



HRC Submission

UK Internal Market Consultation

August 2020

The Human Rights Consortium has several concerns about the approach set out in the Government's White Paper on the UK Internal Market. These concerns are set out below as the limited format of the suggested consultation questions allows little scope for proper analysis of the proposals.

The UK government's Consultation Principles (2013; updated 2018) state that the 'timing of consultation engagement should begin early in policy development when the policy is still under consideration and views can genuinely be taken into account'. The Consultation Principles (2013) also recommends that 12 weeks or more may be appropriate for a 'new or contentious' policy and that when deciding on the timescale for a given consultation the capacity of the groups being consulted to respond should be taken into consideration. As such, in this instance, 4 weeks seems an entirely inadequate time frame given the constitutional implications. Whilst the UK government may feel an urgency to get policies in place and related legislation passed before the end of the Transition Period, it seems that given that this issue is pertinent to the workings of the devolved administrations and pertains to intergovernmental relations, which are presently under review, sufficient time should be granted for this consultation. Despite previous, related consultations, a mere four weeks is inadequate and will not afford respondents adequate time to consult with their stakeholders, if necessary, and thoroughly consider the issues at hand.

The Consultation Principles notes that The Compact (2010) between the voluntary and community sector in England and the UK government must continue to be respected and highlights that according to The Compact, the government shall undertake to, where appropriate and enables meaningful engagement, 'conduct 12-week formal written consultations, with clear explanations and rationale for shorter time-frames or a more informal approach' (2.4).

The Consultation Principles also note that when deciding on the timeframe for consultation, the government should bear in mind, 'the capacity of the groups being consulted to respond should be taken into consideration'. Indeed, many consultants may be understaffed or otherwise impacted due to the ongoing COVID-19 pandemic crisis. Finally, the Consultation Principles states that consultation time frames 'should be proportionate and realistic to allow stakeholders sufficient time to provide a considered response and where the consultation spans all or part of a holiday period'. The Consultation Principles assumes the summer holiday period to be the month of August and significantly 2 of the 4 weeks of the present consultation period is in August.

In line with the Consultation Principles we concede that there may be times when a shorter consultation period may be required, yet it remains our view that the matter at hand is too far reaching, complex and important to rush. Likewise, we see no reference to any assessments of the equality impacts of the Government proposals, particularly as it relates in Northern Ireland to Government duties under Section 75 of the Northern Ireland Act. We would encourage the Government to review and address this shortcoming.

More substantively, the principle behind the concept of Mutual Recognition in the Internal Market White Paper 'to ensure that compliance with regulation in one territory is recognised as compliance in another' is a clear goal of the White Paper. The proposal in the White Paper to effectively introduce a strict legislative framework to enforce this approach does however seem to be quite an inflexible approach given the complexities of the devolved nature of government across the UK, the difficulties of navigating such a system against the provisions of the EU/UK Withdrawal Agreement and the Ireland/Northern Ireland Protocol are at this point overly premature given that the substantive trading relationship between GB and the EU is a yet undecided.

The White Paper affirms the security provided to businesses by the Ireland/Northern Ireland Protocol and provides assurance that NI products that have approval and certification from EU authorities and bodies will also be accepted within the GB market.

What is much less clear is how such a system would work in regard to goods from GB entering the NI market. Under the terms of the Protocol GB goods will not be allowed to enter the Northern Ireland Market unless they are in compliance with the EU rules maintained for NI under the Protocol.

As we do not know what the outcome of the UK/EU Free Trade negotiations will be it is very difficult to predict whether the UK Government will commit GB to maintaining these standards following the end of the transition period at the end of 2020.

The White Paper commits to no lowering of important food and environmental standards but the UK Government has to date been reluctant to agree to key EU proposals for the regulatory alignment and level playing field provisions that would be prerequisites for the UK maintaining an equivalent level of access to the EU Single Market as it currently enjoys. The proposals say that the Government plans 'to take account of the Northern Ireland Protocol' in the application of these new proposals but no details are provided as to how that will be achieved.

As outlined by [Gravey & Jordan](#), if standards in the rest of the UK were to be dropped below the levels contained in the NI Protocol it would signal an automatic barrier to trade between GB and NI that could decrease the availability of goods to NI consumers and in turn create higher prices in the Northern Ireland market. This would have clear knock on implications for living standards, poverty levels and other existing inequalities. While the likelihood of divergence from existing standards seems like the worst-case scenario the trajectory of current trade talks suggest that this could easily emerge as an outcome before the end of the transition period. The White Paper therefore seems premature before the completion of those talks.

The proposals also only currently address frictionless trade, not balancing that need against maintaining the autonomy of devolved regions. One clear concern would be that such proposals would likely risk a 'race to the bottom' regarding standards that may apply across the UK. Our colleagues in the [Wales Governance Centre](#) have rightly pointed out in their own submission that this concern within other systems of mutual recognition is usually handled by allowing regions to derogate from the standards, but such an approach is not discussed in this White Paper. Likewise, there is no provision for a dispute resolution mechanism within the proposed approach. This would

indicate that disputes may be more likely to be dealt with via civil litigation. As that is a route more readily available to larger business an added concern would be that any litigation of this manner would likely seek to challenge higher standards in any of the devolved regions. From a rights perspective this raises concerns about the future of any environmental or working standards, for instance, that may fall outside of the scope of the protections of the NI Protocol or standards generally in these areas in the other devolved regions.

One potential solution to this concern would be for the UK Government to introduce a non-regression clause within these proposals to ensure a minimum set of standards in line with provisions of the NI Protocol for instance. However, no such proposal is discussed within the White Paper.

Given that it would not be in the interests of devolved regions to create trade barriers with England given the size of the market in question and the detrimental economic impacts of restricting trade in this manner the proposals in the White Paper seem quite restrictive, likely to impinge on the autonomy of devolved governments and premature given the wider future trading relationship between the UK and the EU is undecided.

The White Paper does very little to unpack the details of what mutual recognition means and how this principle might in fact play out. As a result, it is difficult for stakeholders to engage in proper analysis of the proposals. That EU powers will return to devolved control is positive for the devolved governments. Previous work across the UK to distinguish Common Frameworks attempted to identify areas where further work was needed to ensure frictionless trade. Similar collaborative and flexible approaches would be more favourable to the current set of proposals that envision a more rigid system that does not properly recognise the autonomy of devolved regions or the uncertainty surrounding the UK's future trading relationship with the EU.

The White Paper states that 'key decisions' around the UK internal market 'will be put to the UK Parliament for approval, rather than resting exclusively with the UK Government', but it does not say that the NI Assembly and the devolved parliaments will also have to approve decisions around this structure. Given that the outworking of any Internal Market system will have a substantial impact on the autonomy of devolved governments and the exercising of those powers returned from the EU, it is concerning that a more collaborative approach in line with existing work on developing Common Frameworks is not proposed. A more effective consultation with the devolved regions and a meaningful application of the Sewel Convention regarding these proposals would be recommended.

The White Paper also states that the present intergovernmental relations (IGR) mechanisms will be 'expanded' as a result of forthcoming Internal Markets legislation. While dialogue across the various jurisdictions of the UK is to be welcomed recent examples within the present IGR structures, including the non-statutory Joint Ministerial Committee (JMC), have received considerable criticisms and been under review since March 2018. Indeed, the Scottish Affairs Committee noted in June 2019 that the JMC, which is meant to demonstrate a parity of esteem between the 4 governments, is principally governed by the UK government's interests and priorities. To create *an effective* body to monitor the UK Internal Market and consult with stakeholders whilst 'fostering collaboration and dialogue' and 'building trust and ensuring openness' will be very difficult in the shadow of mistrust and the belief that these proposals and subsequent laws may erode the powers of the devolved governments.

Certainly, better engagement with the devolved governments and civil society in general is needed. The Northern Ireland Affairs Committee recently reported (July 2020) on the customs arrangements

after Brexit and the Governments commit to unfettered access for Northern Ireland to the UK internal market. The NIAC recommended that the UK governments establish a mechanism by which Northern Ireland businesses, representatives, trade unions, academics and other interested parties can engage with the Joint Committee, Specialised Committees and the Joint Consultative Working Group. The UK government did not submit written response to the NIAC despite being asked to do so.

The White Paper talks of the UK's 'exceptionally high standards which will underpin the functioning of the Internal Market, to protect consumers and workers across the economy and of the governments commitments to upholding high standards post-Brexit'. It reiterates that the UK has 'robust standards on food, with world-leading food, health and animal welfare standards. We will not lower our standards [and will] ensure that consumers can have confidence in the food they buy'. The White Paper explicitly states *'import standards include a ban on using artificial growth hormones in domestic and imported products and set out that no products, other than potable water, are approved to decontaminate poultry carcasses. Any changes to existing food safety legislation would require new legislation to be brought before the UK Parliament and the devolved legislatures.* Yet days after the publication of the White Paper, a majority of MPs voted **not** to require that imported agricultural goods meet animal health and welfare, environmental, plant health, food safety and other standards which are at least as high as those which apply to UK produced agricultural goods. Food standards is a devolved responsibility, but international trade is a reserved matter with devolved administrations being bound to implement international agreements. There are clearly concerns in this approach that reserved powers over International relations may be used to supersede devolved restrictions that interfere with a lowering of trading standards agreed as part of any future Free Trade Agreements.

This raises the question of whether MR and non-discrimination obligations may potentially diminish devolved powers. Public health, animal welfare and food standards are intricately connected and the proposals for strict MR and non-discrimination principles in the UK internal market blurs the lines between devolved and reserved matters and the potential of the UK government to overstep the powers which the devolved governments have. While for some examples, as above, Northern Ireland consumers would be protected through the Ireland/Northern Ireland Protocol, this does not apply to other areas of the UK or for any standards in Northern Ireland that may fall outside the scope of the protocol.

While the NI Protocol may set Northern Ireland apart from much of the Internal Market debate, at least for the next 4 years, it is vital that mechanisms and policies which purport to safeguard the seamless trade between the four nations within the United Kingdom, do not ultimately weaken devolved governance in Northern Ireland given its centrality to the peace process and Belfast/Good Friday Agreement.

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