

# **UK Internal Market Act 2020: review and consultation**

## Committee submission

2 April 2025

The Legislation, Justice and Constitution Committee is the responsible committee, as set out in the Senedd's Standing Orders for constitutional and legislative affairs. The Committee may also consider any matter relating to legislation, devolution, the constitution, justice, and external affairs.

The Committee reports on all primary and secondary legislation introduced to the Senedd, as well as considering Legislative Consent Memorandums for UK Bills legislating in devolved areas.

In its scrutiny of Bills introduced into the Senedd, the Committee's approach is to consider:

- matters relating to the competence of the Senedd, including compatibility with the European Convention on Human Rights (ECHR);
- the balance between the information that is included on the face of the Bill and that which is left to secondary legislation;
- whether an appropriate legislative procedure has been chosen, in relation to the granting of powers to the Welsh Ministers, to make secondary legislation; and
- any other matter it considers relevant to the quality of legislation.



## 1. Introduction

- 1.** We welcome the opportunity to respond to this consultation on the statutory review of the United Kingdom Internal Market Act 2020 (“the 2020 Act”).
- 2.** As a Committee, we have taken particular interest in the operation of the UK internal market.
- 3.** We welcome the decision taken to expand the scope of the review from the narrow parameters provided for in the 2020 Act. However, we regret that the review will not be considering whether to repeal the 2020 Act (or any part of it) and the UK Government’s view that protections for the free movement of goods, provision of services and recognition of professional qualifications that flow from the market access principles should not be weakened.
- 4.** In our view, this review should act as an opportunity to fully assess whether the regime put in place by the previous UK Government adequately manages the operation of the UK’s internal market, whilst recognising the democratic legitimacy of the devolved legislatures and governments. This should include consideration of whether the 2020 Act, or parts of it, should be repealed and replaced with new legislation or by strengthening the Common Frameworks programme.
- 5.** To that end, we welcome the recognition in the consultation document that Common Frameworks are the most important tool to find shared approaches or agree on how to manage divergence, with the 2020 Act sitting “in the background”. The commitments made by the UK Government to finalise the Common Frameworks programme by Easter 2025 are also important steps towards improving the management of policy divergence between the four nations of the UK.
- 6.** As well as respecting the democratic legitimacy of each devolved legislature to make (and effectively implement) laws within its competence, policy divergence can also lead to shared benefits through policy innovation and shared learning, which the consultation rightly acknowledges.
- 7.** Beyond the operation of the UK internal market, we are very disappointed that the review will not be considering Part 6 of the 2020 Act, which provides a Minister of the Crown with the power to provide financial assistance. This power can be used to fund activities in policy areas that are devolved in Wales, without

a role for the Welsh Ministers or the Senedd to ensure this financial assistance is aligned with Wales' devolved priorities. We agree with our predecessor Committee in the Fifth Senedd, which stated that these powers represent an unnecessary and confusing intrusion on the ability of the Senedd and the Welsh Government to act on behalf of Wales' citizens. It is disappointing that the UK Government has not recognised this review as an opportunity to address this issue and ensure a proper and appropriate role for the Senedd and the Welsh Government in determining how this funding is allocated.

**8.** We would encourage the UK Government to engage extensively with the Welsh Government (as well as the other devolved governments) and Welsh stakeholders as part of the review. It is critical that these views and experiences are understood and able to contribute towards the review's considerations.

**9.** We note the comments made by the First Minister, Eluned Morgan MS, during a recent appearance at the Welsh Affairs Select Committee that she thinks the UK internal market was "imposed" upon the Welsh Government and that there are "a few things to iron out" in relation to that.

**10.** The Committee wrote to stakeholders with whom it has engaged as part of its work on the 2020 Act to draw their attention to the review and encourage them to respond to the consultation. The RSPCA wrote to the Committee, confirming that it would be submitting a response to the consultation through its membership of the Trade and Animal Welfare Council, while also setting out its views on the operation of the 2020 Act and its impact on law and policy in Wales.

**11.** Our response will set out our experiences and views on the operation of the 2020 Act. If it would be of benefit, we would welcome the opportunity to meet with the Minister for Trade Policy and Economic Security, Douglas Alexander MP, to discuss our views on the 2020 Act further.

## 2. Overview of Committee's previous work on the UK Internal Market Act 2020

**12.** The development and operation of the UK internal market has been of particular interest to our committee, and to its predecessor in the Fifth Senedd (2016-21), due to its implications for devolution.

**13.** Our predecessor committee conducted scrutiny of the legislative consent memorandum (LCM) laid by the Welsh Government in respect of the UK Internal Market Bill. The Committee published its report on the LCM on 26 November 2020.

**14.** In its report, our predecessor committee was clear that it would have been more appropriate to have, at least initially, followed the Common Frameworks process, rather than seeking to legislate through the UK Internal Market Bill.

**15.** Our predecessor committee noted that the Bill's effects on the exercise of devolved legislative and executive competence would be "profound" and that the Bill would "frustrate the Welsh Government's ability to determine easily whether it is practical to legislate and greatly impact the Senedd's capability to make coherent and accessible laws that meet the needs and aspirations of Welsh citizens".

**16.** In its report, our predecessor Committee concluded that the Bill presented "a risk to devolution" and took the exceptional step of breaking its usual practice not to comment on whether the Senedd should give its consent to provisions in UK Bills, stating:

*"...we consider that the Bill would have a profound effect on the devolution settlement and therefore, in our view, the Senedd should not give its consent to the Bill in its current form".*

**17.** In light of our experience of the operation of the 2020 Act, we must conclude that the concerns outlined by our predecessor committee have indeed been realised.

**18.** Our Committee has considered specific pieces of Welsh and UK legislation that interact with the 2020 Act, as well as looking at broader constitutional level effects of the Act. The Committee has considered the effects of the 2020 Act in its reports on:

- The Environmental Protection (Single-use Plastic Products) (Wales) Bill
- The Agriculture (Wales) Bill
- The Welsh Government's Legislative Consent Memorandum on the Genetic Technology (Precision Breeding) Bill
- The Health Service Procurement (Wales) Bill

- [The Welsh Government's Legislative Consent Memorandum on the Product Regulation and Metrology Bill](#)
- [The Welsh Government's Legislative Consent Memorandum on the Tobacco and Vapes Bill](#)
- [The Visitor Accommodation \(Register and Levy\) Etc. \(Wales\) Bill](#)

**19.** The Committee's work has generally focused on the potential impact that the 2020 Act's market access principles for goods have on the effectiveness of Senedd legislation. For example, in relation to the Environmental Protection (Single-use Plastic Products) (Wales) Bill, the Committee [raised significant concerns](#) about the enforcement of the Bill's proposed bans on some single-use plastic products not covered by the narrow exclusion on plastics included in the 2020 Act. The Committee was concerned that the 2020 Act's provisions would mean that these plastic products could continue to be sold in Wales even if a ban was introduced. Unfortunately, the prohibition on the supply of some of those products has [yet to be commenced](#) by the Welsh Ministers, so the Committee's concerns cannot yet be put to the test. Whilst the Welsh Government has [not acknowledged](#) that the 2020 Act influenced this decision, we believe that it demonstrates that the 2020 Act is having an effect on the implementation of a Senedd Act. We return to this matter later in our response.

**20.** More recently, the Committee has been looking at the impact that the 2020 Act is having on the Welsh Government's approach to legislating, including its willingness to seek intergovernmental agreements for policy alignment to avoid any potential impacts from the market access principles. The Welsh Government has [confirmed to the Committee](#) that the 2020 Act was a contributing factor to its decision to agree to legislation in the UK Parliament about the supply of tobacco and vapes products being taken forward on a UK basis.

**21.** Whilst we would welcome positive and constructive relationships between governments, this should not be at the expense of the Senedd's ability to legislate or act as a means of by-passing the barriers to legislating created by the 2020 Act.

**22.** A significant challenge that the Committee has faced in bringing attention to these matters is the unwillingness of the Welsh Government to engage on the practical implications that result from the 2020 Act. Our Committee's attempts to ask Welsh Ministers for assessments of the impact of the 2020 Act on Welsh

legislation have been frustrated by a lack of engagement and transparency on the matter. We will return to this matter later in the response.

**23.** The Welsh Government has maintained its position, as set out in [its legal challenge to the Act](#), that it does not recognise the impact of the 2020 Act on the practical effect of Senedd legislation. As a Committee, we have consistently accepted that the 2020 Act cannot limit the Senedd's competence to legislate on matters that are devolved but are concerned that once law is made by the Senedd, the 2020 Act impacts on how effective that law is as it can no longer be enforced on products and services made, imported into and regulated elsewhere in the UK. There are examples of legislation that pre-date the 2020 Act that could, if they were made today, not be enforced in the same way and to the same extent.

**24.** In order to support the Committee's understanding of the impact of the 2020 Act on the effectiveness of Welsh law, we have been working with Professor Thomas Horsley of the University of Liverpool. Professor Horsley undertook research work with Senedd officials to generate new knowledge and understanding regarding the 2020 Act and to explore the impact of the Act on intra- and inter- parliamentary procedures.

**25.** The research contributed towards a publication of a [report on the UK Internal Market Act and Devolution](#), and Professor Horsley held a private briefing session with the Committee in July 2024.

### 3. The UK Internal Market and Common Frameworks

**26.** Whilst we acknowledge that this review is not about how the Common Frameworks programme has operated, we welcome the commitments made by the UK Government when announcing the review in relation to the programme. The commitment to finalising the programme by Easter 2025 is a welcome one, particularly after little progress has been made over the last few years. Commitments to develop closer working relationships and to increase transparency between the UK and devolved governments are also welcome and will be crucial if the Common Frameworks programme is to operate most effectively.

**27.** As we have noted in the introduction to this response, we welcome the acknowledgement in the consultation that Common Frameworks are “the most

important tool” for the UK and devolved governments to find shared approaches or agree how to manage divergence. This approach can help to rebalance the management of the UK’s internal market, away from a system which overly favours central control, towards one that values co-operation and recognises the benefits of policy divergence.

**28.** In June 2023, we published [a report on the provisional Common Frameworks](#), bringing together the views and recommendations of four Senedd committees that had been scrutinising the provisional frameworks. One of the key matters considered in this report was the importance of improved transparency for the Senedd and stakeholders when policy is being developed through a Common Framework and when disputes are escalated to ministerial level.

**29.** We recommended in our report that the Welsh Government should seek intergovernmental agreement to ensure the regular reporting to legislatures on the operation of each Common Framework. We continue to believe that this would be beneficial for scrutiny and transparency.

**30.** In [its first periodic report](#), the Office for the Internal Market (OIM) noted that most business and trade bodies that they engaged with were not aware of Common Frameworks. Amongst those who were aware of them, many did not understand what issues are discussed through particular Common Frameworks, nor whether there were any opportunities for them to input into discussions. The OIM reported that businesses had raised concerns about the lack of role for non-governmental stakeholders in Common Frameworks.

**31.** Whilst the use of Common Frameworks could lead to better decision-making and recognition of devolved autonomy, Senedd committees have raised concerns about the impact that Frameworks can have on the legislative competence of the Senedd and executive competence of Welsh Ministers. Policymaking through Common Frameworks and other intergovernmental decision-making processes has the potential to limit the role of the Senedd (and other devolved legislatures) in the policy-making process. This can be true of both decisions made through Common Frameworks, but also those made through other intergovernmental forums. This is why a focus on improving the transparency of decisions taken through this process is key.

**32.** We have seen a recent example of this with the previous UK Government’s [Tobacco and Vapes Bill](#) (2023-24 session). The Bill took a ‘four nations’ approach to legislating for the whole of the UK, with delegated powers to the relevant

government. We asked the then Cabinet Secretary for Health and Social Care, Eluned Morgan MS, whether the 2020 Act had influenced the Welsh Government's decision to take this intergovernmental approach. She told the Committee that it was:

*"... one of the considerations why it would be appropriate to adopt a four-nations approach to the UK Tobacco and Vapes Bill, however the overriding consideration was public health benefit. Our decision to engage in this Bill is because, if passed, it represents one of the most significant public health interventions in a generation."*

**33.** A similar Bill was subsequently introduced by the current UK Government in the 2024-25 session. In our report on the Welsh Government's legislative consent memorandum on the re-introduced Bill, we noted that health is an area of devolution that has resulted in intra-UK divergence, including on restrictions on smoking, and that should there be evidence and support for public health legislation to differ in Wales to that of the rest of the UK, then divergence may be desirable.

**34.** We would not wish the Welsh Government to be reluctant to legislate on an important devolved matter, such as public health, for fear of the potential consequences of the 2020 Act.

**35.** In order to improve transparency when policy is being developed through a Common Framework, we recommended in our report that the Welsh Government should make it clear to the Senedd and stakeholders when this approach is being taken.

## 4. The operation of the market access principles

**36.** As we stated in the introduction to this response, we are disappointed that the Review will not be considering whether the 2020 Act (or any part of it) should be repealed. However, we do welcome the recognition in the consultation document that the market access principles should sit "in the background" rather than being used to manage the UK internal market.

**37.** In our view, the market access principles (as they are set out in the 2020 Act) pose a threat to the ability of the devolved governments and legislatures to

effectively implement laws in the policy areas that they are responsible for. We would therefore support a more holistic review of whether any reforms could be made to the principles in order to enable greater flexibility for the devolved governments. This could be achieved, for example, by widening the scope of the definition of the legitimate aims outlined in the 2020 Act<sup>1</sup> to justify indirect discrimination, or by considering the principles of 'subsidiarity' and 'proportionality' enshrined in the EU's single market.

**38.** However, even without these wholesale reforms, there are improvements that could be made to the current operation of the market access principles that would provide greater oversight and transparency of the regime and protect the autonomy of devolved governments and legislatures to make effective policy in areas they are responsible for.

**39.** As we noted in the previous section, we support a move towards a system that gives preference to managing policy divergence through Common Frameworks and negotiation, rather than one which relies on the market access principles.

**40.** To support this, there should be a more routine use of the exclusions process, both to consider whether much broader areas of devolved policy could be excluded and to normalise the process for agreeing ad hoc exclusions from the market access principles.

**41.** Broadening the areas of devolved policy that are excluded from the 2020 Act would provide greater certainty to legislators, businesses and other interested stakeholders who could be affected by a regulatory requirement. We experienced this kind of uncertainty when considering the Welsh Government's proposals to prohibit the sale of certain single-use plastic products in the Environmental Protection (Single-use Plastic Products) (Wales) Act 2023.

**42.** Due to the specific nature of the products that had been excluded from the market access principles, there was a narrow path in which the legislation could operate effectively without interacting with the market access principles. This was perhaps clearer cut for two of the products that formed part of the Welsh Government's proposals (carrier bags and oxo-degradable plastics). However, polystyrene lids for cups and takeaway food containers were likely to be captured by the market access principles as the exclusion only referred to containers or cups made from polystyrene, and not their lids.

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<sup>1</sup> Sections 8(6) and 21(7)

**43.** An exclusion with a broader scope that covered all single-use plastic products (as had been originally requested by the Scottish Government) would have removed this confusion. The Welsh Government has subsequently implemented the bans in two stages, with the second phase (covering the three items likely to be impacted by the market access principles) not scheduled to be introduced until Spring 2026.

**44.** In our report on the commencement Order for the bans on the products already covered by the exclusion, we asked the Welsh Government to explain why the prohibitions relating to the other three products were not being commenced at the same time and highlighted the symmetry between the items being prohibited in the second phase and the products excluded from the 2020 Act.

**45.** It is positive that the review will be considering the process for agreeing these exclusions. Improvements are needed to the process to ensure that there is greater certainty around the length of time that a request should be completed within, the format and form of a request and an agreed process for approval and appeal of decision-making. The Common Frameworks and existing intergovernmental structures should provide an appropriate arena for this process to operate within, including making use of the independent secretariat and dispute-resolution process that already exist.

**46.** However, reforms to the process for agreeing exclusions would still not address the fundamental issue that the UK Government remains the gatekeeper of exclusions being agreed due to its role in making subordinate legislation to add exclusions to the 2020 Act. In this process, the UK Government acts as both a policymaker for England (and in some cases the whole of the UK) as well as government for the UK, with responsibility for overseeing the exclusions process. Without reforms to this element of the process, it is unlikely that it will be rebalanced towards a more equitable partnership between all four governments.

**47.** One of the challenges we, and other Senedd Committees, have faced is the lack of available information about the potential effects of the market access principles. This has likely been impacted in Wales by the position that the Welsh Government has adopted in relation to the Act. Indeed, in our report on the Health Service Procurement (Wales) Bill, we highlighted that in our view the evidence we received from the then Minister for Health and Social Services in respect of the practical effect of the 2002 Act on the Bill was unsatisfactory.

**48.** We believe that there should be more routine information provided, for example, in explanatory memoranda or other notes that accompany legislation, about whether any assessment has been undertaken about the interaction between the regulatory proposals and the market access principles. This would provide legislatures and other interested stakeholders with critical information to understand whether the proposal would be effective.

**49.** We did see this level of openness from the Welsh Government when a legislative consent memorandum was laid in the Senedd in relation to the Genetic Technology (Precision Breeding) Bill [now Act] in 2023. We agreed with the Welsh Government's analysis that the Bill's provisions would have an effect on Welsh law as a result of the market access principles. However, we did not believe that the legislative consent process was the appropriate place to bring this matter to the attention of the Senedd, as the Bill's provisions applied only to England and as a result did not come within the legislative competence of the Senedd.

**50.** In our report on the memorandum, we recommended that the Senedd's Business Committee should review the Senedd's Standing Orders so that they make appropriate provision to ensure the practical effect of the 2020 Act is taken into account when Senedd legislation is introduced and when legislation passing through other UK legislatures may have an effect on Welsh law that is already on the statute book.

## 5. Office for the Internal Market

**51.** The Committee has enjoyed a positive working relationship with the Office for the Internal Market (OIM) and recognises the important role that the OIM has to play in building understanding about the operation of the UK internal market.

**52.** The OIM's annual and periodic reports make a unique contribution towards this goal, and we have been fortunate to welcome representatives from the OIM to give evidence to the Committee on its annual and periodic reports in 2023 and on its annual report in 2024.

**53.** The provisions in sections 34-36 of the 2020 Act that enable the UK and devolved governments to request advice from the OIM can also provide critical information in the policy development process. However, we believe that this resource has so far been underutilised by the Welsh Government and other

governments, and that improvements are needed to the process to improve transparency when requests for advice are made.

**54.** We would support changes that would ensure that legislatures are notified when requests for advice are made and that any subsequent reports are then laid before each of the four legislatures in the UK.

**55.** Under the provisions in the 2020 Act, this advice can only be requested by a “relevant national authority”, which for Wales is the Welsh Ministers. However, we have welcomed the willingness of the OIM to offer its support to our Committee, and others in the Senedd, if we are considering a matter which may affect the operation of the UK internal market.

**56.** For example, we were grateful to receive the views of the OIM in relation to the interaction between the 2020 Act and the Product Regulation and Metrology Bill when we were considering the Welsh Government’s legislative consent memorandum on the Bill.

**57.** Expanding opportunities for the OIM to support the scrutiny role of legislatures would be a welcome step forward.

**58.** We are also supportive of calls made by the House of Lords Common Frameworks Scrutiny Committee for the OIM to make clear in its reports how it takes into account devolved policy autonomy when advising on, and assessing, the impact of policy divergence agreed through Common Frameworks on the UK internal market. It is crucial that the democratic legitimacy of the Senedd to make laws for Wales in devolved areas is recognised when these assessments are being made.

**59.** This should also include an understanding of the wider policy benefits that may occur as a result of policy divergence. Currently, the OIM only assesses the economic impact that could occur as a result of a proposed regulatory provision, aligning with the requirements in the 2020 Act. However, a fuller cost benefit assessment that recognised, for example, the positive environmental or health impact that could result from a policy proposal, would provide a more comprehensive picture of the proposal. This would then enable the UK and devolved governments to make more informed decisions through Common Frameworks and to agree an exclusion from the 2020 Act if necessary.

**60.** Whilst section 34(4) of the 2020 Act does allow for advice to be given to consider “among other things” the potential economic effects of a proposed regulatory provision, we believe that this should be amended to give greater

flexibility for the OIM to consider wider policy benefits that could arise from a proposed provision.