

Statement by the Committee: United Kingdom Internal Market Bill

24 September 2020

Earlier this week, we took evidence from the Counsel General on the UK Government's United Kingdom Internal Market Bill. Given the time constraints imposed to scrutinise the Bill in the UK Parliament, we have decided to issue this statement to set out our initial views. We hope to provide a fuller analysis in due course as part of our report on the Welsh Government's Legislative Consent Memorandum, as well as covering the issues it raises in a forthcoming report on our Wales' Changing Constitution inquiry. This inquiry has been examining the constitutional implications for the Senedd of exiting the European Union (EU), as well as the application of the Sewel Convention.

In October 2017, the Joint Ministerial Committee (EU Negotiations) established a set of principles on common frameworks. The principles included, for example:

Establishing common frameworks where they are necessary in order to enable the functioning of the UK internal market, while acknowledging policy divergence and ensuring compliance with international obligations.

That Frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures, and will 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 Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks, agreed in April 2018, was the basis on which the Welsh Government recommended that consent be given to European Union (Withdrawal) Bill. The Senedd gave that consent.

We recognise and endorse the need for a UK internal market after leaving the EU. On that basis we support the approach being taken to establish common frameworks, which appeared to be progressing, albeit slowly, on the basis of a welcome UK-wide shared governance.

The introduction of the UK Government's Internal Market Bill breaches the principles agreed in October 2017 for establishing common frameworks to accommodate a UK internal market. Furthermore, it appears to have been developed in isolation from other governments, undermining not only the development of those common frameworks but also the trust and goodwill needed to ensure effective governance in the UK.

During our evidence session, the Counsel General highlighted the difficulties the Bill will create for the ability of the Senedd to legislate in devolved areas and for the Welsh Ministers to exercise its powers.

The mutual recognition principle for goods and services contained in the Bill would make it impossible for the Welsh Government to propose effective legislation to address specific policy issues in Wales, for example in the field of housing and public health - the very essence of devolution. In some cases, the use of available powers could be rendered redundant.

To give a hypothetical example: Senedd legislation prohibits the sale of genetically modified (GM) food in Wales, while there is no such prohibition in England. The principle of mutual recognition would mean that it would be lawful for producers in England to sell GM food in Wales, despite the Senedd prohibition. The Bill will embed within the constitution a limit on the effectiveness of Senedd legislation. As the UK Government says in its Explanatory Notes to the Bill "the Bill's provisions create a new limit on the effect of legislation made in exercise of devolved legislative or executive competence".

At its core, the Bill appears to be an attempt to recentralise control in Westminster. As currently drafted, and contrary to the UK Government's narrative, there are no provisions in the Bill which give new powers to the Senedd - in fact it does the opposite, by expressly including new areas (e.g. subsidy control) as being outside the Senedd's powers. The Bill also gives the UK Government power to

provide financial assistance in any part of the UK, to further UK Government priorities, rather than devolved priorities.

The Bill has the potential, if unamended, to create unnecessary division, undermining inter-governmental relations as we exit the EU and in the middle of a global pandemic. The focus should be on mutual respect and co-operation, rather than the UK Government acting unilaterally to introduce a Bill that undermines the practical application of devolution settlements that have been built on the results of two referendums.

Moreover, the legislation appears rushed, poorly thought-through and heavy-handed, particularly against the backdrop of progress being made on common frameworks. These frameworks are a way of delivering the same overarching benefits without necessitating a Bill that erodes trust and could have long-lasting unintended consequences. There was therefore no urgency for such a Bill and it would have been better to use the opportunities provided by discussions on frameworks to draft a Bill built on consensus and co-operation.

The Bill also adds another layer of complexity to the devolution settlement, frustrating the ability to determine easily whether it is practical to legislate. Further, the notable absence of clear governance and dispute resolution arrangements will inevitably lead to costly legal disputes and challenges, particularly for businesses.

As well as its impact on devolution, the Bill raises serious concerns about other fundamental constitutional issues. For example, the approach of the Bill towards the rule of law, international law and the role of the courts is troubling.

We would urge the UK Government to reconsider the terms of the Internal Market Bill.