

The Rt Hon. the Baroness Taylor of Bolton, Chair, Constitution Committee, House of Lords

The Rt Hon. the Lord Blencathra, Chair, Delegated Powers and Regulatory Reform Committee, House of Lords

The Earl of Kinnoull, Chair, European Union Committee, House of Lords

Baroness Andrews OBE, Chair, Common Frameworks Scrutiny Committee, House of Lords

Mr William Wragg MP, Chair, Public Administration and Constitutional Affairs Committee

The Rt Hon. Stephen Crabb MP, Chair, Welsh Affairs Committee, House of Commons

12 November 2020

Dear All

United Kingdom Internal Market Bill

We write to you as representatives of three Senedd Committees that have concerns about the potential impact of the United Kingdom Internal Market Bill on devolution, should the Bill proceed to the statute book without substantial amendment.

Much of the focus on the Bill to date (as introduced) has understandably been in relation to Part 5 on the Northern Ireland Protocol and its clauses that, if retained, could enable Ministers of the Crown to depart from the UK's international obligations in breach of international law. We share the concerns of many about these provisions. However, of equal concern to us is the Bill's impact on devolution. The Bill as drafted would have long term constitutional impacts that should be given very serious consideration before the Bill proceeds further.



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Parts 1-3 of the Bill on market access will place a new practical limit on the effect of devolved legislation. This was recognised by the UK Government in its original Explanatory Notes to the Bill, which said that the Bill will “create a new limit on the effect of legislation made in exercise of devolved legislative or executive competence”. We foresee that such limits would greatly impact the Senedd’s ability to make coherent and accessible laws that meet the needs and aspirations of Welsh citizens. Whilst much existing Welsh legislation falls outside the market access principles, any attempt to update, refine or otherwise amend such legislation risks losing this protection by virtue of it being a substantive change, a term that is not defined in the Bill. If new Welsh legislation is subsequently introduced in relation to goods, services, or professional qualifications, it would be disappplied and be of no effect to the extent that it is captured by the Bill. This would severely limit the effect, reach and enforceability of the new Welsh legislation. Perversely, this is a disincentive to policy innovation and it also undermines the principle of devolution.

The UK Government has outlined its view that the Bill is needed to prevent divergence in the UK at the end of the EU transition period. Exemptions to the market access principles in Parts 1-3 of the Bill which would allow devolved legislatures to develop legislation appropriate for the specific needs of their countries are narrower in scope than those currently available under the rules that have governed the operations of the EU single market. For example, exemptions related to environmental or cultural protection are absent. We remain unconvinced by the rationale set out to date by the UK Government for this change and the inclusion of a very limited set of exemptions in the Bill. In addition, the UK Government has not yet set out its rationale for believing that the devolved governments and legislatures will automatically seek to diverge from each other on 1 January 2021 given their ongoing commitment to the common frameworks programme.

The Bill’s consequences for devolution extend beyond the market access principles in Parts 1-3. Part 7 makes the entire Bill a protected enactment, preventing it from being amended by the devolved legislatures and entrenching it as a permanent part of the constitutional settlement. It also expressly reserves subsidy control to the UK Parliament, reducing the Senedd’s existing legislative competence. We have seen no convincing justification for this reservation.

As regards Part 6, it is of great concern that the Bill gives the UK Government new powers to fund activity in policy areas devolved to Wales. We can see no logical link between the



requirements for such powers and the operation of a UK internal market. Furthermore, the implications of these powers on the Welsh block grant remain unclear.

We recognise that many Members of Parliament have raised these concerns in debates, including in relation to amendments tabled following the [Counsel General's letter to the Lord Speaker](#) of 15 October 2020. We are grateful to those Members for raising the profile of these important constitutional matters.

However, we wish to highlight a further concern, which is that any resolution of the matters of dispute in Part 5 of the Bill could overshadow the matters of equal concern as they apply to devolved nations, such that their resolution is considered unworthy of pursuit or unnecessary.

The UK Government has asked the Senedd for its consent to the Bill in accordance with the Sewel convention. You will be aware that, as things stand, the Welsh Government has stated that it is not in a position to recommend to the Senedd that consent be given. The Sewel convention has assumed a more prominent role recently and particularly since the refusal of consent by all devolved legislatures to the European Union (Withdrawal Agreement) Bill was disregarded. With regards to the latter, the UK Government's reasoning was that the circumstances were deemed "not normal" and that it was necessary to proceed to Royal Assent, notwithstanding the lack of devolved consent, in order to ensure that all parts of the UK had the powers required to meet its obligations in the Withdrawal Agreement.

In our view these arguments cannot be deployed in respect of the United Kingdom Internal Market Bill. We do not consider that the Bill is required for a functioning statute book post-withdrawal from the EU. We also believe that a UK-wide internal market can be regulated through common frameworks and existing powers, a position supported by the Joint Ministerial Committee (EU Negotiations) Communiqué of 16 October 2017.

We hope therefore that in your ongoing scrutiny of the Bill, you will continue to press the UK Government to address the significant deficiencies as they relate to devolution.

The Scottish Parliament and Northern Ireland Assembly have passed motions indicating their opposition to the Bill. Should the Senedd take the same decision, we consider that



the constitutional implications of the Bill passing without the consent of the devolved legislatures in Wales, Scotland and Northern Ireland could be profoundly damaging to the UK as a whole.

Yours sincerely




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and Constitution Committee



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Chair, Finance Committee



David Rees MS

Chair, External Affairs and Additional Legislation Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.

