



Llywodraeth Cymru
Welsh Government

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE Welsh Government amendments to the United Kingdom Internal Market Bill

DATE 15 October 2020

BY Jeremy Miles MS, Counsel General and Minister for European Transition

I have today written to the Lord Speaker and to the leaders of the political groups in the House of Lords to urge their support for a set of amendments to the United Kingdom Internal Market Bill which, as currently drafted, represents a fundamental attack on devolution.

My letter to the Lord Speaker is at Annex 1. A brief introduction to the set of amendments is at Annex 2, and the Welsh Government's amendments are at Annex 3.

Jeremy Miles AS/MS

**Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition**



**Llywodraeth Cymru
Welsh Government**

Ein cyf/Our ref: MA/CG/3454/20

The Rt. Hon. The Lord Fowler
Lord Speaker
House of Lords
SW1A 2PW
lordspeaker@parliament.uk

15 October 2020

Dear Lord Speaker

UNITED KINGDOM INTERNAL MARKET BILL

The Welsh Government is deeply concerned about the UK Internal Market Bill which will receive its second reading next week.

The Bill represents an unprecedented attack on the devolution settlement in Wales, and, we believe, in Scotland and Northern Ireland. It would undermine the Senedd's right to regulate in devolved areas of competence; give wholly new powers to UK Ministers to spend public funds on devolved issues in Wales, without any undertaking to work with the devolved Government in doing so; and would explicitly amend the Government of Wales Act to enable the government to impose a new 'state aid' regime without our agreement.

It would undermine the hard work which has been underway for more than three years on the part of all four Governments to develop the Common Frameworks programme, which aims to simultaneously ensure the smooth functioning of the UK Internal Market while protecting the established constitutional rights of the devolved legislatures and governments.

We have therefore developed a set of model amendments which I have pleasure in enclosing with this letter. We would urge members of the House to support these in order to protect the rights of the devolved institutions.

Although the amendments have been developed so as to have equal validity across all three of the devolved nations, I should stress that these are proposals from the Welsh Government. The Scottish Government has indicated that it is broadly supportive of these amendments while remaining resolutely opposed to the Bill in principle on the basis that it weakens devolution and breaches international law.

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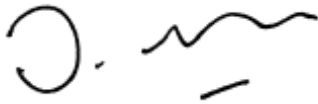
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

I am copying this letter to the Leader of the House of Lords, Baroness Evans of Bowes Park; the Shadow Leader of the House of Lords, Baroness Smith of Basildon, the Leader of the Liberal Democrats, Lord Newby and the Convenor of the Cross-Bench peers, Lord Judge; as well as to the First Minister and Deputy First Minister of Northern Ireland and Michael Russell, MSP, Cabinet Secretary for the Constitution, Europe and External Affairs in the Scottish Government.

Yours sincerely,

A handwritten signature in black ink, consisting of a large 'J' followed by a series of wavy lines and a short horizontal stroke at the end.

Jeremy Miles AS/MS

Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition

WELSH GOVERNMENT:

MODEL AMENDMENTS FOR THE UNITED KINGDOM INTERNAL MARKET BILL

The Welsh Government has prepared 'model amendments' which it would urge Peers to consider tabling to address its concerns with regard to the Bill, which as drafted would fundamentally undermine the devolution settlement.

In order to be valid and logical without further drafting, the amendments are presented so as to apply to Scotland and Northern Ireland as well as Wales.

Parts 1 – 3 and Schedules 1 and 2

In respect of Parts 1 – 3 of the Bill, the amendments aim to:

- Limit the application of Parts 1 to 3 to those subject areas, services or professions specified in regulations, which should only be made in circumstances where it has not been possible to reach agreement on a Common Framework for that specific subject area, service or profession *[amendment no. 1 to insert new Clause after Clause 1, amendment no. 13 to insert new Clause to replace Clause 17, amendment no. 16 to insert new Clause after Clause 23 and amendment no. 25 inserting a new Schedule before Schedule 1. There are also related amendments to Clause 3 (amendment 3), Clause 9 (amendment 7), Clause 16 (amendments 11 and 12) and Clause 25 (amendment 17)]*
- Widen the scope of the exceptions to the market access principles to a wider range of public policy considerations, in line with practice within the EU *[amendment no. 8 inserting new Clause to replace Clause 10, amendment no. 9 to Clause 11, amendment no. 14 to Clause 18, amendment no. 15 to Clause 20, amendments nos. 26 and 27 to Schedule 1]*
- Require the consent of the devolved administrations should the Government wish to use its delegated powers to add to the areas or scope in which the principles can be applied or amend the exceptions to them and to any guidance issued by the Government *[amendment no. 2 to Clause 3, amendment no. 4 to Clause 6, amendment no. 10 to Clause 12]*
- Limit the scope of the application of the non-discrimination principle *[amendment nos. 5 and 6 to Clause 8]*
- Require Ministers, when making legislation, to have regard to the need to ensure a high level of protection in respect of environmental protection, food standards etc. in the regulation of goods *[amendment no. 24 inserting new Clause after Clause 52.]*

Part 4 and Schedule 3

In respect of Part 4 and Schedule 3, the amendments are intended to:

- Reflect the fact that, unlike its other functions, the Office of the Internal Market (OIM) in the Competition and Markets Authority (CMA) will be dealing with matters within devolved competence. These amendments therefore strengthen the role of the devolved institutions in the CMA's overall governance and the appointment of the OIM Panel [*amendments no. 19 to Clause 39, amendment no. 20 to Clause 40 and amendment nos. 28 to 34 to Schedule 3*]
- Ensure that the OIM is equally accountable to all four legislatures and administrations [*amendment no. 35 to Schedule 3*]
- Add to the role of the OIM to reflect the fact that powers under Parts 1 – 3 can only be 'switched on' by Regulations [*amendment no. 18 to insert a new Clause after Clause 31*]

Part 6

In respect of Part 6, the amendments are intended to remove the wholly new powers which the Bill would give to UK Ministers to fund activities within devolved competence in Scotland, Wales and Northern Ireland [*amendment no. 21 to remove Clause 48*]

Part 7

In respect of Part 7 the amendments are intended to:

- Remove the provisions which would prevent devolved legislation from making provision about the regulation of State aid, thereby maintaining the status quo and ensuring that each part of the UK can play a part in determining the UK's future State aid regime [*amendment no. 22 to remove Clause 50*]
- Remove the provisions which would make the Bill a 'protected enactment' (which would mean devolved legislatures would be prohibited from making any change to it), as the Government has claimed it is an economic, not a constitutional Bill [*amendment no.23 to remove Clause 51*]

AMENDMENTS TO THE UNITED KINGDOM INTERNAL MARKET BILL

After Clause 1

BARONESS FINLAY OF LLANDAFF

1 Insert the following new Clause –

“Application of market access principles

Legislation to which market access principles apply

- (1) The United Kingdom market access principles apply to legislation only so far as it relates to a subject specified in regulations made by the Secretary of State.
- (2) Regulations under subsection (1) may specify a subject only if it is within a description listed in Schedule (*Subjects to which market access principles may be applied*).
- (3) The Secretary of State may by regulations amend Schedule (*Subjects to which market access principles may be applied*).
- (4) Regulations under this section are subject to affirmative resolution procedure.
- (5) Before laying a draft of a statutory instrument containing regulations under this section before either House of Parliament, the Secretary of State must give notice of the proposed regulations to –
 - (a) each devolved authority, and
 - (b) the Competition and Markets Authority.
- (6) The Secretary of State may not lay the draft instrument before either House of Parliament until –
 - (a) the Secretary of State has received –
 - (i) a statement in relation to the proposed regulations from each devolved authority, and
 - (ii) a report or advice on the proposed regulations from the Competition and Markets Authority, or
 - (b) the period of 12 months beginning with the day on which notice was given under subsection (5) has ended.
- (7) When a draft of a statutory instrument containing regulations under this section is laid before either House of Parliament, the Secretary of State must at the same time lay before that House copies of any statements, report or advice mentioned in subsection (6)(a).
- (8) In this section, “devolved authority” means –
 - (a) the Scottish Ministers;
 - (b) the Welsh Ministers;
 - (c) the Department for the Economy in Northern Ireland.”

Member's explanatory statement

This amendment means that the United Kingdom market access principles only apply to legislation relating to subjects specified in regulations made by the Secretary of State. It introduces a new Schedule (inserted by amendment 25) listing the subjects that may be specified, and sets out the procedure for making regulations.

Clause 3

BARONESS FINLAY OF LLANDAFF

- 2 Clause 3, page 3, line 30, leave out “consult” and insert “obtain the consent of”

Member's explanatory statement

This amendment requires the Secretary of State to obtain the consent of the devolved administrations before making regulations amending clause 3(3), which specifies the types of statutory requirement that are within the scope of the mutual recognition principle.

Clause 4

BARONESS FINLAY OF LLANDAFF

- 3 Clause 4, page 4, line 5, leave out “is the day before the day on which this section comes into force” and insert “in relation to a statutory requirement relating to a subject is the day before the day on which regulations under section (*Legislation to which market access principles apply*) specifying that subject come into force”

Member's explanatory statement

This amendment is related to the new clause inserted by amendment 1. It means that the mutual recognition principle does not apply to a statutory requirement that applied in one part of the United Kingdom before regulations came into force specifying the subject of the requirement as one to which the principle applies.

Clause 6

BARONESS FINLAY OF LLANDAFF

- 4 Clause 6, page 5, line 28, leave out “consult” and insert “obtain the consent of”

Member's explanatory statement

This amendment requires the Secretary of State to obtain the consent of the devolved administrations before making regulations amending clause 6(3), which specifies the types of statutory provision that are within the scope of the non-discrimination principle.

Clause 8

BARONESS FINLAY OF LLANDAFF

- 5 Clause 8, page 6, line 21, leave out paragraph (d)

Member's explanatory statement

This amendment is consequential on amendment 8, which replaces clause 10. It removes the provision that a relevant requirement is indirectly discriminatory if (among other things) it cannot reasonably be considered a necessary means of achieving a legitimate aim. The issue is addressed more generally in the new clause 10.

BARONESS FINLAY OF LLANDAFF

6 Clause 8, page 6, line 45, leave out subsections (6) to (9)

Member's explanatory statement

This amendment removes provisions about the meaning and application of clause 8(1)(d), as a consequence of amendment 5 removing clause 8(1)(d).

Clause 9

BARONESS FINLAY OF LLANDAFF

7 Clause 9, page 7, line 10, leave out subsection (1) and insert –

“(1) Statutory provision relating to a subject is not a relevant requirement for the purposes of the non-discrimination principle for goods if the same provision was in force in the part of the United Kingdom concerned on the day before the day on which regulations under section (*Legislation to which market access principles apply*) specifying that subject come into force.”

Member's explanatory statement

This amendment is related to the new clause inserted by amendment 1. It means that the non-discrimination principle does not apply to a statutory requirement that applied in part of the United Kingdom before regulations came into force specifying the subject of the requirement as one to which the market access principles apply.

Clause 10

BARONESS FINLAY OF LLANDAFF

8 Leave out Clause 10 and insert the following new Clause –

“Exclusions from market access principles: public policy etc.

- (1) The United Kingdom market access principles do not apply to (and sections 2(3) and 5(3) do not affect the operation of) any legislation so far as it satisfies the conditions set out in subsections (2) and (3).
- (2) The first condition is that the aim of the legislation is –
 - (a) the protection of the life or health of humans, animals or plants,
 - (b) the protection of public safety or security,

- (c) the protection of the environment,
 - (d) the protection of animal welfare,
 - (e) consumer protection,
 - (f) the improvement of working conditions, or
 - (g) a combination of any of those aims.
- (3) The second condition is that the legislation can reasonably be considered a proportionate means of achieving that aim or those aims.
- (4) The United Kingdom market access principles do not apply to (and sections 2(3) and 5(3) do not affect the operation of) any legislation so far as it imposes, or relates to the imposition of, any tax, rate, duty or similar charge.
- (5) A relevant requirement is not to be taken indirectly to discriminate against goods for the purposes of section 8 if –
- (a) it is statutory provision contained in, or in subordinate legislation made under, an Act of Parliament,
 - (b) the same, or substantially the same, statutory provision applies in the originating part,
 - (c) the statutory provision that applies in the originating part is also contained in, or in subordinate legislation made under, an Act of Parliament, and
 - (d) no substantive change to the statutory provision has come into force –
 - (i) in the destination part but not the originating part, or
 - (ii) in the originating part but not the destination part.
- (6) In subsection (5), “relevant requirement”, “statutory provision”, “originating part” and “destination part” have the meanings they have in relation to the non-discrimination principle for goods (see sections 5 and 6).
- (7) The Secretary of State may by regulations amend subsection (2).
- (8) Regulations under subsection (7) are subject to affirmative resolution procedure.
- (9) Before making regulations under subsection (7) the Secretary of State must obtain the consent of –
- (a) the Scottish Ministers;
 - (b) the Welsh Ministers;
 - (c) the Department for the Economy in Northern Ireland.”

Member’s explanatory statement

This amendment specifies exclusions from the United Kingdom market access principles, in place of the narrower exclusions in Schedule 1. In particular, it means the principles will not apply to legislation which can reasonably be considered a proportionate means of achieving any of the policy aims listed in subsection (2).

Clause 11

BARONESS FINLAY OF LLANDAFF

9 Clause 11, page 8, line 9, leave out subsections (6) and (7)

Member's explanatory statement

This amendment is consequential on amendment 8 replacing clause 10, which will mean that Schedule 1 no longer sets out exclusions from the United Kingdom market access principles. It removes provisions modifying one of the exclusions in Schedule 1.

Clause 12

BARONESS FINLAY OF LLANDAFF

10 Clause 12, page 8, line 31, at end insert—

“(4A) Before issuing, revising or withdrawing any guidance the Secretary of State must obtain the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.”

Member's explanatory statement

This amendment requires the Secretary of State to obtain the consent of the devolved administrations before issuing, revising or withdrawing guidance on the operation of the United Kingdom market access principles or of Part 1 of the Bill.

Clause 16

BARONESS FINLAY OF LLANDAFF

11 Clause 16, page 11, line 26, leave out paragraph (c) and insert—

“(c) a requirement that—

- (i) is in force, or otherwise has effect, in relation to a service on the relevant day, and has not been substantively changed after that day, or
- (ii) comes into force, or otherwise takes effect, in relation to a service after the relevant day, if it re-enacts or replicates (without substantive change) a legislative requirement in force or having effect in relation to the service immediately before the relevant day;”

Member's explanatory statement

This amendment is related to new clause 17 substituted by amendment 13, which means that Part 2 applies only to services specified in regulations. This amendment and amendment 12 mean that Part 2 does not generally apply to requirements that have effect before the regulations come into force.

BARONESS FINLAY OF LLANDAFF

12 Clause 16, page 12, line 3, leave out subsection (7) and insert –

“(7) For the purposes of subsections (5)(c) and (6) –

- (a) the “relevant day” is the day before the day on which section 18 first applies, or sections 19 and 20 first apply, in relation to a service by virtue of regulations under section (*Services: application of sections 18 to 20*);
- (b) an authorisation requirement corresponds to another authorisation requirement if it relates to the same, or substantially the same, services.”

Member’s explanatory statement

This amendment is related to the new clause 17 substituted by amendment 13, which means that Part 2 applies only to services specified in regulations. This amendment and amendment 11 mean that Part 2 does not generally apply to requirements that have effect before the regulations come into force.

Clause 17

BARONESS FINLAY OF LLANDAFF

13 Leave out clause 17 and insert the following new clause –

“Services: application of sections 18 to 20

- (1) Section 18 applies to a service only if it is specified in regulations made by the Secretary of State.
- (2) Regulations under subsection (1) may not specify a service listed in the table in Part 1 of Schedule 2.
- (3) Sections 19 and 20 apply to a service only if it is specified in regulations made by the Secretary of State.
- (4) Regulations under subsection (3) may not specify a service listed in the table in Part 2 of Schedule 2.
- (5) In Schedule 2 –
 - (a) Part 3 lists authorisation requirements to which section 18 does not apply;
 - (b) Part 4 lists regulatory requirements to which sections 19 and 20 do not apply.
- (6) The Secretary of State must keep Schedule 2 under review.
- (7) The Secretary of State may by regulations amend Schedule 2.
- (8) Regulations under subsections (1) and (3) are subject to affirmative resolution procedure.

- (9) Before laying a draft of a statutory instrument containing regulations under subsection (1) or (3) before either House of Parliament, the Secretary of State must give notice of the proposed regulations to—
 - (a) each devolved authority, and
 - (b) the Competition and Markets Authority.
- (10) The Secretary of State may not lay the draft instrument before either House of Parliament until—
 - (a) the Secretary of State has received—
 - (i) a statement in relation to the proposed regulations from each devolved authority, and
 - (ii) a report or advice on the proposed regulations from the Competition and Markets Authority, or
 - (b) the period of 12 months beginning with the day on which notice was given under subsection (9) has ended.
- (11) When a draft of a statutory instrument containing regulations under subsection (1) or (3) is laid before either House of Parliament, the Secretary of State must at the same time lay before that House copies of any statements, report or advice mentioned in subsection (10)(a).
- (12) Regulations under subsection (7) are subject to affirmative resolution procedure.
- (13) But, during the period of three months beginning with the day this section comes into force, the Secretary of State may make regulations under subsection (7) subject instead to made affirmative procedure.
- (14) Before making regulations under subsection (7) the Secretary of State must obtain the consent of each devolved authority.
- (15) In this section, “devolved authority” means—
 - (a) the Scottish Ministers;
 - (b) the Welsh Ministers;
 - (c) the Department for the Economy in Northern Ireland.”

Member's explanatory statement

This amendment means that the provisions in Part 2 limiting the effect of certain requirements apply only to services that are specified in regulations made by the Secretary of State. It provides that services listed in Schedule 2 may not be specified, and sets out the procedure for making regulations.

Clause 18

BARONESS FINLAY OF LLANDAFF

- 14 Clause 18, page 13, line 14, at end insert “or by any other overriding reason relating to the public interest”

Member's explanatory statement

This amendment broadens the purposes for which an authorisation requirement may be applied to a person authorised in another part of the United Kingdom, to include any overriding reason relating to the public interest (rather than only to respond to a public health emergency).

Clause 20

BARONESS FINLAY OF LLANDAFF

15 Clause 20, page 14, line 20, leave out subsections (6) to (8)

Member's explanatory statement

This amendment removes the list of "legitimate aims" in clause 20(6) and the power to amend that list. The intention is that the reference to a legitimate aim in clause 20(2)(d) should be read as meaning any legitimate aim, not only the three aims listed in subsection (6).

After Clause 23

BARONESS FINLAY OF LLANDAFF

16 Insert the following new Clause –

"Application of Part 3

- (1) This Part applies to a profession only if it is specified in regulations made by the Secretary of State.
- (2) Regulations under this section are subject to affirmative resolution procedure.
- (3) Before laying a draft of a statutory instrument containing regulations under this section before either House of Parliament, the Secretary of State must give notice of the proposed regulations to –
 - (a) each devolved authority, and
 - (b) the Competition and Markets Authority.
- (4) The Secretary of State may not lay the draft instrument before either House of Parliament until –
 - (a) the Secretary of State has received –
 - (i) a statement in relation to the proposed regulations from each devolved authority, and
 - (ii) a report or advice on the proposed regulations from the Competition and Markets Authority, or
 - (b) the period of 12 months beginning with the day on which notice was given under subsection (3) has ended.

- (5) When a draft of a statutory instrument containing regulations under this section is laid before either House of Parliament, the Secretary of State must at the same time lay before that House copies of any statements, report or advice mentioned in subsection (4)(a).
- (6) In this section, “devolved authority” means –
 - (a) the Scottish Ministers;
 - (b) the Welsh Ministers;
 - (c) the Department for the Economy in Northern Ireland.”

Member’s explanatory statement

This amendment means that Part 3 of the Bill (concerning mutual recognition of professional qualifications) will apply to a profession only if it is specified in regulations made by the Secretary of State. It also sets out the procedure for making regulations.

Clause 25

BARONESS FINLAY OF LLANDAFF

17 Clause 25, page 45, line 46, leave out subsections (2) and (3) and insert –

- “(2) In subsection (1) “existing provision” means –
 - (a) provision that is in force in relation to a profession on the date that regulations under section (*Application of Part 3*) are made in relation to that profession, or
 - (b) provision that comes into force in relation to a profession after that date so far as it is, in substance, a re-enactment or replication of provision within paragraph (a).
- (3) Subsection (1) does not apply (and section 22(2) accordingly does apply) in relation to a profession if, after the date on which regulations under section (*Application of Part 3*) are made in relation to that profession, provision comes into force in a part of the United Kingdom other than the relevant part that changes the circumstances in which individuals are qualified in relation to that profession.”

Member’s explanatory statement

This amendment is related to amendment 16. It means that Part 3 does not generally apply to legislation that is already in force in relation to a profession when regulations are made applying Part 3 to that profession (or that restates legislation that was in force at that time).

After Clause 31

BARONESS FINLAY OF LLANDAFF

18 Insert the following new Clause –

“Advice on proposal to make regulations applying Part 1, 2 or 3

- (1) Where the CMA is given notice of proposed regulations in accordance with section (*Application of market access principles*)(5), (*Services: application of sections 18 to 20*)(9) or (*Application of Part 3*)(3), the CMA must give advice, or make a report, to the Secretary of State with respect to the proposed regulations.
- (2) The advice or report must (among other things) consider the potential effects on the matters specified in subsection (3)—
 - (a) of any regulatory provision that any relevant national authority has proposed or might reasonably be expected to propose and that would be affected by the making of the proposed regulations, and
 - (b) of the application of Part 1, 2 or 3 of this Act by virtue of the proposed regulations.
- (3) The matters mentioned in subsection (2) are—
 - (a) the effective operation of the internal market in the United Kingdom, including—
 - (i) indirect or cumulative effects;
 - (ii) distortion of competition or trade;
 - (iii) impacts on prices, the quality of goods and services or choice for consumers;
 - (b) the following in each part of the United Kingdom—
 - (i) the health and safety of humans, animals and plants,
 - (ii) standards of environmental protection, and
 - (iii) any other aim that any regulatory provision mentioned in subsection (2)(a) would seek to promote.
- (4) Where the CMA gives advice, or makes a report, to the Secretary of State under this section—
 - (a) it must at the same time send a copy of the advice or report to the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland;
 - (b) it must publish the advice or report in such manner as it considers appropriate.”

Member's explanatory statement

This amendment requires the CMA to provide advice or a report to the Secretary of State when notified of proposed regulations applying Part 1, 2 or 3 of the Bill (under the clauses inserted or substituted by amendments 1, 13 and 16), and it specifies matters that the advice or report must consider.

Clause 39

BARONESS FINLAY OF LLANDAFF

- 19 Clause 39, page 31, line 6, leave out “such” and insert “each relevant national authority and such other”

Member’s explanatory statement

This amendment requires the CMA to consult the Secretary of State and the devolved administrations when preparing or revising its statement of policy in relation to the enforcement of notices under clause 38 requiring information or documents.

Clause 40

BARONESS FINLAY OF LLANDAFF

- 20 Clause 40, page 31, leave out lines 39 to 41 and insert –

“must –

- (a) consult the CMA and such other persons as the Secretary of State considers appropriate;
- (b) obtain the consent of each other relevant national authority.”

Member’s explanatory statement

This amendment requires the Secretary of State to obtain the consent of the devolved administrations before making regulations specifying maximum penalties that may be imposed by the CMA under clause 39.

Clause 48

BARONESS FINLAY OF LLANDAFF

- 21 *Baroness Finlay of Llandaff gives notice of her intention to oppose the Question that Clause 48 stand part of the Bill.*

Member’s explanatory statement

This notice is intended to remove the provision for a Minister of the Crown to provide financial assistance for economic development etc. anywhere in the United Kingdom.

Clause 50

BARONESS FINLAY OF LLANDAFF

- 22 *Baroness Finlay of Llandaff gives notice of her intention to oppose the Question that Clause 50 stand part of the Bill.*

Member’s explanatory statement

This notice is intended to remove provisions changing the legislative competence of the devolved legislatures to prevent devolved Acts making provision about the regulation of the provision of certain subsidies by public authorities.

Clause 51

BARONESS FINLAY OF LLANDAFF

23 *Baroness Finlay of Llandaff gives notice of her intention to oppose the Question that Clause 51 stand part of the Bill.*

Member's explanatory statement

This notice is intended to remove provisions changing the legislative competence of the devolved legislatures to prevent devolved Acts modifying the United Kingdom Internal Market Act 2020.

After Clause 52

BARONESS FINLAY OF LLANDAFF

24 Insert the following new Clause –

“52A Establishing and maintaining high levels of protection in the regulation of goods

- (1) The duty in subsection (2) applies where an appropriate authority exercises any function of making of subordinate legislation that establishes, alters or removes a relevant requirement.
- (2) The appropriate authority must have regard to the need to establish and maintain a high level of protection in respect of any regulatory aim that is relevant to the relevant requirement.
- (3) A person in charge of a Bill in an appropriate legislature that contains provision establishing, altering or removing a relevant requirement must make a statement, on or before introduction of the Bill, that –
 - (a) sets out the person's view as to whether the provisions will provide for a level of protection in respect of any regulatory aim relevant to the relevant requirement that is equivalent to, higher than or lower than the level of protection afforded by the law before it would be changed by the Bill, and
 - (b) sets out the person's reasons for holding that view.
- (4) The form of any statement under subsection (3), and the manner in which it is to be made, is to be determined under the standing orders of the appropriate legislature.
- (5) Before making subordinate legislation that establishes, alters or removes a relevant requirement, the appropriate authority must make a statement that –
 - (a) sets out the authority's view as to whether the legislation will provide for a level of protection in respect of any regulatory aim relevant to the relevant requirement that is equivalent to, higher than or lower than the level of protection afforded by the law before it would be changed by the legislation, and
 - (b) sets out the person's reasons for holding that view.

- (6) A statement made under subsection (5) must be in writing and be published at such a time before the subordinate legislation is made and in such manner as the authority making it considers appropriate.
- (7) But subsection (6) is subject to any requirements imposed by the standing orders of the appropriate legislature in the case of subordinate legislation that must be laid before the legislature.
- (8) In this section –
- “appropriate authority” means –
- (a) a Minister of the Crown;
 - (b) the Scottish Ministers;
 - (c) the Welsh Ministers;
 - (d) the First Minister and deputy First Minister in Northern Ireland acting jointly, a Northern Ireland Minister or a Northern Ireland department;
 - (e) any other person who exercises the function of making subordinate legislation;
- “appropriate legislature” means –
- (a) either House of Parliament;
 - (b) the Scottish Parliament;
 - (c) Senedd Cymru;
 - (d) the Northern Ireland Assembly;
- “regulatory aim” means –
- (a) the protection of the life or health of humans, animals or plants,
 - (b) the protection of public safety or security,
 - (c) the protection of the environment,
 - (d) the protection of animal welfare,
 - (e) consumer protection,
 - (f) the improvement of working conditions, or
 - (g) a combination of any of those aims;
- “relevant requirement” means –
- (a) a relevant requirement (within the meaning given by section 3) for the purposes of the mutual recognition principle for goods as it applies in relation to the sale of goods in a part of the United Kingdom, or
 - (b) a relevant requirement (within the meaning given by section 6) for the purposes of the non-discrimination principle for goods.”

Member's explanatory statement

This amendment means that Ministers and others involved in making legislation must have regard to the need to establish and maintain a high level of protection in respect of regulatory aims relevant to that legislation and to which the mutual recognition principle for goods or the non-discrimination principle apply.

Before Schedule 1

BARONESS FINLAY OF LLANDAFF

25 Insert the following new Schedule –

“SCHEDULE

SUBJECTS TO WHICH MARKET ACCESS PRINCIPLES MAY BE
APPLIED

- 1 Support for agriculture, including direct payments to farmers and rural development.
- 2 Support and management of fishing, fisheries and aquaculture, including access to fisheries, fishing quotas and marine conservation.
- 3 Zootechnical and genealogical conditions for trade in breeding animals used in agriculture and their germinal products.
- 4 Animal health and welfare.
- 5 Plant health.
- 6 Plant varieties and seeds.
- 7 Cultivation and marketing of genetically modified organisms.
- 8 Production, certification and labelling of organic products.
- 9 Food compositional standards and labelling.
- 10 Use of geographical names for foods and agricultural products.
- 11 Safety and hygiene of food and animal feed.
- 12 Regulation of fertilisers, including composition and labelling.
- 13 Manufacture, authorisation, sale and use of chemicals and pesticides.
- 14 Emissions trading schemes for greenhouse gases.
- 15 Ozone depleting substances and fluorinated gases.
- 16 Prevention, reduction, treatment, disposal and shipment of waste, including standards for products and packaging.

Interpretation

In this Schedule, “food” includes drink.”

Member's explanatory statement

This amendment inserts a new Schedule listing the subjects that may be specified by regulations under the new clause inserted by amendment 1 for the purpose of applying the United Kingdom market access principles in Part 1.

Schedule 1

BARONESS FINLAY OF LLANDAFF

26 Schedule 1, page 46, line 5, leave out sub-paragraph (1) and insert—

“(1) This paragraph sets out the conditions referred to in section 43(5).”

Member's explanatory statement

This amendment is consequential on the new clause 10 substituted by amendment 8, which means that paragraph 1 of Schedule 1 will not be relevant to Part 1 of the Bill and will apply only for the purposes of clause 43(5).

BARONESS FINLAY OF LLANDAFF

27 Schedule 1, page 47, line 1, leave out paragraphs 2 to 12

Member's explanatory statement

This amendment removes provisions in Schedule 1 which are not needed as a consequence of the new clause 10 substituted by amendment 8, which sets out exclusions from the United Kingdom market access principles in more general terms.

Schedule 3

BARONESS FINLAY OF LLANDAFF

28 Schedule 3, page 54, line 11, leave out “consult” and insert “obtain the consent of”

Member's explanatory statement

This amendment requires the Secretary of State to obtain the consent of the devolved administrations before appointing the chair and members of the CMA's Office of the Internal Market panel (but this is intended to be subject to amendment 29).

BARONESS FINLAY OF LLANDAFF

29 Schedule 3, page 54, line 14, at end insert—

“(2B) But the Secretary of State may make an appointment without a consent required by sub-paragraph (2A) if that consent is not given within the period of one month beginning with the day on which the Secretary of State requests it.

(2C) If the Secretary of State makes an appointment without a consent required by sub-paragraph (2A),

the Secretary of State must publish a statement explaining why the Secretary of State has proceeded with the appointment.””

Member’s explanatory statement

This amendment enables the Secretary of State to make an appointment to the OIM panel without the consent of the devolved administrations (required by amendment 28) if one month has passed since consent was requested. Reasons must be given for proceeding without consent.

BARONESS FINLAY OF LLANDAFF

30 Schedule 3, page 54, line 8, at end insert –

“(2A) After sub-paragraph (1)(b) insert –

“(c) one person appointed to membership of the CMA Board by each of –

- (i) the Scottish Ministers,
- (ii) the Welsh Ministers, and
- (iii) the Department for the Economy in Northern Ireland.””

Member’s explanatory statement

This amendment provides for each of the devolved administrations to appoint a member to the CMA Board.

BARONESS FINLAY OF LLANDAFF

31 Schedule 3, page 54, line 14, at end insert –

“(4) In sub-paragraph (5), after “(1)(b)” insert “and (c)”.

2A In paragraph 2, after sub-paragraph (2) insert –

“(3) Before determining the terms and conditions of an appointment to the CMA Board under paragraph 1(1)(c), the Secretary of State must consult whichever of the Scottish Ministers, the Welsh Ministers or the Department for the Economy in Northern Ireland is responsible for making the appointment.””

Member’s explanatory statement

This amendment adds two new amendments to Schedule 3 related to amendment 30. The first updates a cross-reference as a consequence of that amendment. The second requires the Secretary of State to consult the devolved administrations before setting terms and conditions for CMA Board members that they appoint.

BARONESS FINLAY OF LLANDAFF

32 Schedule 3, page 54, line 15, at end insert –

“(4) In sub-paragraph (1), after “(1)(b)” insert “or (c).”

Member’s explanatory statement

This amendment is consequential on amendment 30, and applies the maximum 5-year term for CMA Board members to members appointed by the devolved administrations.

BARONESS FINLAY OF LLANDAFF

33 Schedule 3, page 55, line 3, at end insert –

“(2A) After sub-paragraph (2) insert –

“(2A) Sub-paragraph (2) applies to a member of the CMA Board appointed under paragraph 1(1)(c) as if the reference to the Secretary of State were a reference to whichever of the Scottish Ministers, the Welsh Ministers or the Department for the Economy in Northern Ireland appointed the person.”

Member’s explanatory statement

This amendment means that, if a CMA Board member appointed by one of the devolved administrations (by virtue of amendment 30) wishes to resign from membership, they must do so by giving notice to the devolved administration in question.

BARONESS FINLAY OF LLANDAFF

34 Schedule 3, page 55, line 15, at end insert –

“5A (1) Paragraph 7 is amended as follows.

(2) The existing provision becomes sub-paragraph (1).

(3) After that sub-paragraph insert –

“(2) Sub-paragraph (1) applies to a member of the CMA Board appointed under paragraph 1(1)(c) as if the reference to the Secretary of State were a reference to whichever of the Scottish Ministers, the Welsh Ministers or the Department for the Economy in Northern Ireland appointed the person.”

Member’s explanatory statement

This amendment means that, where a CMA Board member was appointed by one of the devolved administrations (by virtue of amendment 30), the power to remove that member for incapacity, misbehaviour or dereliction of duty is exercisable by the devolved administration in question.

BARONESS FINLAY OF LLANDAFF

35 Schedule 3, page 55, line 20, at end insert –

“7A In paragraph 12, after “Parliament” insert “, the Scottish Parliament, Senedd Cymru and the Northern Ireland Assembly”.

7B In paragraph 13, after “Parliament” insert “, the Scottish Parliament, Senedd Cymru and the Northern Ireland Assembly”.

7C In paragraph 14, after “Parliament” insert “, the Scottish Parliament, Senedd Cymru and the Northern Ireland Assembly”.

7D In paragraph 27(b), after “(1)(b) insert “and (c)”.”

Member’s explanatory statement

This amendment requires the CMA to lay its annual plan, proposals for its plan, and its annual report before each of the devolved legislatures. It also adds an amendment to update a cross-reference as a consequence of amendment 30.