provided from moneys no longer remitted to the European Union. Indeed, if it were to follow the lines of the city deals or its predecessors in the European Union, the Government would negotiate the other Governments, in the case of the devolved nations, or, in the case of England, the various regions and cities, what they felt the money should be spent on, consider it and make a decision. That is all perfectly feasible. So, yes, it is a very good idea to have a shared prosperity fund, and it needs no legislation.[85]

The Minister, Baroness Penn, disagreed with both of these arguments:

> **Baroness Penn**: The noble and learned Lord, Lord Thomas, asked why such a power should be included in this Bill. The ability of the UK Government to invest in and support businesses and communities in all parts of our union, as these clauses provide for, helps to achieve a stronger and fairer internal market.
>
> […]
>
> Let me be clear: this power is in addition to the devolved Administrations' existing powers. It will allow the UK Government to complement and strengthen the support given to citizens, businesses and communities in Scotland, Northern Ireland and Wales. It does not take away responsibilities from the devolved Administrations. Rather, the power will enable the UK Government to deliver investment more flexibly and dynamically and in collaboration with the devolved Administrations and other partners.[86]

However, amendments 48 and 49 to remove the two clauses were subsequently agreed.

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84 HL Deb 25 November 2020 c278
85 Ibid, c276
86 Ibid, c296

7. Harmful subsidies (state aid)

Clause 50

As introduced, the Bill would give the UK Parliament exclusive powers to legislate for a UK wide subsidy control regime once the EU state aid rules no longer apply at the end of the Transition period.[87] **Clause 50: Regulation of distortive or harmful subsidies** would do this by modifying Schedule 5 of the *Scotland Act 1998*, Schedule 2 of the *Northern Ireland Act 1998* and Schedule 7A of the *Government of Wales Act 2006*.

Clause 50 would define "distortive or harmful" subsidies and allow the UK Parliament to pass legislation that regulates the effects of such subsidies both in relation to international trade and the UK Internal market. However, EU state aid rules would continue to apply to trade relating to goods and wholesale electricity between Northern Ireland and the EU under Article 10 of the NIP of the Withdrawal Agreement.[88]

Background

There's a longstanding disagreement between the UK Government and devolved administrations on whether state aid/subsidies are a matter of a devolved or a reserved competence.[89]

In the negotiations on the UK-EU future relationship, subsidies/state aid have consistently remained one of the most contentious areas. To alleviate its fears of unregulated UK subsidies undercutting the single market, the EU has been asking the UK to commit to a robust state aid regime which would be enforced by an independent authority. The UK Government has insisted that the development of a domestic subsidy regime has to be seen separately from its potential commitments under a free trade agreement with the EU. Minister Paul Scully has said that the new UK subsidy regime might not necessarily require a domestic regulator. For further discussion see Commons Library Briefing 9025, UK subsidy policy: first steps, section 3.[90]

For both the domestic and international aspects of UK subsidy controls see Commons Library Briefing UK subsidy policy: first steps for further background on state aid/subsidy rules and the Government's thinking concerning the new regime.

Subsidy policy as a reserved matter

On Lords' Report stage, clause 50 which would make subsidy controls a reserved matter was removed from the Bill.

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87 The Government has laid draft regulations to disapply state aid provisions from retained EU law. The Commons formally approved the regulations on 4 November 2020. The Lords debated and approved the regulations on 2 December 2020. A Lords Library briefing explores the regulations and their interaction with this Bill in more detail.

88 EM, para 71

89 House of Lords Library Briefing United Kingdom Internal Market Bill HL Bill 135 of 2019-21, section 5.1

90 CBP 9025, UK subsidy policy: first steps.

Lord Thomas of Cwmgiedd, speaking to amendment 51, argued that the only purpose of the clause was "to alter the devolution scheme" under this Bill. He said that whereas there was general support for a single state aid subsidy control regime for the whole of the UK, a consultation on a properly thought-through regime was needed before passing legislation. Alternatively, an approach through a common framework on subsidy control could be used. He referred to the Welsh Government's explicit support for such a framework. Several peers agreed that the clause unnecessarily changed the current devolved competence regarding subsidies.

Lord Callanan replied that "the effect of the amendment would be to create unacceptable uncertainty regarding the extent to which subsidy control is a reserved or devolved competence." The Minister noted that the clause would not affect devolved spending powers, which should not be conflated with the regulation of these powers through a unified UK regime. He added that the reservation in clause 50 "will enable the UK to design a bespoke subsidy control regime that meets the needs of the UK economy." He also said that including subsidy control in the common frameworks programme would not be appropriate and that collaboration with devolved administrations in this area was ongoing.

The Amendment 51 to remove clause 50 was agreed on division with 319 votes to 230.

New powers of the IOM: harmful subsidies

At Report stage, Baroness Bowles of Berkhamsted proposed a new clause on "State aid and the Office for the Internal Market" which would establish the Office for the Internal Market as independent of the Competition and Markets Authority (CMA) (see section 5.3 above). Following public consultation about the United Kingdom's state aid provisions and with the consent of the devolved administrations, the Secretary of State would be able to designate the OIM as the competent body for state aid in the UK. The OIM would investigate harmful and distortive subsidies and could recommend the Secretary of State and devolved administrations further changes to rules governing subsidy controls.[91]

Lord Callanan argued for the Government that this amendment would prejudge the outcome of the forthcoming consultation regarding the UK subsidy regime. It would also create uncertainty over the extent to which subsidy control is a reserved or devolved competence. That would be contrary to the intent of clause 50 to make state aid a reserved matter.

The amendment was agreed on division with 289 votes to 257.

[91] Amendment 50, new clause after clause 49

8. Annex: Concordance table

UK Internal Market Bill 2019-21: Clause concordance table				
Bill 177 as Introduced	Bill 185	Bill HL 135 (as introduced) *(see correction)*	Bill HL 150	Bill HL155
Part 1: UK Market Access: Goods				
1	1	1	1	1
				2
2	2	2	2	3
3	3	3	3	4
4	4	4	4	5
5	5	5	5	6
6	6	6	6	7
7	7	7	7	8
8	8	8	8	9
9	9	9	9	10
10	10	10	10	Replaced by 11
11	11	11	11	12
	12	12	12	13
				14
12	13	13	13	15
13	14	14	14	16
14	15	15	15	17
Part 2: UK Market Access: Services				
15	16	16	16	18
16	17	17	17	19
17	18	18	18	20
				21
18	19	19	19	22
19	20	20	20	23
20	-	-	-	-
				24
21	21	21	21	25

UK Internal Market Bill 2019-21: Clause concordance table				
Bill 177 as Introduced	Bill 185	Bill HL 135 (as introduced) *(see correction)*	Bill HL 150	Bill HL155
Part 3: Professional Qualifications and Regulation	Part 3: UK Market Access: Professional Qualifications and Regulation			
22	22	22	22	26
23	23	23	23	27
24	24	24	24	28
25	25	25	25	29
26	26	26	26	30
27	27	27	27	31
Part 4: Independent Advice on and monitoring of UK Internal Market				
28	28	28	28	32
		29	29	33
		30	30	34
29	29	31	31	35
30	30	32	32	36
31	31	33	33	37
32	32	34	34	38
33	33	35	35	39
34	34	36	36	40
35	35	37	37	41
				42
36	36	38	38	43
37	37	39	39	44
38	38	40	40	45
39	39	41	41	46

UK Internal Market Bill 2019-21: Clause concordance table				
Bill 177 as Introduced	Bill 185	Bill HL 135 (as introduced) *(see correction)*	Bill HL 150	Bill HL 155
Part 5: Northern Ireland Protocol				
40	40	42	-	-
41	41	43	-	-
42	42	44	-	-
43	43	45	-	-
44	44	46	-	-
45	45	47	-	-
Part 6: Financial Assistance Powers			Part 5: Financial Assistance Powers	
46	46	48	42	-
47	47	49	43	-
				Part 5: State Aid and the Office for the Internal Market
				47
Part 7: Final Provisions			Part 6: Final Provisions	
48	48	50	44	-
49	49	51	45	48
50	50	52	46	49
51	51	53	47	50
52	52	54	48	51
53	53	55	49	52
54	54	56	50	53

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