

## UK Internal Market White Paper Summary

1. The UK Internal Market was first established in the 1707 Acts of Union. In short, the Internal Market allows trade in goods and services to be frictionless between all parts of the UK. For example, if a baker sells bread in both Glasgow and Carlisle, they will not need to create different packaging because they are selling between Scotland and England. Likewise, engineering firms in Scotland using parts made in Wales will know that the parts are compliant with regulations across other home nations.
2. Since 1973, these rules were replaced by European law. In January 2020 the UK left the European Union. Following the end of the Transition Period this year, the way the UK regulates labour, capital, goods and services will no longer be decided by the EU. Instead, the UK will be able to regulate our trade in goods and services in a tailored manner, specifically designed to benefit our businesses, workers and consumers, while maintaining our high regulatory standards.
3. The Government aims to implement a system that **works alongside new devolved powers** while guaranteeing consistency and clarity for business and citizens. They want to do this through implementing new legislation to enshrine a **fundamental Market Access Commitment in law**, minimising domestic trade costs, business uncertainty and bureaucracy. They want to legislate for this fundamental commitment by the end of 2020, as the UK exits the Transition Period, to ensure the protection of all UK business and consumers from Day 1. As the EU regulatory powers fall away, there is a danger of regulatory barriers emerging.
4. Without an up-to-date, coherent market structure, economic barriers could block or inhibit trade in goods across the UK, and services could be significantly and detrimentally impacted. Complexities in key sectors such as construction could arise, were differences in regulations to emerge over time. Moreover, different approaches to the regulation of construction professionals, such as differing qualifications for plumbers and technicians, could limit access to skilled construction workers, and make it harder for Scottish construction companies to bid for contracts in England.
5. The UK Internal Market system will therefore be driven by the following three overarching policy objectives:
  - a. to continue to secure economic opportunities across the UK;
  - b. to continue competitiveness and enable citizens across the UK to be in an environment that is the best place in the world to do business; and
  - c. to continue to provide for the general welfare, prosperity, and economic security of all citizens.

6. The Government will seek to introduce new legislation that will commit to free access for all citizens and businesses in economic activity across the UK. This will ensure continued market access across the UK, delivered through the principles of **mutual recognition** and **non-discrimination**.

### **Mutual Recognition and Non-Discrimination**

7. **The fundamental aim of all mutual recognition systems is to ensure that compliance with regulation in any one territory is recognised as compliance in the other(s).** For example, if a good produced in Scotland, and adhering to the Scottish labelling regulations, can be placed on the Scottish market, it can also be placed on the English and Welsh markets without the additional need to comply with English or Welsh requirements.
8. Mutual recognition will not, however, be appropriate or possible in all areas. Within a mutual recognition system there will be “exclusions”. These will refer to areas outside scope when the system comes into force. This has been a feature of the UK Internal Market since 1707 (such as legal systems). Any exclusions will need to be agreed at the outset and will not generally be expected to change. If the UK Government or a devolved administration introduces regulation that falls within an exclusion, then the mutual recognition system will not apply, such as in taxation and spending, existing reserved areas, or social policies with little Internal Market impact.
9. **The mutual recognition system will be combined with a non-discrimination principle.** This will protect businesses, workers and consumers from discrimination by ensuring that an authority must regulate in a way that avoids differential and unfavourable treatment to goods or services originating in another part of the UK to that afforded to its own goods or services. The focus of the nondiscrimination principle will be on ensuring that any discriminatory barriers are addressed (e.g. regulating against goods from a specified nation within the UK), while mutual recognition will aim to reduce the overall regulatory burden a business might face as a result of diversity in regulation affecting goods and services. **The Government’s view is that direct discrimination should be prohibited; it is also seeking views on how to legislate for indirect discrimination.**

### **What is indirect discrimination?**

10. The Government holds that it should also protect against instances where an economic operator is not directly discriminated against but is nevertheless treated in a substantially unfavourable way by another administration compared with local operators when operating in another part of the UK, and where for example, this is not justifiable on the grounds of a clearly stated policy objective.

11. This obligation on administrations and regulators not to discriminate in a way that affects trade will provide an additional safeguard for the UK Internal Market in areas where mutual recognition is excluded. For example, if Wales specified that milk cannot be transported more than a certain distance which meant that in effect most milk from England, Scotland and Northern Ireland could not be sold in Wales, this could be viewed as a case of indirect discrimination. The Government therefore think that this kind of discrimination should be prohibited as it has equivalent effect to direct discrimination.
12. It will be necessary to decide whether indirect discrimination in this context should be prohibited at the outset in legislation as a justiciable right for business, or after a period of monitoring and assessment. Another option would be for this element of the non-discrimination principle to be given effect by other means, such as via robust administrative or intergovernmental processes.

**Consultation Question 1: Do you agree that the government should seek to mitigate against both 'direct' and 'indirect' discrimination in areas which affect the provision of goods and services?**

#### **How mutual recognition and non-discrimination will combine**

13. Mutual recognition and non-discrimination will operate together to ensure both smooth and fair trade within the UK. For goods, a UK-specific mutual recognition principle will be introduced. Mutual recognition will be the default presumption but there are areas where mutual recognition will not be appropriate ("exclusions"). As set out before, there have always been areas out of scope of the UK Internal Market, such as the Scottish legal system. Mutual recognition is already provided for services under the Provision of Services Regulations 2009.
14. For both goods and services, these provisions will be supplemented by the nondiscrimination principle. For goods, non-discrimination will apply within certain excluded areas such as procurement. For services, the non-discrimination principle will contribute to preventing unnecessary barriers to service provision within the UK. For professional qualifications, a system will be introduced to ensure that professionals regulated in one part of the UK will be able to seek recognition of their qualifications in another, allowing them to provide services.
15. Some areas will be excluded from mutual recognition and non-discrimination. Exclusions will be defined from the outset in legislation and will not be expected to change. If the UK Government or a devolved administration introduces new regulation that falls within an exclusion, then the mutual recognition system will not apply to all or part of it as appropriate. The excluded categories will likely include:

- a. UK Government regulation in reserved areas, existing regulatory differences (which remain unchanged), tax and fiscal matters, and the provision of goods and services by public authorities (market activity from economic operators and professional qualifications would be covered);
  - b. regulation necessary to implement some international obligations.
16. The Government envisages that non-discrimination will apply to the ancillary areas of regulation which are not directly related to the lawful sale of goods, (i.e. requirements on transportation, disposal, or the manner of sale of goods); and is considering whether and to what extent it should apply to public procurement, in particular for above-threshold procurements. Stakeholders are invited to comment on the application of non-discrimination to public procurement. In addition, the Government is keen to obtain views on which other areas which have the potential to affect goods or services but are not covered by mutual recognition should also be covered by the principle of non-discrimination.

**Consultation Question 2: What areas do you think should be covered by non-discrimination but not mutual recognition?**

**Governance, independent advice and monitoring**

17. In order to ensure a well-functioning Internal Market, the Government intends to build on existing governance arrangements between the UK Government, devolved administrations and UK Parliament and the three devolved legislatures and that this should be transparent and beneficial to businesses, workers and consumers.
18. Governance arrangements will seek to build on the existing collaboration between the UK Government and devolved administrations. Arrangements will need to ensure that any existing dispute avoidance and resolution mechanisms can address potential disagreements on the Internal Market. This will also mean intergovernmental collaboration in communicating and resolving issues from stakeholders facing potential barriers to intra-UK trade.

**Independent functions in the Internal Market**

19. As the UK transitions from membership of the European Union and the close supervision that the European Commission applies to its own Single Market, it is not the Government's intention to replicate that institution within the UK Internal Market. However, the Government does recognise that there remains an important role in relation to the Internal Market for independently-delivered functions removed from its own political influence and that of the devolved administrations.

20. It is the Government's position that independent expert advice should be available on the potential impact of a proposal on the Internal Market, including to legislatures, rather than being isolated to individual administrations. As well as shaping the policy-making process and encouraging stakeholder input from across the UK, these assessments will contribute to a stronger evidence base both within and between administrations. Such assessments will cover not only local and community effects, but also cumulative and cross-UK supply chain implications.
21. In addition to providing necessary independent advice, the Government believes expert monitoring and updating of the health and growth of the UK's Internal Market will be vital. This monitoring will cover the 'health of the market', as well as adaptable reporting of economic trends across the UK Internal Market, including its impact on competition. This reporting will ensure that any cumulative difference in regulation is tracked over time.
22. The monitoring mechanism could see specific reporting into impacted sectors or UK regions and could also include local-level divergence within England, particularly in response to future English devolution. The functioning of the UK Internal Market architecture itself will also need to be reviewed at intervals to make sure legislation is still serving developments in the market and whether legal principles are being adhered to and utilised effectively by stakeholders.
23. Insights from external stakeholders will be gathered to support this function and outputs will be made available for businesses and consumers to consider and utilise. In this regard, the monitoring function could include the option for making recommendations about minimum standards.
24. **Independent monitoring and reporting will not generate any binding recommendations**, though monitoring could nevertheless explicitly note particularly distortive or discriminatory actions by any administration.
25. The views of business and consumers will be actively and systematically gathered on an independent basis, in part to support advice provided and monitoring. Stakeholders will be able to submit evidence of potential regulatory distortions through an online interface. An independent assessment of this evidence could support reporting on whether a regulatory measure was causing businesses significant costs more generally and discouraging intra-UK trade. This could include professionals who are facing barriers in having their qualifications recognised across the UK.
26. As detailed above, the Government intends to supplement the smooth operation of the Internal Market with two functions delivered independently: **monitoring** of the Internal Market and **business and consumer engagement**. The Government believes two of these functions are best housed in the same vehicle, in recognition of the mutually

reinforcing role they will play in the wider system. This would also ensure the functions are implemented with adequate authority and necessary flow of information happens seamlessly.

27. The UK Government recognises the range of potential vehicles for the two independent functions that could be explored including an independent body with close links to the UK Parliament and devolved legislatures; an expert committee; or a body accountable directly to the UK Parliament. The design of the vehicle and its governance will have implications for the way advance notification, oversight and dispute resolution are conducted, as well as how wider intergovernmental collaboration on and accountability for the Internal Market is ensured.

**Consultation Question 3. What would be the most effective way of implementing the two functions outlined above? Should particular aspects be delivered through existing vehicles or through bespoke arrangements?**

**Consultation Question 4. How should the Government best ensure that these functions are carried out independently, ensure the smooth functioning of the Internal Market and are fully representative of the interests of businesses and consumers across the whole of the UK**

For the full paper, including information on subsidy control, please see [here](#).