

# UNITED KINGDOM INTERNAL MARKET BILL

## EXPLANATORY NOTES ON LORDS AMENDMENTS

### What these notes do

- 1 These Explanatory Notes relate to the Lords amendments to the United Kingdom Internal Market Bill as brought from the House of Commons on 30 September 2020.
- 2 These Explanatory Notes have been prepared by the Department of Business, Energy and Industrial Strategy in order to assist the reader of the Bill and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Lords amendments themselves, refer to HL Bill 135, the Bill as first printed for the Lords.
- 4 These Explanatory Notes need to be read in conjunction with Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.
- 5 Lords Amendments 2, 3, 5, 6, 7, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 35 and 37 were tabled in Committee in the name of the Minister and 10, 16, 18, 31, 33, 36, 38, 39, 40, 41, 58, 59 and 60 were tabled at Report stage in the name of the Minister.
- 6 Lords Amendments 1, 19 and 34 were tabled at Report stage by Lord Hope of Craighead and were opposed by the Government.
- 7 Lords Amendments 4, 8, 9, 17 and 30 were tabled at Report stage by Baroness Andrews and were opposed by the Government.
- 8 Lords Amendments 48, 49, 57 and 61 were tabled at Report stage by Lord Thomas of Cwmgiedd and were opposed by the Government.
- 9 Lords Amendment, 50 was tabled at Report stage by Baroness Bowles of Berkhamsted and Lord Stevenson of Balmacara and was opposed by the Government.
- 10 Lords Amendments 11, 15 and 32 were tabled at Report stage by Baroness Hayter of Kentish Town and were opposed by the Government.
- 11 Lords Amendment 43 was tabled in Committee by Lord Purvis of Tweed and was opposed by the Government.
- 12 Lords Amendment 51 was tabled at Report stage by Lord Purvis of Tweed and Lord Thomas and was opposed by the Government.
- 13 Lords Amendments 42, 44, 45, 46 and 47 were tabled in Committee by Lord Judge and opposed by the Government. Amendments 14, 52, 53, 54 and 55 were tabled at Report stage by Lord Judge as consequential amendments and were not opposed by the Government.
- 14 Lords Amendment 12 was tabled at Report stage, and Lords Amendments 13 and 56 were tabled at Third Reading, by Lord Stevenson of Balmacara as consequential amendments and were not opposed by the Government.

- 15 In the following Commentary, an asterisk(\*) appears in the heading of any paragraph that deals with a non-Government amendment.

## Commentary on Lords amendments

### Lords Amendment after Clause 1

#### Lords Amendment 1\*

- 16 Lords Amendment 1 amends the Bill to prevent the application of the UK market access principles where a statutory provision or requirement gives effect to a decision to allow for divergence from harmonised rules, where that decision has been agreed through the Common Frameworks process.
- 17 The new clause means that any agreement reached through the Common Frameworks process which permitted policy divergence would be excluded from the UK market access principles.
- 18 The new clause also prevents ministers of the Crown from making new regulations on policy areas under discussion as part of the Common Frameworks process.

### Lords Amendments to Clause 3: Relevant requirements for the purposes of section 2

#### Lords Amendment 2

- 19 This is a technical drafting amendment introduced by the Government. It clarifies that Clause 3, which identifies what a 'relevant requirement' is for the purposes of the mutual recognition principle, does so in relation to the specific sale transaction in question.
- 20 The amendment provides greater clarity and certainty to traders as to when they can rely on the mutual recognition principle to avoid point of sale requirements. It makes clear that a 'relevant requirement' is one that relates to the specific sale transaction in question. It ensures that there is no suggestion that a requirement need relate to all conceivable sales in order to be a 'relevant requirement.'

#### Lords Amendment 3

- 21 This Government amendment follows from Lords Amendment 2 above.
- 22 It clarifies subsection (2), which is the key proposition of the definition of 'relevant requirement' for the purposes of the mutual recognition principle. This amendment makes sure that a requirement is a 'relevant requirement' only in relation to the specific sale transaction in question.

#### Lords Amendment 4\*

- 23 This amendment removes the Secretary of State's power to make regulations to amend clause 3(3), which lists the types of statutory requirement that are within the scope of the mutual recognition principle for goods.
- 24 This means that the Secretary of State cannot make regulations to amend the list of types of statutory requirements that are within scope of mutual recognition. Amendments to this list

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would therefore require primary legislation.

## **Lords Amendments to Clause 4: Exclusion of certain requirements existing before commencement**

### **Lords Amendment 5**

- 25 This is a technical drafting amendment introduced by the Government to clarify Clause 4(1)(a) that sets out the exclusion of certain existing requirements from the mutual recognition principle.
- 26 In relation to existing statutory requirements that are excluded from the mutual recognition principle, it makes clear that the reference in Clause 4(1)(a) is to a particular (ie an actual) sale of goods, rather than a hypothetical one. This amendment also ensures consistency with Clause 3(1).

### **Lords Amendment 6**

- 27 This Government amendment corrects a small drafting error in clause 4(1)(a). The subsection referred to “a part of the United Kingdom” when it should refer to the part of the UK mentioned in the opening words of the subsection.
- 28 This is a technical amendment which does not change the effect of the Clause but clarifies the drafting.

### **Lords Amendment 7**

- 29 This Government amendment aligns the language in clauses 4(2) and 4(5). These provisions both refer to the effect of statutory requirements on a particular day, for the purpose of working out whether a particular statutory requirement is excluded as an existing requirement. Both clauses 4(2) and 4(5) are intended to refer to a hypothetical sale on a particular day (and not an actual sale). This amendment avoids possible confusion by making the language consistent, and therefore making clear that both sub-clauses should refer to a hypothetical sale. This amendment does not alter the effect of Clause 4 but clarifies the drafting and ensures consistency between clauses 4(2) and 4(5).

## **Lords Amendment to Clause 6: Relevant requirements for the purposes of the non-discrimination principle**

### **Lords Amendment 8\***

- 30 This amendment removes the Secretary of State’s power to make regulations to amend clause 6(3), which lists the types of statutory requirement that are within the scope of the non-discrimination principle for goods.
- 31 This means that the Secretary of State cannot make regulations to amend the list of types of statutory requirements that are within scope of non-discrimination. Amendments to this list would therefore require primary legislation.

## **Lords Amendments to Clause 8: The non-discrimination principle: indirect discrimination**

### **Lords Amendment 9\***

- 32 This amendment removes the Secretary of State's power to make regulations to add to, vary or remove from the list of 'legitimate aims', which outline specific criteria where indirect discrimination is permitted.
- 33 This means that the Secretary of State cannot make regulations to amend the meaning of "legitimate aim" by regulations to add, vary or remove an aim.

### **Lords Amendments 10 and 11\***

- 34 Lords Amendment 10 and Lords Amendment 11 amend Clause 8, adding new subsections (7) to (10), to require the Secretary of State to comply with certain duties before exercising the power that was in subsection (7) [Removed] to amend the list of legitimate aims by regulations.
- 35 Amendment 10, inserting subsection (7), would require the Secretary of State to consult the devolved administrations before exercising the power.
- 36 Amendment 11, inserting subsections (8) to (10), would require the Secretary of State to seek consent from the devolved administrations. However, the amendment enables the power to be exercised without the devolved administrations' consent after one month provided that a statement is published setting out the justification.

## **Lords Amendment to Clause 10: Exclusions from market access principles: public interest derogations**

### **Lords Amendment 12\***

- 37 The amendment to Clause 10 introduced at Lords Report stage of the debate will provide the legitimate aims which a new piece of legislation for goods must meet for the market access principles to be disapplied. This replaces the previous clause 10 of the Bill which granted the Secretary of State powers to amend the list of goods exclusions from the market access principles.
- 38 The legislation must be shown to be in pursual of a legitimate aim and a proportionate way of meeting that aim. This will be judged against similar legislation within the United Kingdom for the same legitimate aim. Finally, the legislation must not be used as a disguised restriction of trade.

## **Lords Amendments to Clause 11: Modifications in connection with the Northern Ireland Protocol**

### **Lords Amendment 13\***

- 39 Lords Amendment 13 removed subsections (6) and (7) of Clause 11, which set out how the exclusion in Schedule 1 of "Threats to human, animal or plant health" should be modified in relation to qualifying Northern Ireland goods.
- 40 This amendment was consequential upon Lords Amendment 56 which removed Schedule 1. Lords Amendment 56 was itself consequential upon Lords Amendment 12 made at Report

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stage where Lords voted to replace Clause 10, the introductory clause for Schedule 1, with a new approach to exclusions.

#### **Lords Amendment 14\***

- 41 Lords Amendment 14 would amend Clause 11 to change the reference to the definition of qualifying Northern Ireland goods from Part 5 of the Bill to the definition used in the European Union (Withdrawal) Act 2018.

### **Lords Amendment to Clause 12: Guidance relating to Part 1**

#### **Lords Amendment 15\***

- 42 The amendment establishes that the Secretary of State must obtain the consent of the devolved administrations before issuing, revising or withdrawing statutory internal market guidance, but caveats this by providing that if consent is not provided within one month of it being requested, the Secretary of State can then proceed to publish guidance without consent. However, the Secretary of State must also publish a statement explaining why they have proceeded to use the power without consent.

### **Lords Amendment after Clause 12: Duty to review the use of Part 1 amendment powers**

#### **Lords Amendment 16\***

- 43 This amendment, relates to powers that were included in the Bill after Lords Committee, but which were removed at Lords Report stage. The amendment placed a requirement on the Secretary of State to carry out a review of any use of the powers to amend that were in Part 1 of the Bill, in then clauses 6(5), 8 (7) and 10(2). If the powers to amend had remained, subsection (2) of the amendment required that within three to five years of the passing of the Act, the Secretary of State should conduct a review of use of the powers to amend and produce a report of that review, a copy of which would then have to be laid before Parliament.
- 44 Subsection (3) required that devolved administrations should be consulted as part of the review and that any relevant reports or advice issued by the Competition and Markets Authority should also be considered. Where any changes in powers had been made the impact and effectiveness of those changes should be assessed.
- 45 Subsection (5) set out that in the event that none of the powers to amend had been used, the Secretary of State would have been required to report this, including issuing a statement advising as such and at the same time include any further information relating to the statement that they felt appropriate. In the absence of the power being used, the requirement to consult with the devolved administrations and take on board relevant findings from the Competition and Markets Authority would not have applied.

### **Lords Amendments to Clause 17: services: exclusions**

#### **Lords Amendment 17\***

- 46 This amendment removes the Secretary of State's power to make regulations to amend Schedule 2 of the Bill, which contains services and requirements excluded from either or both

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of the market access principles in Part 2.

### **Lords Amendment 18**

- 47 This Government amendment requires the Secretary of State to consult with the devolved administrations when using the power in Clause 17(2) [now removed] to make regulations amending Schedule 2 (which contains exclusions from the market access principles in Part 2).
- 48 This amendment would insert in the power a requirement to consult with the devolved administrations. This requirement also applies to other powers in Parts 1 and 2 of the Bill.

### **Lords Amendment after Clause 18: common frameworks process**

#### **Lords Amendment 19\***

- 49 This amendment inserts a new Clause after Clause 18. It requires that the mutual recognition principle in Clause 18 shall not apply to any regulatory requirement that gives effect to a decision to diverge from harmonised authorisation requirements, agreed to through the common frameworks process.
- 50 Subsection (2) of this amendment outlines that no regulations may be made by a Minister of the Crown with regard to a matter that is under consideration under the common frameworks process.

### **Lords Amendment to Clause 19: direct discrimination in the regulation of services**

#### **Lords Amendment 20**

- 51 This is part of a group of Government amendments which breaks down the test for indirect discrimination in Clause 20. This amendment is consequential to Lords Amendment 28 which introduces a separate definition of “relevant connection” for indirect discrimination in Clause 20.
- 52 This ensures that the definition of “relevant connection” in Clause 19 no longer applies to Clause 20. The new, separate definition of relevant connection in Clause 20 is narrower than that in Clause 19.
- 53 These were technical clarification amendments put forward by the Government to more clearly set out the requirements for indirect discrimination in Part 2 of the Bill.

### **Lords Amendment to Clause 20: indirect discrimination in the regulation of services**

#### **Lords Amendments 21, 22, 23, 24, 25, 26, 27, 28, 29**

- 54 These are all Government amendments accepted at Lords Committee stage which break down the test for indirect discrimination, providing clarity to the test for adverse market effect and tying the concept of relevant disadvantage to unequal treatment in this Clause.
- 55 Lords Amendments 21, 22 and 23 distinguish between the treatment of incoming and local service providers.
- 56 Lords Amendments 24 and 25 attach the test for relevant disadvantage to the concept of unequal treatment between incoming and local service providers.

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- 57 Lords Amendment 26 introduces and defines the concept of “relevant disadvantage”, tying it more clearly to the concept of unequal treatment between incoming and local service providers. Lords Amendment 27 rephrases what is meant by ‘disadvantage’ towards a service provider for the test of unequal treatment. It separates this from the test for adverse market effect, which is provided in new subsection (5).
- 58 Lords Amendment 28 defines the concepts of local and incoming service provider which are used in the group of amendments, and it brings over the definition of “relevant connection” from Clause 19, drawing it more narrowly for indirect discrimination than direct discrimination.
- 59 Lords Amendment 29 removes a provision that is no longer necessary due to the other amendments in this group.

### Lords Amendment 30\*

- 60 Lords Amendment 30 removes the Secretary of State’s power to make regulations to add to, vary or remove from the list of legitimate aims in Clause 20. Legitimate aims are public interest reasons in relation to which provision that would otherwise amount to indirect discrimination may be justified.

### Lords Amendment 31

- 61 Lords Amendment 31 would require the Secretary of State to consult with the devolved administrations when using the power granted under Clause 20 [now removed] to make regulations amending the list of legitimate aims for indirect discrimination.
- 62 This amendment introduces to the power a requirement to consult with the devolved administrations. The same requirement applies to the other powers in Parts 1 and 2 of the Bill.

### Lords Amendment 32\*

- 63 Lords Amendment 32 sets out additional process for the use of the power [now removed] to amend the legitimate aims. The amendment would require devolved administration consent before use of the power.
- 64 However, if consent is not provided within one month of it being requested, the Secretary of State can proceed to use the power without consent. Before exercising the power in the absence of consent, the Secretary of State must first publish a statement explaining why they have proceeded to use the power.

## Lords Amendment after Clause 20: Duty to review the use of Part 2 amendment powers

### Lords Amendment 33

- 65 Lords Amendment 33 relates to powers that were in the Bill during Lords Committee, but which were removed at Lords Report stage. The amendment inserts a new Clause after Clause 20. It places a requirement on the Secretary of State to carry out a review of any use of the powers in Part 2 of the Bill. Subsection (2) of this amendment requires that within three to five years of the passing of the Act, the Secretary of State should conduct a review of the use of the powers, and produce a report of that review, a copy of which must be laid before Parliament.
- 66 Subsection (3) requires that the devolved administrations should be consulted as part of the

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review and that any relevant reports or advice issued by the Competition and Markets Authority should also be considered. Where any changes in powers are made, the impact and effectiveness of those changes must be assessed.

- 67 Subsection (5) sets out that in the event that none of the powers to amend have been used, the Secretary of State is required to report this, including issuing a statement advising as such and at the same time include any further information relating to the statement that they feel is appropriate. In the absence of the powers being used, the requirement to consult with the devolved administrations and take on board relevant findings from the Competition and Markets Authority does not apply.

## **Lords Amendments to Clause 25: Other exceptions from section 22**

### **Lords Amendment 34**

- 68 Lords Amendment 34 amends the Bill to give primacy to requirements about professional qualifications in each part of the UK agreed through the Common Frameworks process over the mutual recognition of professional qualifications under section 22(2) of the Bill. Section 22(2) allows for qualified UK residents to be treated as if they had the relevant qualifications or experience to practice a profession in each part of the UK.

### **Lords Amendment 35**

- 69 Lords Amendment 35 proposed by the Government in Committee adds the professions of patent attorney and trademark attorney to the list of legal professions excluded from the automatic recognition principle in Part 3 of the Bill.

### **Lords Amendment 36**

- 70 Lords Amendment 36 proposed by the Government at Report stage excludes the profession of school teaching from the automatic recognition principle in Part 3 of the Bill.

## **Lords Amendment to Clause 27: Interpretation of Part 3**

### **Lords Amendment 37**

- 71 Lords Amendment 37 proposed by the Government in Committee ensures that, where a qualification requirement attaches to a particular professional activity, that requirement only falls within the scope of Clause 22(1) if it is essential to the practice of the profession generally.

## **Lords Amendment to Clause 29: Objective and general functions**

### **Lords Amendment 38**

- 72 Lords Amendment 38 proposed by the Government at Report stage would amend Clause 29 by including a requirement to support the operation of the internal market for consumer interests and interests of all parts of the United Kingdom, within the OIM's objective. Additionally, the CMA (acting as the OIM), would need to have regard to the need to act even-handedly in relation to all administrations when carrying out its functions under Part 4, which comprise the UK Government and all devolved administrations.

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## **Lords Amendment after Clause 37**

### **Lords Amendment 39**

- 73 Lords Amendment 39 proposed by the Government would insert a new clause into the Bill requiring the CMA lay its annual plan, proposals for the annual plan and its performance report on the functioning of the UK internal market before the UK Parliament and devolved legislatures.

## **Lords Amendment to Clause 39: Penalties**

### **Lords Amendment 40**

- 74 Lords Amendment 40 proposed by the Government would amend Clause 40 to ensure that the devolved administrations, as well as the Secretary of State are explicitly consulted when the CMA is preparing or revising its policy on enforcing information-gathering notices.

## **Lords Amendment to Clause 40**

### **Lords Amendment 41**

- 75 Lords Amendment 41 proposed by the Government would require that the devolved administrations are amongst the bodies that the Secretary of State consults, before setting the maximum level of penalties for non-compliance with a CMA request for information.

## **Lords Amendment to Clause 42: Northern Ireland's place in the UK internal market and customs territory**

### **Lords Amendment 42: Clauses to not stand part of the Bill**

- 76 The Lords voted to remove clause 42. This would remove the obligation for appropriate authorities to have special regard to a number of matters when exercising functions related to the implementation of the Northern Ireland Protocol or relating to the movement of goods within the UK.

## **Lords Amendment to Clause 43: Unfettered access to UK internal market for Northern Ireland goods**

### **Lords Amendment 43: Clauses to not stand part of the Bill**

- 77 The Lords voted to remove clause 43. This would remove the prohibition on new checks and controls being applied to qualifying Northern Ireland goods as they move to the rest of the UK. It would similarly prevent the preclusion of the use of existing checks, controls or processes being used for the first time, or for a new purpose as qualifying Northern Ireland goods move to the rest of the UK.

## **Lords Amendment to Clause 44: Power to disapply or modify export declarations and other exit procedures**

### **Lords Amendment 44: Clause to not stand part of the Bill**

- 78 The Lords voted to remove clause 44. This would remove the power for a Minister of the

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Crown to make provision about the application of exit procedures to goods when moving from Northern Ireland to Great Britain, including making provision disapplying, or modifying the application of, exit procedures, stating or restating the application of exit procedures.

## **Lords Amendment to Clause 45: Regulations about Article 10 of the Northern Ireland Protocol**

### **Lords Amendment 45: Clause to not stand part of the Bill**

- 79 The Lords voted to remove clause 45. This would remove the power that provides that the Secretary of State may make Regulations in connection with Article 10 of the Northern Ireland Protocol (State Aid), to make provision about how this Article is to be interpreted for the purposes of domestic law.

## **Lords Amendment to Clause 46: Notification of State aid for the purposes of the Northern Ireland Protocol**

### **Lords Amendment 46: Clause to not stand part of the Bill**

- 80 The Lords voted to remove clause 46. This would remove the statutory requirement that no one apart from the Secretary of State may notify or inform the European Commission of State aid, or proposed State aid, where required under Article 10. This does not prevent others doing so on behalf of the Secretary of State where they are authorised to do so. This reflects the status quo, namely that this function is presently performed by the Foreign Secretary via the UK Mission in Brussels. The Secretary of State would have been subject to Regulations made under clause 45(1), which has also been removed, when interpreting Article 10.

## **Lords Amendment to Clause 47: Further provision related to sections 44 and 45 etc.**

### **Lords Amendment 47: Clause to not stand part of the Bill**

- 81 The Lords voted to remove clause 47. This would remove the clause that provides that clauses 44 and 45 and any regulations made under them have effect notwithstanding any incompatibilities or inconsistencies with relevant international or domestic law.

## **Lords Amendment to Clause 48: Power to provide financial assistance for economic development etc.**

### **Lords Amendment 48\***

- 82 Lords Amendment 48 amends the Bill to remove the power to provide financial assistance. Without this clause there is no longer a general power for UK Ministers to provide UK-wide financial assistance for a number of specified purposes including: economic development; infrastructure; culture; sporting activities; domestic educational and training activities and exchanges; and international education and training activities and exchanges.

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## **Lords Amendment to Clause 49: Financial assistance: supplementary**

### **Lords Amendment 49\***

- 83 Lords Amendment 49 removes the supplementary clause. Alongside the removal of Clause 48 there is no longer a general power for UK Ministers to provide UK-wide financial assistance for a number of specified purposes including: economic development; infrastructure; culture; sporting activities; domestic educational and training activities and exchanges; and international education and training activities and exchanges.

## **Lords Amendment after Clause 49**

### **Lords Amendment 50: State aid and the Office for the Internal Market\***

- 84 Lords Amendment 50 would introduce a new clause requiring the OIM to be set-up as a body independent of the CMA within six months of Clause 30 coming into force. Subsequently, appointments to the OIM would have to gain the consent of the Ministers in the devolved administrations. In addition, following public consultation and only with the consent of the devolved administrations, the Secretary of State has a power to make regulations to give the OIM functions relating to the investigation of harmful or distortive subsidies within the UK, as well as making recommendations on changes to the tests for harmful subsidies, remedies, the scope of exceptions and time limits on approvals.
- 85 Amendment 50 would require a review of the OIM's competencies to be carried out between two to three years, beginning with the day on which Clause 30 comes into force.

## **Lords Amendment to Clause 50: Regulation of Distortive or Harmful Subsidies**

### **Lords Amendment 51\***

- 86 Lords Amendment 51 removes clause 50 from the UK Internal Market Bill.

## **Lords Amendments to Clause 52**

### **Lords Amendment 52\***

- 87 Lords Amendment 52 would amend Clause 52 so that it no longer disapplies Part 5 of the Bill or section 8C(5A) of the European Union (Withdrawal) Act 2018 (as inserted by subsection (3) of Clause 46) should Articles 5 to 10 of the Northern Ireland Protocol cease to apply.

### **Lords Amendment 53\***

- 88 Lords Amendment 53 would amend Clause 52 so that subsection (2) no longer refers to amendments made under subsection (3) of Clause 46 as that subsection would be removed under Lords Amendment 54 (see below).

### **Lords Amendment 54\***

- 89 Lords Amendment 54 would amend Clause 52 to remove subsection (3). Subsection (3) would

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amend section 8C of the European Union (Withdrawal) Act 2018, to prevent regulations made under that provision from amending, repealing or otherwise modifying the operation of Clause 43, subject to come exceptions.

## **Lords Amendment to Clause 56**

### **Lords Amendment 55\***

- 90 Lords Amendment 55 would amend Clause 56 to remove subsection (4). Subsection (4) provides that Clauses 44, 45 and 47 could not be commenced until a motion had been moved and approved in the House of Commons and a take note motion had been tabled in the House of Lords by a Minister of the Crown.

## **Lords Amendment to Schedule 1: Exclusions from market access principles**

### **Lords Amendment 56\***

- 91 This amendment removed Schedule 1, which set out the exclusions from the market access principles for goods, from the Bill.
- 92 This amendment was consequential on Amendment 12 from Lords Report stage, where the Lords voted to replace Clause 10, the introductory clause for Schedule 1, with a new approach to exclusions.

## **Lords Amendments to Schedule 3**

### **Lords Amendment 57\***

- 93 Lords Amendment 57 is linked to Lords Amendment 61 which would make Ministers in the devolved administrations responsible for three appointees to the Board of the CMA. The amendment states that if a devolved administration individually appoints a CMA Board member who resigns, then they must do by giving a notice of resignation to the devolved administration in question.

### **Lords Amendment 58**

- 94 This Lords Government Amendment 58 would require that in the process of appointments, the Secretary of State should have regard to the variety of necessary skills, knowledge and experience and ensure there is a balance of panel members equipped to carry out their role in relation to the UK internal market in different parts of the United Kingdom, before making an appointment to the OIM.

### **Lords Amendment 59**

- 95 This Lords Government Amendment 59 would amend Schedule 3 to require the Secretary of State to obtain the consent of devolved administrations to any proposed appointment to the OIM panel.

### **Lords Amendment 60**

- 96 This Lords Government Amendment 60 would give the Secretary of State the option to proceed with an appointment to the OIM panel, after an interval of at least one month from the day that consent is requested, even if one or more of the devolved administrations have

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not given their consent. The Secretary of State would be required to publish reasons for proceeding when consent was not given.

### Lords Amendment 61\*

- 97 Lords Amendment 61 to Schedule 3 refers to the procedures relating to the appointments made to the CMA so the OIM can carry out its UK internal market functions. This Amendment would include a requirement in Schedule 3 whereby Ministers in the devolved administrations can individually appoint one person each to membership of the CMA Board.

## Financial Effects of Lords Amendments

- 98 This Bill entails additional expenditure for the delivery of the UKIM functions by the CMA, including the resource expenditure associated with the additional headcount required for delivery, and the capital expenditure associated with the data collection and analysis for the monitoring function. The best estimate for this expenditure is ~£5m in 2021/22, with a total cost of ~£45m over a 10 year appraisal period (2021/22 prices, discounted to 2021/22). This cost will be borne by the CMA.
- 99 This estimate does not make any assumptions about efficiency savings from attaching the functions to an existing body. It is likely that integrating the OIM functions into an existing body can unlock some small efficiencies which could be derived from economies of scale, for example in cost overheads like shared services or estates. Since overall overheads are only assumed to be around 10% of total costs, any potential savings are likely to be relatively small, maybe in the region of around 5%. So there is a potential saving from attaching the OIM to the CMA, instead of making it an independent body as per Lords Amendment 50.
- 100 Adding functions relating to the investigation of harmful or distortive subsidies within the UK to the remit of the OIM would likely have further cost implications, which are not covered by the above. It is not possible to assess these implications at this point in time in light of the uncertainty around the precise remit of such a function and the resulting volume of work.

# **UNITED KINGDOM INTERNAL MARKET BILL**

## **EXPLANATORY NOTES ON LORDS AMENDMENTS**

These Explanatory Notes relate to the Lords Amendments to the United Kingdom Internal Market Bill as brought from the House of Lords on 2 December 2020.

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