
**STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The UK Internal Market Bill**
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Transition**

Last Wednesday, the UK Government published its Internal Market Bill – only eight weeks after a White Paper purportedly consulting on the proposals contained within it saw the light of day. The UK Government is not publishing the responses to the consultation and its ‘analysis’ of them is flimsy to say the least. But we know it is not just the devolved governments which questioned the need for the legislation and the assumptions within the White Paper, with organisations such as NFU Cymru and the Education Workforce Council being amongst Welsh respondents who were critical.

A government sure of its footing in respect of such a far-reaching and contentious piece of legislation would surely publish the responses it has received.

There will be an opposition debate on the Internal Market Bill tomorrow, so today I will set out the factual basis for our serious concerns. At the outset, I want to make clear that we have no issue with the objective of ensuring the UK Internal Market can work smoothly after the end of EU Transition. On the contrary, we were among the first to point out that after we had left the EU we would need to develop a new form of joint governance to manage the intersection between devolved competence and the internal market.

For three years we have worked tirelessly on Common Frameworks in all the areas where the UK Government has identified that there is a risk of unnecessary barriers to the internal market being erected.

This work is now coming to fruition and there have been no examples of irretrievable breakdown or one Government blocking progress in any of the 28 Frameworks in which Wales is involved.

Yet, the Bill effectively undermines this work by providing the UK Government with a way of hollowing out the right of this Senedd to regulate within those areas of devolved competence as it sees fit.

Parts 1 and 2 of the Bill would enforce the principles of mutual recognition and non-discrimination in the case of almost all goods and services which originate or are legally imported to any part of the United Kingdom (defined in the case of non-discrimination as merely goods which 'pass through').

This would mean, for example, that while we could follow through our intention of banning nine types of single use plastics in Wales if they were produced in or imported into Wales, we could not prevent these same products which were produced in or imported into England or Scotland from being sold in Wales if they could be lawfully sold there. It also appears that it would be illegal to insist on them being labelled in a way which highlighted their damaging impact on the environment. While not specifically preventing the Senedd from exercising its powers, it renders them meaningless, in a context where the vast majority of goods for sale in Wales come or pass through other parts of the United Kingdom.

While this part of the Bill supposedly merely replaces the application of the same principles in EU law, the crude proposals in the Bill have none of the protections – of subsidiarity, proportionality and significant public policy exceptions – that apply in the approach it seeks to replicate. Crucially, it doesn't provide a floor of standards which divergence across the UK during the era of devolution has been built upon.

Part 3 seeks to impose the same approach on professional qualifications – though declaring my interest as a lawyer, I note that the legal profession is exempt. As a lawyer also, I can point out that this is a complex piece of drafting which will also bring joy to litigants up and down the land. We are not yet clear whether this would actually make it impossible to prevent teachers from other parts of the UK who lack the qualifications and experience required by our legislation from registering with the Education Workforce Council to teach in Wales, but it could tie that Council up in legal knots for years to come.

Part 4 of the Bill gives the Competition and Markets Authority a new role in providing the Office of the Internal Market. The functions proposed for this Office are ones which we broadly could endorse, but it is wholly inappropriate that a non-Ministerial Department of the UK Government, whose main function relates to matters which are wholly reserved, should be given this role without extensive reform of its governance arrangements.

Part 5 of the Bill relates to the Northern Ireland Protocol. It is somewhat odd – probably unprecedented – to find myself on the same side of any debate as Lords Howard and Lamont but that will tell you how broad is the range of voices which finds this part of the Bill utterly repugnant. Anyone who believes in the importance of the rule of law, and the importance of abiding to legal agreements you have freely

entered into – even if for the simple expedient of ensuring that other parties in future will be willing to make agreements with you – will be appalled that a Government could propose ministerial powers which so directly flout both domestic law and international agreements. The provisions in this part also exacerbate a potential threat to Welsh ports by incentivising freight from the island of Ireland to use ferry routes from Northern Ireland to Great Britain.

Part 6 of the Bill gives UK Ministers for the first time in the 21 years since devolution powers to fund activity in policy areas which are devolved to Wales – not just in economic development but in health, housing and education infrastructure, sport and culture. Let us be clear about one thing – a Government in Westminster that seeks both the power to spend in devolved areas, and the power to control the funding available, is a government that seeks to neuter devolution. And a Government which has so manifestly failed to invest in Wales in respect of the things they already have responsibility for – railways, broadband infrastructure, the tidal lagoon and large-scale energy – plainly intends to fund its own priorities by top-slicing the budget which this Senedd currently controls, leaving us with even less scope and flexibility to meet the needs of the Welsh people we are elected to serve.

Part 7 of the Bill explicitly changes the devolution settlement by adding state aid to the list of reserved matters. Llywydd, the preoccupation with state aid by this Conservative Government leads it to risk sacrificing a Free Trade Agreement with the EU and peace in Northern Ireland. But plainly the intention here is to shut us out from co-creation of a robust state aid regime for the whole of the UK and it is a significant threat to Welsh businesses.

And finally, Part 8 contains the proposal to make the whole of the Bill a protected enactment, not capable of amendment by this Senedd even when it impacts, as this surely does, on devolved matters – a power which should surely be used sparingly but which has been applied more times in the last three years than in the 18 previous ones.

The Welsh Government believes this is a badly thought through and highly damaging piece of legislation. We will work with politicians of all parties and of none in Parliament to ensure that – unless overhauled through amendment – this Bill does not get onto the Statute Book. We have proposed constructive alternative proposals, a wise Government in Westminster would look at them anew.

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