

NORTH EAST SCOTLAND AGRICULTURE ADVISORY GROUP BULLETIN – 28 APRIL 2021

THE UNITED KINGDOM INTERNAL MARKET ACT 2020

1 Reason for report

- 1.1 To inform NESAAAG Members

2 Recommendation

- 2.1 **It is recommended that the Group notes this report**

3 Purpose and Decision-Making Route

- 3.1 Action point from prior meeting

4 Discussion

- 4.1 At the prior meeting of NESAAAG on 25 November, a commitment was made to providing an update on the UK Internal Market Act once it had completed its passage through the UK parliamentary process. The UK Internal Market Bill was published on 9 September 2020 to prepare for the end of the transition period, following which the UK Government and Devolved Administrations would no longer be collectively bound by EU law. The UK Government argued that the Bill would be necessary to underpin the proper functioning of the UK internal market after the end of the transition period. Although the Scottish and Welsh parliaments declined to offer their consent, the Act became law on 17 December 2020.
<https://www.legislation.gov.uk/en/ukpga/2020/27/contents/enacted>
- 4.2 The UK Internal Market Act 2020 embeds in law the two key Market Access Principles (MAPs) of mutual recognition and non-discrimination. Under the former, goods compliant with statutory rules relating to the part (country) of the UK in which they were manufactured or imported automatically meet the requirements applying elsewhere in the UK. A similar regime applies to services. For the latter principle (non-discrimination), rules on the sale of goods of delivery of services cannot discriminate against providers from another part of the UK, either directly or indirectly, though there are some exceptions for Northern Ireland under the Northern Ireland Protocol. The Act also establishes an Office for the Internal Market (OIM) which oversees the market.
- 4.3 While Devolved Administrations will still be able to regulate goods and services in their own areas under the Act, their standards may not be enforceable to manufacturers and providers elsewhere in the UK. This could potentially weaken the powers of devolved governments and stifle the opportunity to pilot higher standards and new policy developments in Devolved Administrations. The Institute for Government cites* the example of a ban on single use plastics in one part of the UK being unenforceable on

manufacturers/providers elsewhere in the UK. Common Framework agreements are proposed through which the four administrations could collaborate to agree future policy development and minimise disruption arising from regulatory divergence, and in so doing help to allay concerns over the diminution of devolved powers.

<https://www.instituteforgovernment.org.uk/sites/default/files/publications/internal-market-act.pdf>

**The Welsh government intends to ban nine types of reusable plastics: straws, stirrers, cotton buds, balloon sticks, plates and cutlery, polystyrene food and drinks containers, and certain types of carrier bags. England has already introduced a similar ban, but this applies only to the first three items, which would leave the latter six items legal in England and not Wales. The ban on these six items would apply only to plastics produced in Wales and would not be enforceable against plastic products sold in Wales if they were produced in England. So the Welsh government would not be able to prevent, for example, plastic cutlery from being sold, consumed and disposed of in Wales. This could undermine its ability to achieve the objective of reducing plastic waste. The Welsh government said: 'A ban that could only apply to Welsh produced plastics would undermine the policy and render it ineffective'.*

- 4.4 Previously, EU Structural Funds were administered by Devolved Administrations. The Act empowers UK Ministers to intervene directly in any part of the UK to resource investment in infrastructure, economic development and skills, as seems likely via the UK Shared Prosperity Fund. Powers to create a new UK-wide State Aid regime are also part of the Act and have been the subject of a recent consultation.
- 4.5 That the Act – which has significant implications for devolved government – passed into law without the approval of Devolved Administrations, as is customary under the 'Sewel Convention', set the pattern for the continuing dissent expressed by Scottish and Welsh Governments that devolved powers have been undermined by the Act. The House of Lords expressed concerns during the passage of the Bill and secured several amendments, including strengthening the reach of the common framework approach when managing policy divergence (ie through consensus).
<https://commonslibrary.parliament.uk/research-briefings/cbp-9051/>
<https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2021/03/brexit-uk-internal-market-bill-scotlands-future/documents/brexit-uk-internal-market-act-devolution/brexit-uk-internal-market-act-devolution/govscot%3Adocument/brexit-uk-internal-market-act-devolution.pdf?forceDownload=true>
- 4.6 While the scope of the Act appears narrower than the EU Single Market legislation it replaces, the implications are potentially very wide ranging (though 'public functions' are excluded from MAPs). For the food and agriculture sectors, it is possible that areas of contention will arise in relation to animal welfare arrangements and food standards (eg gene-edited produce and food imported under a future trade deal).
- 4.7 The Institute for Government analysis concludes by suggesting that, despite the sustained resistance from devolved administrations and the House of Lords, passing the Act was the easy part, and that the real work ('next steps') will involve creating the durable and robust structures required to manage the UK internal market in partnership with devolved administrations, including:
- to establish trust in the Office for the Internal Market

- to clarify how market access principles will be enforced
- to agree protocols around the use of powers to amend the framework
- to create a joined-up approach to the UK internal market
- to facilitate parliamentary scrutiny of the UK internal market
- to consider how the long-term implications for devolution will be assessed
- to consult on the shared prosperity fund and future subsidy regime

5 Council Priorities, Implications and Risk

5.1 The following Council priorities are relevant to this report

- Support a strong, sustainable, diverse and successful economy
- Protect our special environment including tackling climate change by reducing greenhouse gas emissions

5.2 The table below indicates whether risks and implications apply if the recommendations are agreed

Subject	Yes	No	N/A
Financial			x
Staffing			x
Equalities			x
Fairer Scotland Duty			x
Town Centre First			x
Sustainability			x
Children and Young People's Rights and Wellbeing			x

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