



UK Government Internal Market Bill: Briefing

What does it mean for Wales and the housing sector?

September 2020

Background

The [UK Internal Market Bill](#) introduced to the UK parliament on the 9th September 2020 addresses the allocation of internal trade powers when the UK leaves the EU's single market and customs union on 1st January 2021. The Bill attempts to eliminate barriers to trade between UK nations once key policy areas return to the UK Government and devolved administrations.

The UK Government states that the Bill will “guarantee companies can trade unhindered in every part of the UK, while maintaining world-leading high standards for consumers, workers, food, animal welfare and the environment.”



Ministers say it contains vital safeguards to protect Northern Ireland and the rest of the UK, if negotiations on a future trade deal break down. But it is also perceived to be controversial as it would allow ministers the power to override international law and in particular, some parts of the EU Withdrawal Agreement. UK Government have also described it as the biggest transfer of power to the devolved nations in their history.

However, the Bill has received significant opposition from devolved governments in Wales & Scotland, with the Welsh Government's Counsel General, Jeremy Miles MS, accusing the UK Government of stealing powers from devolved administrations, and describing the Bill as a "quick and dirty way" of hollowing out devolved competence. The Counsel General specifically cited housing standards and regulation as areas for concern.

The following briefing outlines what parts of the Bill are applicable to Wales and the housing sector and the associated threats to devolution.

Internal Market Bill

1. Market access for goods and services

Mutual recognition for goods

If passed, the new Bill would allow goods produced in, or imported into one part of the UK to be sold in any other part of the UK without the need for it to be subject to any further compliance requirements. This means that goods set to English standards set by the UK Government would be accepted for sale in Wales, despite Welsh standards stipulating otherwise. Wales could opt to introduce higher standards on goods, but it would only apply to Welsh producers and serve as a voluntary measure that other UK nations could adhere to, but are not required to.

Non-discrimination for goods

In addition to this, legislation for indirect discrimination is proposed to prevent one part of the UK from setting higher standards for a person, good or service than it does for itself. For example, the Welsh Government would not be able to set higher standards than their own for producers in other UK nations.

The Bill does not clarify whether the market access commitment would include any mechanism to ensure high standards are upheld. Given the size



and dominance of the market in England, there would likely be an economic imperative for companies to produce to the standards set for England. It is believed that this will put Welsh producers at a disadvantage compared to other UK producers.

Mutual recognition and non-discrimination for services

This ensures that service providers that are authorised to provide services in one part of the UK can provide services in the other parts of the UK too.

In the [UK Government's White Paper](#), it states that 'certain social policy measures with little Internal Market impacts, and pre-existing differences and policies will be exempt from the principles of mutual recognition and non-discrimination.'

Schedule 2 of the Bill provides further detail on the exclusions to services to which mutual recognition and non-discrimination **does not apply** and includes, "Social Services relating to social housing, childcare, adult social care and support of families and persons permanently or temporarily in need."

Potential threats to Welsh housing standards

The UK Government's White Paper specifically cites building regulations as a trade barrier to the construction industry in the UK, by making it more difficult for construction firms to design and plan projects effectively across the UK. Whilst this shows clear intention to form part of the Internal Market, it is unclear to what extent building regulations would be affected in Wales and whether current regulations fall under pre-existing differences and hence exclusion.

Construction firms are already familiar with working with different variations to building regulations in the UK (e.g. the Welsh Housing Quality Standard vs the Scottish Housing Quality Standard). Therefore the inclusion of building regulations could, in theory, allow construction companies to build new homes in Wales not set to its required standards, but to that of another UK nation.

Potential threats to devolution

In an oral statement to the Senedd on 15th September, Counsel General Jeremy Miles MS said that the proposals of mutual recognition and non-discrimination to goods and services "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.” The Counsel General has said that the Bill will effectively provide the UK Government with a “quick and dirty way” of hollowing out the right of the Senedd to regulate within areas of devolved competence as it sees fit, **specifically citing housing standards and regulation** as areas for concern.

2. Professional qualifications and regulation

As mentioned in the previous section, although certain social policy areas are exempt from the Internal Market Bill, professional qualifications are included in the principles for mutual recognition and non-discrimination (excluding professionals regulated in law). This means that “a professional qualified in one part of the UK is automatically treated as qualified in respect of that profession in another part of the UK (the automatic recognition principle).”

These provisions will only apply in relation to professions for which new qualification or experience requirements are introduced, or existing ones changed, in any part of the UK.

There are some exceptions where the principle will not apply, including:

- To any professional qualifications in place when the bill is passed, or certain legal professions.
- To any ongoing professional requirements, such as development or training.
- If a process allows a UK resident to apply to have their existing UK professional qualifications or experience recognised by a regulatory body in another part of the UK. Those practicing their profession before such a process is available will not need to apply to have their qualifications recognised and will be able to rely on the automatic recognition principle.

Potential threats to employment in the housing sector

This introduces a grey area to the housing sector as it is unclear whether professional qualifications (e.g. construction professionals) in Wales would be



inclusive to the Internal Market, or whether they would qualify as a pre-existing difference.

The [Senedd's Internal Market Research Briefing](#) uses the example of Social Care Wales who are currently able to decide to their discretion which professional qualifications to accept as being sufficient to allow persons to be registered as social workers, social care managers and social care workers in Wales.

Potential threats to devolution

If another UK nation allows a person to provide social care services with fewer qualifications than in Wales, then this throws up the question of what would happen to the Welsh policy objectives of upskilling the workforce in key areas if the principal of mutual recognition applies and hence restricting growth and prosperity in Wales.

3. Reporting, advisory and monitoring functions

Monitoring responsibilities will be given to a new independent body, the Competition Markets Authority (CMA) as chosen by the UK Government.

The CMA will have powers to monitor and report on the effectiveness of the internal market, under its own initiative or at the request of the UK or devolved governments.

The [Institute for Government](#) explains that the CMA will need to report on the functioning of the internal market every 12 months, and the effectiveness of the bill's provisions on mutual recognition and non-discrimination every five years, beginning on 31 March 2023. These reports must arrange for a copy of the report to be laid before the UK parliament and devolved legislatures. However, there is no obligation on any of the governments to act on the reports.

Although one administration can require reports on regulations passed by another – if it has a 'detrimental impact' on the UK internal market – they cannot force the other administration to respond.

It is also not clear how disputes around the functioning of the internal market will be managed, with no details on how disputes will be resolved, who will be responsible for their resolution and the process for improvements.



Potential threats to devolution

Proposing that the Internal Market will be overseen by the UK Government, without clearly defined roles for devolved legislatures is seen as 'wholly unacceptable' by the Welsh Government.

4. Financial assistance powers

The UK Government will be able to provide financial assistance for the purposes of:

- Promoting economic development in the UK,
- Providing infrastructure in the UK (with housing mentioned as a form of infrastructure. The term 'providing' is referred to as: acquiring, designing, constructing, converting, improving, operating and repairing infrastructure).
- Supporting cultural and sporting activities, projects and events.
- Supporting international and domestic educational and training activities and exchanges.

This will allow the UK government to spend money directly in devolved areas and allow it to replace EU structural funds by implementing the [UK Shared Prosperity Fund](#).

Financial assistance would be in the form of grants, loans, guarantees or indemnities and may include conditions about repayment with or without interest.

The power is in addition to (and does not limit or replace) any existing powers by the UK Government to provide financial assistance.

Potential threats to devolution

There is a concern that potential funding by the UK Government might give the power for decisions on infrastructure to the UK Government rather than the Welsh Government and that the intention would be to fund its own priorities, as opposed to the priorities of the Welsh Government. This raises questions of both democratic legitimacy and both the Welsh Government and the Senedd's ability to exercise their full range of executive and law making powers.



However, Secretary of State for Wales, Simon Hart MP has argued that this process will bring added democratic accountability, stating that many infrastructure decisions are currently taken by the EU with no sense of accountability for Wales at all.

The Bill clearly states that the funding would be in addition to, and not instead of, current funding streams (i.e. the Welsh Government block grant and subsequent Barnett consequential funding); however concerns still remain in Welsh Government over whether Senedd budgets would be constrained.

5. Northern Ireland protocol

In the [Withdrawal Agreement](#), one of the solutions to prevent a "hard" land border between Northern Ireland and the Republic of Ireland was to keep Northern Ireland in the EU single market for goods, unlike the rest of the United Kingdom. This would require export declaration forms when moving goods from Northern Ireland to Great Britain.

However, the Internal Market Bill prevents any government from introducing new checks or processes on goods moving from Northern Ireland to Great Britain. By ignoring this part of the EU Custom's law, the UK government is in breach of the international treaty it signed last year.

What does this mean for Wales?

With a third of Holyhead's freight traffic coming from Northern Ireland, there are concerns that the failure to comply with the Withdrawal Agreement would affect the security and viability of Welsh ports.

Whilst the Bill intends to seamlessly facilitate the free flow of goods between Great Britain and Northern Ireland, it fails to explain what this would mean for trade and the associated tariffs between Northern Ireland and Wales.

6. State aid

As a member of the EU, the UK has been subject to EU rules on State Aid which are regulated by the European Commission. These rules also apply to the UK during the transition period. The Bill proposes to create a single, UK-wide subsidy regime that will ensure 'a uniform approach on the rules that will



govern the way public authorities, including local authorities, support businesses’.

Potential threats to devolution

The Bill amends the devolution statutes to clarify that subsidy control or state aid powers are reserved and are a matter exclusively for the UK government. The Welsh and Scottish governments have argued that under the current devolution arrangements, state aid is devolved, whilst the UK Government is of the view that it is currently reserved. This clause will no longer put that in doubt. However, the Bill does state that devolved governments will remain responsible for spending decisions on subsidies.

7. Final provisions

Perceived as the biggest attack on devolution, the final part of the Bill allows protection of the Act against modification by devolved administrations. This means that it cannot be amended by primary or secondary legislation by the devolved legislatures (in areas of devolved competence) or by the UK government by secondary legislation.

Conclusion

- The Internal Market Bill aims to ensure market access across the UK based on the principles of mutual recognition and non-discrimination.
- Whilst the Bill sets out potential opportunities for economic development, it limits Wales’ ability to regulate in a way that may favour their domestic businesses and align policy with its own Government priorities.
- State aid and new financial powers suggest that the UK government plans to intervene to shape Wales’ economy, with the ability to choose which business to support.
- Although these proposals will provide enhanced opportunities for collaboration on key policy areas closer to home, there are a range of devolved Welsh laws where it is currently unclear whether they’d be inclusive to the internal market. Further clarity is required in areas affecting Welsh housing policy such as building regulations and



professional qualifications. Further clarity also needs to be sought on the impact to Welsh trade with Northern Ireland.

- There appears to be a distinct barrier for involvement from devolved nations in the governance of the Internal Market and addition to this, no future opportunities for modification if the Bill is enacted in law.