

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 3, page 3, line 27            leave out subsection (9)

Effect

Paving amendment.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 3, page 3, line 34 add at end ‘Regulations under subsection (8) are subject to super-affirmative resolution procedure (see Schedule (*Super-affirmative resolution procedure*)).’”

Effect

This amendment ensures that regulations under subsection (8) are subject to super-affirmative resolution procedure and introduces the supportive schedule in respect of super-affirmative resolution procedure.

Reason

We are concerned at the level of Parliamentary scrutiny applicable to regulations under clause 3. Changing the scope of the mutual recognition principle may have significant consequences and we believe that the appropriate procedure should be super-affirmative resolution procedure which enables longer consultation and for the views of stakeholders to be taken into account.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 3, page 3, line 31

add at end “( ) The Secretary of State must publish the results of the consultation and give reasons for any decision reached.”

Effect

This amendment requires the Secretary of State to publish the results of the consultation and give reasons for any decision reached.

Reason

The obligation on the Secretary of State to consult with the Devolved Administrations is welcome but the clause lacks any obligation on the Secretary of State to report the outcome of the consultation with reasons for the decision. The Government should make public the outcome of the consultation in the interests of transparency.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 4, page 4, line 3                      leave out “and (b) there was no corresponding requirement in force in each of the other three parts of the United Kingdom”

Effect

This is a probing amendment to seek the Government’s interpretation of Clause 4(3)(b).

Reason

Clause 4 purports to mean that certain regulatory divergences which currently exist will continue to be able to be enforced against goods produced in, or imported into, other parts of the UK and would not be able to be so enforced were they introduced after the MRP comes into force.

However, we note that in order for ‘a statutory requirement in a part of the United Kingdom’ not to be a relevant requirement for the purposes of the MRP, the conditions in subsection (2) must be met. There are two conditions in subsection (2) and our comment relates to subsection (2)(b). Subsection (2)(b) provides: ‘(2) The conditions are that ,on the relevant day... (b) there was no corresponding requirement in force in each of the other parts of the United Kingdom’

We question what provisions will captured by the terms of clause 4? For example, Food and Feed law is mainly derived from EU law and in terms of the EU (Withdrawal) Act 2018 this body of law is retained EU law, implemented throughout the UK. Are Scottish Food and Feed Regulations (and by implication all retained EU law) excluded or not from the application of the mutual recognition principle because there are corresponding requirements implementing the same EU obligation (albeit in slightly different terms to fit into the relevant law) in each of the other parts of the UK? How does the MRP relate to Common Frameworks?

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 4, page 4, line 9                      leave out subsection (5)

Effect

Consequential amendment.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 4, page 4 line 14      leave out “subsections (2) and (5)” and insert “  
subsection (2)”

Effect

Consequential amendment.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 4, page 4, line 16

add at end “ ( ) For the purposes of subsection (4) “substantive change” means “significant amendment.”

Effect

This amendment probes the Government’s understanding of the phrase ‘substantive changes’ in relation to changes to statutory requirements.

Reason

We note that “substantive change” is not defined in clause 4. The Government should explain what it interprets as “substantive change” in connection with changes to statutory requirements.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 5, page 4, page 29

leave out “of no effect” and insert “not law”

Effect

This amendment probes the meaning of clause 5 (3) regarding the effect of a statutory requirement under clause 6.

Reason

It would appear that the effect of clause 5(3) will be to render a statutory provision in devolved legislation of “no effect”. This is lacking in clarity. Is the statutory requirement valid or not? Is it valid but cannot be enforced? Is it voidable? It is also not clear what is the application, if any, of clause 5(3) if the statutory provision is in an Act of Parliament which applies to England only. These matters should be clarified. The amendment applies the statutory language of the Scotland Act 1998 section 29 to clause 5(3) in an effort to bring clarity to the point.

We take the view these statutory provisions could be challenged by private parties. It will presumably also be a basis for challenging devolved legislation (assuming the inability to modify the bill under clause 54, will in all cases prohibit legislation that is contrary to its principles – presumably that is the intention but it is not the clearest way that outcome could have been achieved).



**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 6, page 5, line 25 leave out subsection (6)

Effect

Paving amendment.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 6, page 5, line 29

add at end “( ) The Secretary of State must publish the results of the consultation and give reasons for any decision reached”

Effect

This amendment requires the Secretary of State to publish the results of the consultation and give reasons for any decision reached.

Reason

The obligation on the Secretary of State to consult with the Devolved Administrations is welcome but the clause lacks any obligation on the Secretary of State to report the outcome of the consultation with reasons for the decision. The Government should make public the outcome of the consultation in the interests of transparency.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 6, page 5, line 30 add at end ‘ ( ) Regulations under subsection (5) are subject to super-affirmative resolution procedure (see Schedule (*Super-affirmative resolution procedure*)).’”

Effect

This amendment ensures that regulations under clause 6 will be subject to super affirmative procedure. This amendment also introduces the supportive schedule in respect of super-affirmative resolution procedure

Reason

We are concerned at the level of Parliamentary scrutiny applicable to regulations under clause 6. Changing the scope of the non-discrimination principle may have significant consequences and we believe that the appropriate procedure should be super affirmative resolution procedure which enables longer consultation and for the views of stakeholders to be taken into account.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 7, Page 5, line 41            leave out “actual or hypothetical”

Effect

This amendment probes the description of local goods in clause 7(3).

Reason

We have concerns about the definition of “Local goods” which for the purposes of clause 7 include “actual or hypothetical goods”. There is no definition of “hypothetical goods”. The Government should explain what it means by using this term.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 8, page 6, line 47

add at end

“(c)the protection of public morality  
(d) the protection of public policy  
(e) The protection of national treasures  
possessing artistic historic or archaeological value  
or  
(f) The protection of industrial and commercial  
property.”

Effect

This amendment ensures that the definition of legitimate aim is brought into line with the source EU law as contained in Articles 34-36 TFEU.

Reason

The list of legitimate aims defined in clause 8(6) is shorter than those in Article 36 TFEU. Clause 8(6) defines a “legitimate aim” as “(a) the protection of life or health of humans, animals or plants or (b) the protection of public safety or security”.

Article 36, on the other hand allows additional prohibitions or restrictions on the grounds of “public morality”, “public policy”, “protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property”.

We suggest that clause 8 is amended accordingly. The Government should explain why it excluded the other “legitimate aims” found in Article 36 TFEU.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 8, page 7, line 3                      leave out subsection (8)

Effect

Paving amendment.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 8, page 7, line 4

add at end

‘ ( ) Before making regulations under subsection (7) the Secretary of State must consult the Scottish Ministers, The Welsh Ministers and the Department for the Economy in Northern Ireland.’

Effect

This amendment ensures that the Secretary of State must consult with the Devolved Administrations before amending the list of legitimate aims.

Reason

Clause 8(7) empowers the Secretary of State to amend (by adding to varying or removing a legitimate aim) clause 8(6). This is a very wide power and regulations are subject to affirmative resolution procedure. Unlike other order making powers earlier in the bill the Secretary of State is under no obligation to consult the Devolved Administrations before making such regulations. The Government should explain why clause 8 adopts a different approach to the earlier clauses in this respect

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 8, page 7, line 4

add at end '( ) The Secretary of State must publish the results of the consultation and gives reasons for any decision reached.'

Effect

This amendment ensures that the Secretary of State must publish the results of any consultation with the Devolved Administrations along with the reasons for reaching any decision on the consultation.



**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 8, page 7, line 8                      add at end ‘( ) Regulations under subsection (7) are subject to super-affirmative resolution procedure (see Schedule (*Super-affirmative resolution procedure*)).’

Effect

This amendment ensures that regulations under clause 8 will be subject to super-affirmative procedure. This amendment also introduces the supportive schedule in respect of super-affirmative resolution procedure.

Reason

We are concerned at the level of Parliamentary scrutiny applicable to clause 8 regulations. Changing the definition of “legitimate aim” may have significant consequences. We believe that the appropriate procedure should be super-affirmative resolution procedure which enables longer consultation and for the views of stakeholders to be considered.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 9, page 7, line 14

leave out 'substantive change' and insert  
'significant amendment'.

Effect

This amendment probes the Government's understanding of the phrase substantive change in relation to changes to statutory requirements.

Reason

We note that "substantive change" is not defined in clause 9. The Government should explain what it interprets as "substantive change" in connection with changes to statutory requirements.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 10, page 7, line 23

add at end

‘(3) Before making regulations under subsection (2) the Secretary of State must consult the Scottish Ministers, The Welsh Ministers and the Department for the Economy in Northern Ireland.’

Effect

This amendment ensures that the Secretary of State must consult with the Devolved Administrations before amending schedule 1 of the bill.

Reason

This is a very wide power and regulations are subject to affirmative resolution procedure. Unlike other order making powers earlier in the bill the Secretary of State is under no obligation to consult the Devolved Administrations before making such regulations. The Government should explain why clause 10 adopts a different approach to earlier clauses in this respect.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 12, page 8, line 22            add at end

‘(2) Before preparing guidance under subsection  
(1) the Secretary of State must consult the Scottish  
ministers, The Welsh Ministers and the  
Department for the Economy in Northern Ireland.’

Effect

This amendment ensures that the Secretary of State must consult with the Devolved Administrations before preparing guidance under clause 12.

Reason

The obligation on the Secretary of State to consult with the Devolved Administrations in earlier clauses was welcome but clause 12 does not include such an obligation. There seems no good reason why the same level of transparency which applies to other parts of the bill should not apply to clause 12. This amendment provides that transparency.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 12, page 8 line 31

add at end

‘(3) Before revising or withdrawing any guidance under subsection (1) the Secretary of State must consult the Scottish Ministers, The Welsh Ministers and the Department for the Economy in Northern Ireland.’

Effect

Consequential amendment.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 14, page 9, line 13

leave out subsection (4) and insert —

“(4) “Sale“ has the same meaning as in the Sale of Goods Act 1979.”

Effect

This amendment brings clause 14 into conformity with the existing law of sale.

Reason

The Sale of Goods Act 1979 defines a contract for sale as “a contract of sale of goods is a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called the price”. It further defines “agreement to sell” as a contract of sale “for the transfer of the property in the goods is to take place at a future time or subject to some conditions later to be fulfilled”. The introduction of a new definition of “sale” in the bill without reference to the Sale of Goods Act 1979 could produce confusion and lack of clarity. The Government should explain the reasons for departing from the definitions in the Sale of Goods Act 1979.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 14, page 9, line 25                      leave out subsection (6)(c).

Effect

This amendment deletes clause 14(6)(c) from the bill.

Reason

Clause 14(6) applies to other means of transferring possession or property which are unrelated to sale including barter for exchange leasing or hiring and gift. The Government should explain the reasons for extending the bill to these transactions and in particular to gift which transfers ownership in the item donated without payment or consideration.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 16, page 11, line 32

leave out 'substantive change' and  
insert 'significant amendment'.

Effect

This amendment probes the Government's understanding of the phrase 'substantive change' in relation to changes to statutory requirements.

Reason

We note that "substantive change" is not defined in clause 16. The Government should explain what it interprets as "substantive change" in connection with changes to legislative requirements.



**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 17, page 12, line 40

add at end

‘(3) before making regulations under subsection (2) the Secretary of State must consult the Scottish Ministers, The Welsh Ministers and the Department for the Economy in Northern Ireland.’

Effect

This amendment ensures that the Secretary of State must consult with the Devolved Administrations before amending schedule 2 of the bill.

Reason

This is a very wide power and regulations are subject to affirmative resolution procedure. Unlike other order making powers earlier in the bill the Secretary of State is under no obligation to consult the Devolved Administrations before making such regulations under clause 17(2). The Government should explain why clause 17 adopts a different approach to earlier clauses in this respect.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 17, page 12, line 41

leave out subsection (3)

Effect

Paving amendment.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 17, page 12, line 43

leave out subsection (4).

Effect

This amendment deletes clause 17 (4) from the bill

Reasons

Clause 17(4) provides that for the first three months following part two coming into force the Secretary of State may make regulations subject to made affirmative resolution procedure.

Made affirmative procedure is a procedure for subordinate legislation, which needs to be carefully scrutinised. The House of Lords Constitution Committee, in its “Fast-track Legislation: Constitutional Implications and Safeguards” report, said:

“The made affirmative procedure is often used in Acts where the intention is to allow significant powers to be exercised quickly. It is a kind of ‘fast-track ’secondary legislation... If the made affirmative procedure is used, then the instrument is effective immediately.”

The report went on to say:

“Instruments laid as made instruments almost inevitably place a serious time pressure on those drafting them. The JCSI’s 8th report of this session drew the special attention of both Houses to three statutory instruments which had been laid as made affirmatives ... ‘revisions were being made to the terms of the instruments down to the moment that they were made’”, and there had been “serious time pressure” in the making of the instruments”. Parliamentary counsel and the solicitors in Government Departments are expert in drawing up instruments and rarely make mistakes but policies which require speed of scrutiny require those carrying out that scrutiny to be additionally careful about the legislation they are considering.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 17, page 12, line 45                      add at end ‘( ) Regulations under subsection (2) are subject to super-affirmative resolution procedure (see Schedule (*Super-affirmative resolution procedure*)).’

Effect

This amendment ensures that regulations under clause 17 will be subject to super-affirmative procedure. This amendment also introduces the supportive schedule in respect of super-affirmative resolution procedure.

Reason

We are concerned at the level of Parliamentary scrutiny applicable to clause 17 regulations. Changing the exclusions to Schedule 2 may have significant consequences. We believe that the appropriate procedure should be super-affirmative resolution procedure which enables longer consultation and for the views of stakeholders to be considered.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 19, Page 13, line 17

leave out “of no effect” and insert “not law”.

Effect

This amendment probes the meaning of clause 19(1) regarding the effect of a statutory requirement under that clause.

Reason

It would appear that the effect of clause 19(1) will be to render a regulatory requirement of ‘no effect’. This is lacking in clarity. Is the regulatory requirement valid or not? Is it valid but cannot be enforced? Is it voidable? These matters should be clarified. The amendment applies the statutory language of the Scotland Act 1998 section 29 to clause 19(1) in an effort to bring clarity to the point.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 20, Page 13, line 35

leave out “of no effect” and insert “not law”.

Effect

This amendment probes the meaning of clause 20(1) regarding the effect of a statutory requirement under that clause.

Reason

It would appear that the effect of clause 20(1) will be to render a regulatory requirement of ‘no effect’. This is lacking in clarity. Is the regulatory requirement valid or not? Is it valid but cannot be enforced? Is it voidable? These matters should be clarified. The amendment applies the statutory language of the Scotland Act 1998 section 29 to clause 20(1) in an effort to bring clarity to the point

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 20, Page 14, line 2

leave out “or less attractive”.

Effect

This probing amendment is designed to ascertain the meaning of ‘less attractive’ in connection a disadvantage referred to in clause 20

Reason

Putting a service provider at a disadvantage is a serious matter in the bill. Using a phrase such as ‘less attractive ‘ as part of the assessment of ‘disadvantage’ is subjective and lacks clarity. The Government should clarify what this phrase means.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 20, page 14, line 26

add at end  
'( ) before making regulations under subsection (7) the Secretary of State must consult the Scottish Ministers, The Welsh Ministers and the Department for the Economy in Northern Ireland.'

Effect

This amendment ensures that the Secretary of State must consult with the Devolved Administrations before amending the definition of 'legitimate aim' in clause 20(6).

Reason

This is a very wide power and regulations are subject to affirmative resolution procedure. Unlike other order making powers earlier in the bill the Secretary of State is under no obligation to consult the Devolved Administrations before making such regulations under clause 20(6). The Government should explain why clause 20 adopts a different approach to earlier clauses in this respect.



**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 20, page 14, line 27

leave out subsection (8)

Effect

Paving amendment.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 20, page 14, line 32

add at end ‘ ( ) Regulations under subsection (7) are subject to super-affirmative resolution procedure (see Schedule (*Super-affirmative resolution procedure*)).’

Effect

This amendment ensures that regulations under clause 20 will be subject to super-affirmative procedure. This amendment also introduces the supportive schedule in respect of super-affirmative resolution procedure.

Reason

We are concerned at the level of Parliamentary scrutiny applicable to clause 20 regulations. Changing the definition of “legitimate aim” may have significant consequences. We believe that the appropriate procedure should be super-affirmative resolution procedure which enables longer consultation and for the views of stakeholders to be considered.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 23, page 16, line 26

leave out “mainly” and insert “substantially”

Effect

This amendment is designed to probe the meaning of ‘mainly’ in connection with the gathering of experience.

Reason

In relation to clause 23(7) “mainly” in 23(7)(b) requires further definition. How would ‘mainly’ be measured? Will it be by time spent as a proportion of the whole qualifying experience? Or by some other measure? How will this experience be recorded and verified? The same questions arise in regard to that aspect of the experience obtained elsewhere than the UK.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 31, page 23, line 18                      leave out “from time to time”.

Effect

This amendment deletes the phrase ‘from time to time’ from clause 31(1).

Reason

With regard to clause 31(1) we believe that reviews should take place on a more structured basis than from “time to time”. This provision needs further definition.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 31, page 23, line 18

leave out “of any matter” and insert “such matters of importance which”

Effect

This amendment ensures that the CMA conducts reviews into important matters only.

Reason

Clause 31(1) provides the CMA with an extensive power to conduct reviews. This power should be used in accordance with clear rules which ensure that only important issues are reviewed. This amendment will ensure that focus,

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 31, page 23, line 26

add at end—

“A proposal under section 31(2) may only be made by  
(a) the Secretary of State  
(b) the Scottish Ministers,  
(c) the Welsh Ministers and  
(d) the Department for the Economy in Northern Ireland.”

Effect

This amendment ensures that only the UK Government and Devolved Administrations can make a proposal to the CMA to conduct a review.

Reason

The bill currently provides that the CMA can receive and consider any proposals for undertaking a review. Anyone can therefore refer a matter to the CMA. There should be some qualification on this to exclude vexatious or frivolous referrals. This amendment restricts the capacity to make referrals to the UK Government and Devolved Administrations.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 32, page 25, line 33

after “part” insert “or the entirety of”

Effect

This amendment ensures that the Secretary of State can request advice of a report for the whole UK not simply a part of the UK

Reason

We note that the Secretary of State may request the CMA to provide a report for any part of the United Kingdom under clause 32(11)(d) but not apparently for the whole of the UK. This amendment resolves that anomaly.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 35, page 27, line 42                      leave out subsection (4).

Effect

This amendment deletes clause 35(4) from the bill.

Reason

Clause 35 (4) states: '*A duty of the Secretary of State under subsection (2) to make a statement to Parliament is to be discharged by laying a copy of the statement before each House of Parliament*'.

We take the view that such duties should be discharged in person directly to Parliament by making an oral statement rather than by laying a copy of the statement before each House.



**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 37, page 28, line 37

add at end

‘( ) before preparing advice and information under subsection (1) the CMA must consult such persons as it considers appropriate.’

Effect

This amendment ensures that the CMA must consult stakeholders before preparing advice and information under clause 37.

Reason

We believe that the provision of advice and guidance about how the CMA will exercise its functions under sections 31-34 will be of considerable interest to those affected by that exercise. Consultation would enable an opportunity to express views on the prospective content of the advice or guidance by those potentially affected.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 37, page 28 line 45

add at end

‘( ) before revising or withdrawing any advice or guidance under subsection (1) the CMA must consult such persons as it considers appropriate’.

Effect

Consequential amendment.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 38, page 29, line 36

after “evidence” insert “or is subject to legal professional privilege”

Effect

This amendment makes explicit reference to legal professional privilege in clause 38(8).

Reason

Clause 38(8) provides that a person may not be compelled ‘ *to produce or provide any document or information which the person could not be compelled to produce, or give in evidence, in civil proceedings before the court*’.

This provision may apply to legal representatives but it should be made clear by reference to legal profession privilege in the clause.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 43, Page 34, line 19

leave out clause 43.

Effect

This amendment deletes clause 43 from the bill.

Reason

Paving amendment.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 44, page 36, line 38

leave out clause 44.

Effect

This amendment deletes clause 44 from the bill.

Reason

The EU-UK Withdrawal Agreement entered into force on 1 February 2020. The Northern Ireland Protocol (the "Protocol") formed part of the Agreement. The Protocol applies a number of EU laws, including customs and state aid law, to the trade and regulatory regime for goods in Northern Ireland in order to retain frictionless trade between Northern Ireland and the Republic of Ireland with no customs infrastructure between the two.

The Protocol has effect from 31 December 2020 (the end of the transition/ implementation period).

We have the following comments in relation to clauses 44–47: If passed, these clauses would empower Ministers to make regulations that are contrary to the Withdrawal Agreement (Articles 4 and 5).

Clause 44 provides Ministers with the power to "disapply or modify" export declarations and exit procedures, including those set out in the Protocol where Ministers consider there is a need to ensure that Northern Ireland goods should have unfettered access to the UK and there is a need to maintain the UK internal market.

Clause 44(5) provides that the regulations under subsection (1) 'may include provision for rights, powers, liabilities, obligations, restrictions, remedies and procedures that would otherwise apply, as a result of relevant international or domestic law, not to be recognised, available, enforced, allowed or followed.'

Clause 44 sets out the initial provisions which could, if enacted, result in the non-recognition of domestic and international right, breach of the Withdrawal Agreement and restriction of legal rights. This is a significant disapplication of the law and is defined in extremely broad terms. It also attempts to make regulations under clause 44 practically unchallengeable. We take the view that the Government should amend or remove clause 44 from the bill.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 45, page 37, line 26

leave out clause 45.

Effect

This amendment deletes clause 45 from the bill.

Reason

The EU-UK Withdrawal Agreement entered into force on 1 February 2020. The Northern Ireland Protocol (the "Protocol") formed part of the Agreement. The Protocol applies a number of EU laws, including customs and state aid law, to the trade and regulatory regime for goods in Northern Ireland in order to retain frictionless trade between Northern Ireland and the Republic of Ireland with no customs infrastructure between the two.

The Protocol has effect from 31 December 2020 (the end of the transition/implementation period).

We have the following comments in relation to clauses 42–47: If passed, these clauses would empower Ministers to make regulations that are contrary to the Withdrawal Agreement (Articles 4 and 5).

There are a number of views on these provisions but we take the view that, if enacted, these clauses would breach the Withdrawal Agreement, by authorising such a breach (clause 45) and precluding challenge in the UK courts (clause 47).

Clause 45 would if enacted expressly authorise the Secretary of State to make regulations which could disapply Article 10 of the Northern Ireland Protocol in violation of the Withdrawal Agreement. We have already stated our position on breach of the Withdrawal Agreement and believe that the Government should amend the bill by removing this clause from the bill.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 47, page 38, line 34                      leave out clause 47.

Effect

This amendment deletes clause 45 from the bill.

Reason

Clause 47 is very concerning in terms of access to justice and compliance with the rule of law.

Clause 47(1) states the intention behind the approach to international or domestic law by declaring that sections 44 and 45 and any pursuant regulations have effect 'notwithstanding any relevant international or domestic law with which they may be incompatible or inconsistent...'.

We take the view that the approach in 47(1) is sufficient to warrant that the Government should amend or remove clause 47 from the bill.

Clause 47(4), (6) and (8) also impact access to justice and undermine the rule of law.

Article 4 of the Withdrawal Agreement provides for the "direct effect" of the Agreement. This means that the rights and obligations set out in the Agreement (including the Protocol) could be enforced in domestic courts across the UK jurisdictions. This provision was given effect in UK law by the European Union (Withdrawal) Act 2018 Section 7A:

*“7A(1) Subsection (2) applies to—(a) all such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the withdrawal agreement, and (b) all such remedies and procedures from time to time provided for by or under the withdrawal agreement, as in accordance with the withdrawal agreement are without further enactment to be given legal effect or used in the United Kingdom.*

*(2) The rights, powers, liabilities, obligations, restrictions, remedies and procedures concerned are to be—(a) recognised and available in domestic law, and (b) enforced, allowed and followed accordingly”.*

The ouster provision in clause 47(4) excludes access to any court or tribunal and clause 47(6) significantly limits judicial review by reference to clause 47(1) and (2). Clause 47(4) provides:

*“(4) No court or tribunal may entertain any proceedings for questioning the validity or lawfulness of regulations under section 44(1) or 45(1) other than proceedings on a relevant claim or application”.*

*Under 47 (8) A “relevant claim or application” means— (a) a claim for judicial review in relation to England and Wales, (b) an application to the supervisory jurisdiction of the Court of Session in relation to Scotland, or (c) an application for judicial review in relation to Northern Ireland, Where the claim or application is for the purpose of questioning the validity or lawfulness of regulations under section 44(1) or 45(1);*

These provisions undermine not only the Withdrawal Agreement, the EU (Withdrawal) Act 2018 and the European Union (Withdrawal Agreement) Act 2020 but also the Human Rights Act 1998 (HRA) (47(2)(a)). Furthermore, regulations under clauses 44 or 45 are to be considered as primary legislation under the HRA and therefore section 6(1) HRA that ‘It is unlawful for a public authority to act in a way which is incompatible with a Convention right’ does not apply.

The Government should, as a matter of principle comply with public international law and the rule of international law under Article 26 of the Vienna Convention of the law of the Treaty, *pacta sunt servanda* (agreements are to be kept) should be honoured. Adherence to the rule of law underpins our democracy and our society. Given the acknowledgement by Northern Ireland Secretary, Brandon Lewis MP that parts of the bill “break international law in a very specific and limited way”. We believe that to knowingly break with the UK’s reputation for following public international law could have far-reaching economic, legal and political consequences and should not be taken lightly. Although amendments were made to the ensuring that the House of Commons will have a vote on the commencement of clauses 44, 45 and 47 the issues of principle raised by those clauses have not been addressed in the bill.

Under international law, it will not matter by what procedure Parliament has brought into force these provisions. The Government, accordingly, should reflect further on these Clauses and ensure either their amendment or removal to prevent any possibility of the UK being in breach of international law, including acting otherwise than in good faith in the performance of its international obligations.



**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 56, page 45, line 26

leave out “that House” and insert “both Houses of Parliament”.

Effect

This amendment ensures that both Houses of Parliament would need to vote on the commencement of clauses 44, 45 or 47.

Reason

Clause 56(4) provides:

*A statutory instrument containing regulations under subsection (3) may not appoint a day for the commencement of section 44, 45 or 47 unless—*

- (a) a Minister of the Crown has moved a motion in the House of Commons to the effect that sections 44, 45 or 47 may be commenced on or after a day specified in the motion (“the specified day”),*
- (b) the motion has been approved by a resolution of that House,*
- (c) a motion to the effect that the House of Lords takes note of the specified day (or the day which is proposed to be the specified day) has been tabled in the House of Lords by a Minister of the Crown, and*
- (d) the day appointed by the regulations is the same as or is after the specified day.*

These provisions were added to the bill during the House of Commons passage in order to provide additional Parliamentary scrutiny of the decision to commence the sections which, if enacted will be in breach of international law.

Clause 56(4) reduces questions of principle to matters of process and at the same time, by reducing the role of the House of Lords to one of taking note of the commencement order, effectively ensures that the Government majority in the House of Commons will be able to pass the order into law. See our comments on clauses 42-47 above.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 56, page 45, line 27

leave out subsection (4)(c)

Effect

Consequential amendment.

**UNITED KINGDOM INTERNAL MARKET BILL**  
**AMENDMENT TO BE MOVED IN COMMITTEE**

To move the following Schedule—

“SCHEDULE

**SUPER-AFFIRMATIVE RESOLUTION PROCEDURE**

1 If the Secretary of State considers it appropriate to make regulations for the purpose of, or in connection with, implementing any international agreement, the Secretary of State Minister may lay before Parliament—

- (a) draft regulations, and
- (b) an explanatory document.

2 The explanatory document must introduce and give reasons for implementing the international agreement.

3 Subject as follows, if after the expiry of the 40-day period the draft regulations laid under subsection (1) are approved by a resolution of each House of Parliament, the Minister may make regulations in the terms of the draft regulations.

4 The procedure in paragraphs (5) to (8) shall apply to the draft regulations instead of the procedure in paragraph (3) if—

- (a) either House of Parliament so resolves within the 30-day period, or
- (b) a committee of either House charged with reporting on the draft regulations so recommends within the 30-day period and the House to which the recommendation is made does not by resolution reject the recommendation within that period.

5 The Secretary of State must have regard to—

- (a) any representations,
- (b) any resolution of either House of Parliament, and

(c) any recommendations of a committee of either House of Parliament charged with reporting on the draft regulations, made during the 60-day period with regard to the draft regulations.

6 If, after the expiry of the 60-day period, the draft regulations are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the draft regulations.

7 If, after the expiry of the 60-day period, the Secretary of State wishes to proceed with the draft regulations but with material changes, the Secretary of State may lay before Parliament—

(a) a revised draft of the regulations, and

(b) a statement giving a summary of the changes proposed.

8 If the revised draft regulations are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the revised draft regulations.

9 For the purposes of this Schedule regulations are made in the terms of draft regulations or revised draft regulations if they contain no material changes to their provisions.

10 In this paragraph, references to the “30-day”, “40-day” and “60-day” periods in relation to any draft regulations are to the periods of 30, 40 and 60 days beginning with the day on which the draft regulations were laid before Parliament.