



Department for  
Business, Energy  
& Industrial Strategy

# Government response to the consultation on the UK Internal Market

Consultation closed: 13 August 2020

## Update 21 October 2020

Since publishing the government response on 9 September, we identified 31 responses that had been only partially analysed for data purposes. We have reviewed our analysis and found that no material change to the text was needed, except for the new aggregated response numbers:

page 5: overall consultation responses - 302

page 11: overall respondent type breakdown now as follows:

We received a total of 302 responses to the consultation: 229 responded online, 73 by email. Of these, 68 were from businesses, 90 from individuals, 88 from industry or trade bodies, 18 from political organisations, 17 from charities, 3 from academics, 3 from local government and 15 from other categories, including public and professional bodies and Trade Unions.

In 14 instances we received a response from the same respondent both online and by email.

We also removed the following text from the start of the second paragraph, page 14, inadvertently drafted to provide an expansive interpretation: 'Whilst there was support from some respondents to this question for the idea of both mutual recognition and non-discrimination principles working in tandem...'



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# 1. Overview

## Summary

- In the UK Internal Market White Paper published on 16 July, the Government set out its proposals to ensure continuity of frictionless trade in goods and services across the UK. The Government's approach has also highlighted the need to preserve the devolved settlements and local decision-making, the value of which has always been recognised. The proposals set out will enable a smooth exit from the Transition Period on 1<sup>st</sup> January 2021 and preserve a set of trading rules which have allowed our nation to flourish unhindered for centuries, dating back to the Acts of Union of 1706 and 1707.
- As we conclude the Transition Period, the Government is acutely aware of the need to avoid the constant potential for new trade barriers arising within the UK market, with the consequent knock-on effect on business and consumers.
- We have therefore considered it necessary to provide certainty against this risk for businesses and consumers. Responses to the consultation have generally confirmed business anxiety, with recognition that promoting frictionless trade within the UK would be crucial as the Transition Period comes to an end, and to support the recovery from Covid-19. For example, one respondent said that *“as we move forward, into a period focussed on economic recovery after Covid-19 and as the EU transition period ends, governments must ensure that there are no barriers to business growth and economic stability.”*
- The Government's priority in developing proposals for the UK Internal Market is to protect opportunities for business, consumers, workers and the third sector in all parts of the UK especially as the economy recovers from the devastating effects of Covid-19. Our proposals embrace localised decision-making while preventing the emergence of disruptive new barriers to internal trade, ensuring that devolution continues to operate exactly as it does now. As outlined within the White Paper, proposals for the UK Internal Market are driven by three overarching policy objectives:
  - i. to continue to secure economic opportunities across the UK;
  - ii. to continue to increase competitiveness and enable citizens across the UK to be in an environment that is the best place in the world to do business; and
  - iii. to continue to provide for the general welfare, prosperity, and economic security of all our citizens.
- The White Paper consultation set out two legal principles which, taken together, will create a Market Access Commitment for UK businesses and consumers:
  - i. **Mutual recognition:** 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).

- ii. **Non-discrimination:** prohibition on discrimination against businesses based on origin.
- These principles, also enshrined by countries such as Canada, Australia and Switzerland in their internal markets, will ensure that the UK preserves both its status as one of the best places in the world to do business, and continues a smooth recovery from Covid-19.
- The consultation invited views on:
  - whether to mitigate against both ‘direct’ and ‘indirect’ discrimination;
  - which areas should be covered by non-discrimination but not mutual recognition;
  - how to implement independent functions; and
  - how those functions best ensure the smooth functioning of the internal market.
- Overall, the consultation received 302 responses. Analysis found that there was overwhelming support from businesses, industry groups and trade bodies for taking action to mitigate against both direct and indirect discrimination. Their responses justified support for the principles of non-discrimination on the grounds of avoiding new trade barriers; ensuring regulatory consistency to deliver UK-wide benefits to consumers; and certainty for businesses as the Transition Period ends. For example, UKHospitality emphasised *“it is imperative that hospitality businesses in the UK enjoy frictionless trade within the UK’s internal market following the end of the transition period.”*
- Responses regarding governance, independent advice and monitoring exhibited a broader range of views. There was support among respondents for the concept of an independent body having a role within the internal market, particularly with the involvement of all four administrations of the UK, as a key way of ensuring transparency and consistency within the UK Internal Market. For example, Leather UK argued that the system would benefit from *“oversight by an independent body, representing the four nations of the UK but not administered by the national administrations.”*

## Consultation background

The consultation was launched on 16 July 2020 and closed formally on 13 August 2020. 10 responses were submitted by email after this deadline and these were accepted.

In setting the timescale for the consultation, the Government sought to balance the need to allocate sufficient time for stakeholders to respond against the need to legislate for business certainty by ensuring the UK Internal Market’s continued cohesion and integrity after the Transition Period has ended after 31 December 2020.

The consultation was published online. Responses were submitted through an online response tool or by email. BEIS also held 14 roundtables (attended by over 120 businesses and over 50 Business Representative Organisations and Trade Unions) and 248 direct calls with businesses and 138 direct calls to Trade Associations and

Business Representative Organisations from all four parts of the UK. In total, BEIS therefore engaged with 339 stakeholders.

## Summary of Government response to the consultation

Detailed below are the seven general core themes emerging from the consultation process, together with the Government's response.

### **Fairness for businesses and consumers**

- A strong majority of business and industry body respondents were supportive of the Government's proposals on non-discrimination. A key theme was that the proposals would ensure certainty for businesses by safeguarding the free flow of goods and services across the UK, avoiding new barriers to trade. Business referred to the clear and obvious benefits to business, workers and consumers of avoiding such barriers. For example, the British Chambers of Commerce explained *"a fragmented system would create additional costs, bureaucracy and supply chain challenges that could disrupt operations for firms across the UK. As these proposals progress, business communities will want practical considerations - not politics - at the heart of the debate and shaping solutions."*
- The Government has been clear that the proposals are necessary to preserve trade and investment competitiveness, protecting jobs, maintaining consumer choice, underpinning the economic recovery in the wake of Covid-19 and inspiring confidence in future trade partners.
- Several respondents were keen to understand why the UK Government's proposals were necessary now. The Government's response is that the four nations will be able to diverge from the common rules regulating trade, in the context of which the devolved settlements were established, when the EU institutions fall away at the end of the Transition Period. This will create the potential for disruptive levels of regulatory divergence between the four nations. The UK Government's proposals will provide regulatory stability for businesses and consumers, smoothing the passage from the Transition Period without threatening the recovery from Covid-19.

### **Safeguarding regulatory autonomy**

- The feedback received has highlighted the importance of promoting compatibility of regulatory approaches across the UK to avoid further regulatory divergence. The main themes raised by businesses and industry groups in support of the proposals were concerns around additional frictions in trade and the importance of consistency in standards for business. Further regulatory divergence could lead to more duplication of rules and fragmentation, adversely affecting business. The experience of other countries – including Australia, USA, Canada, Switzerland and Spain – reflects this, showing that economic cohesion is key to the UK's ability to remain a thriving and competitive economy. The Government is working with the devolved administrations to ensure regulatory consistency through the robust Common Frameworks programme (further detail below).

- At the same time, respondents indicated that this objective must be balanced against the need to preserve the four nations' regulatory autonomy and the UK's economic dynamism. The Government's view is that the proposals are designed to ensure that devolution can continue to work for everyone, and that all devolved policy areas stay devolved while ensuring that there are no new barriers to UK internal trade. Indeed, at the end of the Transition Period, hundreds of powers previously held by the EU, will rightly flow directly back to devolved administrations in the UK.
- To facilitate the return of those powers from the EU, while smoothing our passage from the Transition Period, the UK Government is proposing further measures:
  1. **Reserved matters:** will now be covered within the scope of both mutual recognition and non-discrimination.
  2. **Scope of mutual recognition:** we are excluding certain Sanitary and Phytosanitary measures for animal and plant health, and food safety from mutual recognition. This applies to both emergency measures and those measures aimed at preventing the spread of disease on an ongoing basis. We do not want mutual recognition to undermine the ability of any nation of the UK to implement measures that will allow for the protection of animal and plant health and the preservation of pest and disease-free zones, where these are scientifically justified. Food and feed emergency legislation will also be excluded from direct discrimination measures in the case of a public health emergency. Some chemicals under REACH will also be excluded from mutual recognition to ensure that each devolved administration retains the current authorisation mechanisms for public safety; the REACH restrictions process will also be excluded. Note that none of these areas will be excluded from non-discrimination.
  3. **Application of the non-discrimination principle:** as set out in the White Paper, non-discrimination, but not mutual recognition, will apply to the manner of sale of goods, which includes areas such as, for example, the conditions in which goods are sold, where and to whom they can be sold. Non-discrimination will also apply to requirements relating to the transportation, storage, handling and inspection of goods, as long as these are not expressed as requirements which need to be satisfied for a good to be sold (which will fall within the scope of mutual recognition).
  4. **Additional areas excluded from both mutual recognition and non-discrimination:** any regulation directly relating to the use, disposal, or recycling of a good will not be included in either mutual recognition or non-discrimination. Utilities will also be excluded in both cases. A full list of exclusions has been provided in Section 2 below.
  5. **Services:** the UK Government's proposals are an adaptation of existing rules in the Provision of Services Regulations 2009 which contain regulations on mutual recognition and non-discrimination. Rules included in the UK Internal Market Bill will look to retain the effect of the Provision of Services Regulations, in terms of its scope of application and sectoral

coverage. In addition, mutual recognition and non-discrimination will be applied to professional qualifications. Local authorities, as regulators of services, will be included in scope of non-discrimination.

### **Preserving high standards and maintaining competitiveness**

- Some respondents felt that it was important that the Government was clear that it would maintain its high regulatory standards, notably with respect to agri-food standards.
- The UK Government has frequently repeated its commitment to being a global leader in environmental protection and animal welfare standards while maintaining the high-quality of our produce for consumers at home and overseas. This is not only about reassuring consumers but also about maintaining the UK's international reputation.
- The Government will, therefore, ensure the UK's current high standards are maintained, including by seeking to work with the devolved administrations to agree on standards across all four nations through Common Frameworks.
- This will ensure that there is appropriate discussion of standards between different administrations before new policy is introduced. Through these discussions we will test proposals from all parties and raise concerns on an equal footing, helping to maintain a world class approach to standards across all four nations of the UK.

### **Spending Powers**

- To help overcome the challenges presented in the wake of COVID-19, the Government will take new spending powers to provide direct, flexible and dynamic investment across the UK. These powers will strengthen the engine of our economic recovery, in areas including infrastructure, economic development, culture, sport, and international exchange.
- Through these powers, the Government will be able to invest to support businesses and communities in all parts of the UK. This will help us to protect and drive forward our UK economy and level up the entire country. We also want to invest in culture and sport - two areas of huge importance to our national life.
- The Government intends to work in partnership with the devolved administrations to make sure that these new powers are used to best effect, augmenting the existing powers used to support citizens in Scotland, Wales and Northern Ireland.

### **Independent insight into the functioning of the UK Internal Market**

- The consultation responses highlighted the importance of embedding monitoring and advisory functions, and functions to capture business and consumer insight, to support the ongoing development of the UK Internal Market. The response underlined the importance of arm's length expert reporting and advice, with respondents proposing a range of potential delivery vehicles to realise this. Suggestions included establishing a new independent body or committee, or the



utilisation of existing bodies such as the Competition and Markets Authority (CMA) to conduct these functions.

- For example, one respondent said that “*the Spanish example of the National Markets and Competition Commission referenced in the white paper could be a good example of what, in principle, could be created within the UK.*” Another suggested “*a non-ministerial department accountable directly to the UK Parliament - like the Competition & Markets Authority - would seem to be the best option.*” Some responses emphasised the need for political cooperation and intergovernmental arrangements to effectively resolve potential disagreements.
- To support the smooth operation of the UK Internal Market, the Government will establish an Office for the Internal Market (OIM) within the Competition and Markets Authority to deliver the independent functions set out in the White Paper. This includes the ability to provide independent, technical, non-binding expert advice to administrations on regulation or regulatory proposals that may impact the Internal Market. It will also be responsible for monitoring and reporting on the health of the UK Internal Market, including trends and developments across sectors and regions. To support its ability to carry out these responsibilities, the OIM will have the ability to gather market intelligence from UK businesses, professionals, and consumers to develop its evidence base.

### **Governance and transparency**

- Respondents highlighted the importance of independent oversight, potentially with a route for the voice of businesses and consumers to help surface barriers to trade and to ensure that relevant sectoral intelligence, insight and expertise was captured.
- The expansion of the CMA’s remit to include the UK Internal Market functions will not position it as an enforcer of the principles set out in the White Paper but rather ensure the provision of non-binding expert reporting and technical monitoring. This provision will be available to all four administrations and legislatures on an equal basis. It will support a separate political process to resolve any disagreements and enable inter-governmental engagement. The arrangements underpinning this engagement are also subject to the outcomes of the Review of Intergovernmental Relations.
- Independent reporting on the economic impact of regulation on intra-UK trade will be transparent and presented to both the UK Parliament and devolved legislatures. This approach provides flexibility to resolve potential disagreements based on impartial, independently produced evidence.

### **Protecting Northern Ireland’s place in the UK Internal Market**

- Some respondents raised concerns in relation to Northern Ireland specifically. The key consideration was around how the UK Internal Market provisions would relate to the Government’s existing commitments around unfettered access.
- The UK Government has committed to legislate for unfettered access and to ensure this legislation is in force by the end of the year. Unfettered access not only means that Northern Ireland qualifying goods will not be subject to new

processes or procedures as goods are moved from Northern Ireland to Great Britain; it also means that Northern Ireland businesses will continue to be able to sell their goods throughout the rest of the UK without new restrictions.

- The UK Government's unfettered access commitment to Northern Ireland will be set out through legislation over the coming months, including the UK Internal Market Bill. This legal guarantee for Northern Ireland's businesses will be in place before the end of the Transition Period.
- The mutual recognition and non-discrimination principles will respect the terms of the Northern Ireland Protocol, including that goods being sold in Northern Ireland should comply with EU rules put in place by the Protocol. When services and qualifying goods from Northern Ireland are sold or provided in Great Britain, they will be in scope of the proposals put forward in the Bill.

## Next steps

The Government has carefully considered the responses to the consultation which have informed our approach to the UK Internal Market. We recognise the importance of ensuring the UK Internal Market continues to enable frictionless trade to support the UK economy, to the benefit of consumers and businesses throughout the UK. BEIS is grateful to those who took the time to respond to the consultation and attend online events. Maintaining deep integration and strong economic ties within the UK is even more important for our joint recovery from the coronavirus global pandemic. A fundamental Market Access Commitment will be legislated for this year, ensuring the guaranteed access to the UK economy across all parts of the UK remains, to promote and maintain the welfare and prosperity of all our citizens. We will continue to engage closely with stakeholders from across the UK.

## 2. Government response to the consultation

### Responses received to the consultation

This Government response outlines the consultation position, a high-level summary of the stakeholder responses to the consultation and the UK Government's response to these, organised under each consultation question.

In reporting the overall response to each question, 'majority' indicates the clear view of more than 50% of respondents in response to that question, and 'minority' indicates fewer than 50%. 'About half' indicates an overall response within a few percentage points of 50% (either way).

The following terms have been used in summarising additional points raised in the responses: 'many respondents' indicates more than 70% of those answering the particular question, 'a few respondents' means fewer than 30%, and 'some respondents' refers to the range in between 30% and 70%. This is consistent with the approach of other UK Government responses to consultations.

In the Government response sections, 'we' refers to the UK Government. We received a total of 302 responses to the consultation: 229 responded online, 73 by email. Of these, 68 were from businesses, 90 from individuals, 88 from industry or trade bodies, 18 from political organisations, 17 from charities, 3 from academics, 3 from local government and 15 from other categories, including public and professional bodies and Trade Unions. We also reviewed formal responses from the Scottish Government, Welsh Government and the Northern Ireland Executive. In 14 instances we received a response from the same respondent both online and by email.

Additionally, BEIS held 14 roundtables (attended by over 120 businesses and over 50 Business Representative Organisations and Trade Unions) and 248 direct calls with businesses and 166 direct calls to Business Representative Organisations from all four parts of the UK.

Not all respondents answered the specific questions. Of those who did, the majority of responses were online. Responses which did not explicitly express their support or disapproval of the specific proposal in a given question were logged but classified as neither supportive nor non-supportive. When summarising stakeholder responses to the consultation, all accompanying written text was analysed for each question.

In 12 instances we received a response from the same respondent both online and by email. In such cases both entries were reviewed, and the content assessed but only the online response counted for aggregated analytical purposes, to avoid double-counting respondents.

The UK Government is grateful to each and every respondent to the UK Internal Market consultation for taking the time to submit their views on the proposals.

## Non-discrimination

**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?

### Consultation position

The consultation sets out how the mutual recognition system will be combined with a non-discrimination principle to ensure that any discriminatory barriers are addressed (e.g. regulating against or to disadvantage goods and services from other nations within the UK). The Government’s view is that both direct and indirect discrimination should be prohibited, with views sought on this and examples requested of indirect discrimination that would affect the internal market.

### Summary of stakeholder responses to consultation

A majority of respondents directly answered the question and favoured action to mitigate against both ‘direct’ and ‘indirect’ discrimination. The majority of business and industry body respondents tended to agree with the question while the majority of individuals disagreed.

Key themes for businesses, industry and trade bodies were concerns about trade friction, consistency of standards. A range of specific business issues were cited including potential impacts of direct or indirect discrimination on their business. For example, one respondent stated that they *“concur with the need for future regulations which will facilitate non-discrimination and ensure one part of the internal market cannot discriminate against goods and services from other parts of the UK.”*

Another respondent emphasised the importance of a *“properly functioning UK internal market across the UK’s internal borders, and therefore as a general rule we would wish to see mitigation against direct and indirect discrimination in relation to the provision of goods and services. There may however be some carefully defined circumstances in which direct and indirect discrimination might be appropriate.”*

Most of those who disagreed viewed the proposals as potentially inconsistent with devolution – a combination of a general perceived threat of these proposals to the power of the devolved administrations and that powers would be better exercised by the devolved administrations themselves. This included examples of regulation such as Minimum Alcohol Pricing, to which we have responded below.

### Government response

The non-discrimination principle will support mutual recognition under the UK Internal Market system in areas where mutual recognition does not, or should not, apply. It will provide an additional safeguard for businesses and professionals against discrimination based on residence or origin in the UK. The principle will supplement, in specific areas, the general provisions of existing legislation, such as the Equalities Act and Acts of Union.

Regulatory requirements to which non-discrimination will apply are those that would prevent or restrict a good from a market, but which are not directly related to the good

itself. This will cover requirements relating to the circumstances or the way that the goods are sold (including when and where), or requirements relating to transportation, storage and handling, along with other similar regulation.

In line with the overall view of responses, the Government intends to mitigate against both direct and indirect discrimination. Direct discrimination includes overt cases where a business or professional is treated unfavourably, expressly on the grounds of residence or origin in the UK.

Indirect discrimination will include cases which, while not expressly because of residence or origin, disadvantage business and professionals from other parts of the UK over local ones. This form of discrimination will be defined as a disadvantage for incoming goods and services to a market in comparison with equivalent local goods and services. For example, if the UK Government acting for England introduced a new requirement that wheat used in the production of English ale must not be in transit for more than three hours before reaching the point of production, such a requirement would restrict the access of wheat from Scotland, Wales and Northern Ireland to the English market. It would therefore constitute a form of indirect discrimination. If, on the other hand, the UK Government acting for England, explicitly prohibited wheat from Scotland to be used in English ale, this would be direct discrimination.

In contrast to direct discrimination, where there would be overt discrimination on the face of a requirement, indirect discrimination is harder to identify given that it will be an indirect consequence of a requirement. For this reason and to preserve regulatory autonomy, an issue highlighted by a number of respondents, indirect discrimination will be permitted where requirements are a reasonably necessary way of achieving a 'legitimate aim'.

Legitimate policy objectives are common in international law on non-discrimination, including World Trade Organisation (WTO) agreements. They provide a balance between avoiding indirect disadvantage while meeting policy objectives. If a nation is able to show that the discriminatory measure is reasonably necessary to achieve the policy objective, then that measure will be applicable.

These legitimate objectives are broad and will protect and preserve the exercise of devolved powers, including:

- protection of the life or health of humans, animals or plants;
- public safety or security; and
- the efficient administration of justice (for services only).

One example raised by respondents is Scotland's ability to protect human health through policy such as Minimum Alcohol Pricing. And indeed, this policy would be enabled as a reasonably necessary means of achieving a legitimate aim. The Government fully intends that the UK Internal Market proposals allow for local policy making and retain devolved governments' ability to place requirements on their own producers.

Note, however, that indirect discrimination will not apply to those areas where the same rules exist. In addition, in all instances, both direct and indirect non-discrimination principles will only apply to government regulation, and not to activities – including certification and requirements – imposed by private economic actors.

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

## Consultation position

The White Paper set out that non-discrimination will apply to those areas of regulation which are not directly related to the lawful sale of goods, including the manner of their sale (any regulation relating to transportation, or the manner of sale of goods and similar). It also asked whether, and to what extent, it should apply to public procurement, and in particular to above-threshold procurements. In addition, the Government sought views on which other areas that 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.

## Summary of stakeholder responses to consultation

The Government has received some examples of areas that should not be covered by mutual recognition, but which should be covered by non-discrimination. It should be noted that only a minority of respondents directly responded to the question and suggested areas that should or should not be covered by the two principles, and that the examples were received from a relatively small number of those responding.

These have been divided into the following six categories:

1. Services and qualifications;
2. Health and safety;
3. Social and environmental regulation;
4. Types of goods and services;
5. Goods processing; and
6. Other.

There was also a separate category of respondents who thought that mutual recognition should not cover any areas, but all areas should be instead covered by non-discrimination. A few respondents thought that neither principle should be applied to any areas.

## Government response

### *Regulatory requirements covered by non-discrimination, but not mutual recognition*

For goods, non-discrimination will concern the conditions that may restrict how that good is sold, known as 'manner of sale' requirements, but which are not requirements relating to a good itself (e.g. its characteristics, presentation and other categories) which need to be satisfied for that good to be sold. The 'manner of sale' requirements, such as when goods can be sold, to whom goods can be sold, and other conditions relating to circumstance of sale will be covered by non-discrimination. Requirements relating to the transportation, storage, handling and inspection of goods will also be covered by non-discrimination to the extent they do not fall into the scope of mutual recognition.

It would not make sense for mutual recognition to apply in this regulatory context, given



that regulation in question does not require a business to modify in any way the good it is selling, which is typically where mutual recognition is used as a regulatory principle. Nevertheless, these types of regulation could still result in a barrier for a good to be sold, which makes it necessary to ensure they are not used for protectionist means or targeting non-local business.

Finally, requirements concerning the use, recycling and disposal of goods will be also carved out from mutual recognition and non-discrimination, provided they are not a precondition for such goods being sold.

*Further areas of policy where mutual recognition will not apply, but non-discrimination will*

The Government will exclude selected types of Sanitary and Phytosanitary legislation from mutual recognition so as not to impact measures necessary to prevent the spread of animal and plant disease. It will also exclude measures needed in food or feed emergencies. In these limited circumstances restrictions on the movement of goods are justified and proportionate to protect plant, animal and human health. Authorisations for some chemicals and the restrictions process under REACH will also be excluded to ensure that different geographical risks associated with these products can continue to be taken into account across the UK. In all of these areas the non-discrimination principle will apply to prevent measures in these areas which unnecessarily discriminate against goods or businesses in other parts of the UK.

The Government has considered the extent public procurement should be treated within the UK Internal Market system, including whether it would fall within the scope of mutual recognition or non-discrimination. While mutual recognition is not directly relevant to procurement, given that it is an area of regulation relating to buyers of goods and services (rather than manufacturers or suppliers), non-discrimination is relevant and employed with respect to both EU and WTO procurement regulation. However, this will be taken forward separately, outside the provisions in the UK Internal Market Bill.

With regards to the specific areas mentioned by respondents, the Government's response is as follows.

**Category 1:** For professional qualifications, the new UK Recognition of Professional Qualifications system will apply. Some legal professions will be out of scope from mutual recognition within this new system. In terms of non-discrimination, this will also apply so that professionals from one part of the UK are treated no less favourably than those from another part. For services, the Provision of Services Regulations 2009 establish a principle that an authorisation to provide a service in any part of the UK applies to the whole of the UK. The UK Internal Market Bill will introduce similar rules complementing those found in the 2009 Regulations, with a focus on ensuring the continued free flow of services between the four constituent parts of the UK. Non-discrimination provisions will ensure that services providers from one part of the country are treated no less favourably than those from another.

**Category 2:** The Government agrees that non-discrimination should cover the areas of the Sanitary and Phytosanitary measures, hygiene, health and safety regulation and food and feed safety (Sanitary and Phytosanitary), except for when they relate to the provision of public goods and services (including health services). However, the Government is also of the opinion that (except for some Sanitary and Phytosanitary

measures) these areas should in addition be covered by mutual recognition as they may require business to modify their goods and services, with the potential to create barriers to trade.

**Category 3:** As set out in the Equality Act 2010, workers are legally protected from discrimination. Employers have legal obligations to ensure that the decisions they make do not directly or indirectly discriminate against employees on the grounds of a protected characteristic. A full list of protected characteristics can be found on GOV.UK. In rare cases where workers' rights and fair pay relate to the provision of goods and services, mutual recognition and non-discrimination would apply.

**Category 4:** This category referred to specific goods, such as electrical goods, food, alcohol and others. The Government has not been presented with a strong enough rationale for excluding these particular categories of goods from mutual recognition, but not from non-discrimination. According to the Government, excluding such goods from mutual recognition would create arbitrary trade barriers for businesses, in areas where it is not necessary on the grounds of legitimate policy objectives. Nevertheless, the Government considers that some chemicals under REACH should be an exception given the corresponding risks associated with such goods. Authorisations for the most hazardous chemicals will be excluded from mutual recognition (but not from non-discrimination) given the need to manage these risks; restrictions under REACH will also be excluded from mutual recognition (but not from non-discrimination).

**Category 5:** This category included types of requirements related to packaging, language and other requirements related to labelling, as well as recycling. As with the category above, the Government has not been provided with a strong rationale for excluding these types of requirements from mutual recognition, but not from non-discrimination. It is the Government's view that such regulation, if not subject to mutual recognition, would create significant business costs, confusion and uncertainty, forcing business to comply with multiple requirements and restricting market access. Given that the purpose of the Internal Market proposals is to diminish trade barriers – unless there is a strong reason for not doing so – exclusion of such requirements is not justified.

One exception to this is requirements on the use, disposal or recycling of goods, all of which generally relate to what happens with a good *after* the point of sale to a consumer. If these requirements are expressed as something needed to be met to sell a good, mutual recognition would apply. Conversely, a requirement relating directly to the recycling of single-use plastics would not be subject to mutual recognition.

Requirements in these categories should also be excluded from the scope of the non-discrimination principle, on the grounds that the primary aim of the UK Internal Market system is to address requirements which could restrict goods from being *sold* across the UK.

**Category 6:** This area included a number of broad categories of regulation, such as state aid, economic development, education and planning.

Firstly, the White Paper is clear that mutual recognition and non-discrimination would not apply to the provision of public goods and services, including health, education and economic development, except for when education covers professional qualifications (see Category 1 above). Tax has also been excluded from both principles, owing to the existence of fiscal frameworks. Subsidy control will be reserved but the detail of which will be subject to a separate regime that the Government will set out in due course.



In addition, the Government’s proposals concern solely the management of government regulation, and not commercial decisions of economic operators. Local authority regulation not related to services (such as planning) will not be within scope of the UK Internal Market provisions. Whilst local authorities can set their own regulations, many of these have to be in line with provisions set by central government, as seen with the National Planning Framework and aspects of waste management. Regulation implemented by local authorities is also checked by central government and regulators to ensure compliance with central government guidelines.

It is important to note that this only refers to cases where local authorities provide services. However, where such authorities act as regulators of services, they will remain in scope of non-discrimination.

Finally, with regards to the responses that indicated no goods and services should be covered by mutual recognition (but should be covered by non-discrimination), the Government is keen to emphasise that mutual recognition will be vital to safeguard the long-standing guarantee of frictionless trade to all businesses in the UK. While crucial, the non-discrimination principle would not, on its own, prevent these barriers, as goods and services would still in many cases have to conform to divergent regulation. In line with the Government’s argument in the White Paper, this would erode businesses’ ability to trade freely across the country, create new burdens and costs, diminish the UK’s economic growth and hamper recovery from the pandemic crisis.

### Summary of exclusions from mutual recognition and non-discrimination

Area	Exclusion from Mutual Recognition	Exclusion from non-discrimination
<b>Existing regulatory differences</b>	Yes	Yes
<b>Tax</b>	Yes	Yes
<b>Selected Sanitary and Phytosanitary measures and emergencies, including food and feed</b>	Yes	For public health emergencies
<b>Some chemicals</b>	Yes	No
<b>Services regulated by local authorities</b>	Yes	No
<b>Provision of public services</b>	Yes	Yes
<b>Utilities services</b>	Yes (infrastructure)	Yes

Note that mutual recognition and non-discrimination do not apply to recycling, disposal or use (where it is not a precondition of sale).

## Governance, independent advice and monitoring

**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?

### Consultation position

The White Paper set out proposals for functions delivered at arms-length to the UK Government. Firstly, the provision of regular ongoing monitoring of, and reporting on, the health of the UK Internal Market as it develops. This includes monitoring the cumulative impacts across sectors or regions and horizon-scanning for emerging trends. Secondly, the Government set out the need to independently and proactively gather business, professional, and consumer views to strengthen the evidence-base needed for independent advice and monitoring.

Question 3 invited views on whether an existing arms-length body should deliver these functions or whether bespoke arrangements should be established specific to the Internal Market.

Question 4 within the White Paper sought views on how these two functions could best be carried out independently to ensure they are representative of the interests of businesses and consumers across the UK.

### Summary of stakeholder responses to consultation

#### Operation of independent functions

While some respondents did not have a firm view on these questions or provide answers directly to them, other respondents emphasised the need for oversight and monitoring of the internal market to be conducted at an arm's length from the Government and not in a way that prioritised central government interests. Some respondents were in favour of a body having independently administered functions and some also noted the importance of considering the views of the devolved administrations and the wider public, including businesses, workers and consumers when developing an evidence-base. A few respondents suggested that a body should have a role in considering the interactions between the development of standards and a well-functioning internal market as part of its overall remit.

Among those who supported the need for a body, some argued that it should have a role in resolving disputes, supported by information gathering powers. A few respondents went further to suggest that a body should have the ability to provide independent evidence on new and emerging competition distortions and trade barriers.

## Means of delivering independent functions

Some respondents agreed with the need for a body in the context of the UK Internal Market that is independent and reflective of the interests of all relevant parties. A smaller proportion of respondents emphasised the importance of the body being independent of influence and control from the UK Government, devolved administrations and relevant business interests.

Among respondents who expressed scepticism of the need to establish a new body, some argued that a new body would be unnecessarily expensive and instead favoured the re-purposing of an existing public body to undertake the independent functions. Some respondents wanted to ensure that any independent body was truly independent and its functions performed at arms-length, while a few respondents suggested that the UK Internal Market functions would be a natural fit with the CMA.

## Intergovernmental co-operation and governance of independent monitoring and reporting

Some respondents highlighted the need to include good governance and robust operational provisions without undermining existing devolution settlements. This would enable the body to meet its statutory duties and functions, with clear guidance on the role, responsibilities and relationship between the UK Government, devolved administrations and wider UK public.

Some respondents went further and argued that cooperation between a possible body and businesses must go beyond formal representation, with work carried out formally in collaboration with business. Finally, a few respondents highlighted that the Government should ensure smaller businesses should be represented in decision making, noting that sectoral representation cannot be guaranteed based solely on the views of larger firms.

## Government response

After careful consideration of the independent functions proposals and the general support from amongst consultation respondents, the Government believes that the following three independent functions best support the UK Internal Market's good functioning and should be put on a statutory footing:

1. **Provision of non-binding economic and technical reporting:** including on the development of proposed regulation in scope of the system itself, if sought by an administration. This will provide expert opinion on the potential technical, economic impact of proposed regulations on the UK Internal Market. In addition, there will be provision for administrations to request reports on the economic impact of regulation implemented after the Transition Period to support intergovernmental engagement between the four administrations.
2. **Proactive and reactive monitoring:** this function will include macro-level monitoring and annual reviews on the health, functioning, and evolution of the UK Internal Market system, sectoral and regional monitoring and reporting, and periodic system monitoring of the UK Internal Market architecture itself. This will ensure that emerging trends and developments are identified, and the economic impact of regulations on the UK Internal Market can be independently assessed.

3. **Information-gathering:** allowing information from businesses, consumers and public bodies to support the delivery of the functions described above. This will allow reports and monitoring to be based on rigorous, current information and evidence.

After assessing the consultation responses and considering a range of potential delivery vehicle options, the Government has chosen to establish the OIM within the CMA as the body responsible for carrying out the independent functions described above. The OIM will have a distinct statutory underpinning through the UK Internal Market Bill, which contains all necessary legislative provisions to achieve an effective set of functions and bespoke governance arrangements. In parallel to this, necessary administrative arrangements will be set out in more detail in due course. In choosing this arrangement, the OIM will be able to draw on the CMA's existing expertise.

The CMA has a global reputation for promoting competition for the benefit of consumers, and ensuring markets work well for consumers, businesses and the economy. This decision builds on the CMA's existing technical and economic expertise, which will support the development of the UK Internal Market. These new responsibilities will be undertaken independently from UK Government and the devolved administrations and its reporting will be non-binding. The Government will ensure the OIM is fully operational by the end of 2021 and is also committed to safeguarding the separation between the CMA and its existing market-facing enforcement activity and the OIM and its functions, including whatever provision may be necessary in statute.

The Government will not seek to replicate the European Commission's approach to supervising Single Market rules but instead will have a consensual approach, underpinned by impartial and expert advice. The OIM's reports and advice will be strictly non-binding and will not constrain the ability for devolved administrations to implement regulation once new powers are returned from Brussels to the UK Government and the devolved administrations.

The monitoring responsibilities of the OIM within the CMA will be designed to gather, reflect and balance the views of UK businesses, workers and consumers. The Government agrees with respondents stressing the importance of accounting for a wide range of sectoral interests and business sizes in the OIM's work, while also robustly reflecting academic, third sector and other perspectives.

The OIM's reports and expert technical advice will support intergovernmental collaboration and coordination between officials and ministers. All administrations and legislatures will be able to request specific reporting according to areas of interest. Existing intergovernmental arrangements, or subsequently on new intergovernmental arrangements brought in through the joint Review, will be able to utilise this support in addressing potential disagreements on intra-UK trade, supported by the independent advice and reporting. The OIM's reports will be able to be examined and – if the legislature chooses – debated in both the UK Parliament and devolved legislatures, ensuring inter-parliamentary oversight and transparency.

This consultation is available from: [www.gov.uk/government/consultations/uk-internal-market-policy-option-proposals](https://www.gov.uk/government/consultations/uk-internal-market-policy-option-proposals)

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