

UNITED KINGDOM INTERNAL MARKET BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the United Kingdom Internal Market Bill as brought from the House of Commons on 30 September 2020 (HL Bill 135).

- These Explanatory Notes have been prepared by the Department for Business, Energy and Industrial Strategy in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The purpose of the United Kingdom internal Market Bill is to preserve the UK internal market, providing continued certainty for people and businesses to work and trade freely across the whole of the UK.

Policy background

- 2 On 1 January 2021, the rules that have regulated how each home nation trades with the others will fall away and hundreds of powers previously exercised at EU level will flow directly to the UK Government and the devolved administrations in Edinburgh, Cardiff, and Belfast.
- 3 To ensure businesses can continue to trade freely across the UK as they do now, the Government set out in the UK Internal Market White Paper (<https://www.gov.uk/government/publications/uk-internal-market>) on 16 July 2020 its intention to establish a market access commitment in legislation to preserve the UK internal market.
- 4 As outlined within the White Paper, proposals for the UK internal market are driven by three overarching policy objectives:
 - a. to continue to secure economic opportunities across the United Kingdom;
 - b. 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
 - c. to continue to provide for the general welfare, prosperity, and economic security of all UK citizens.
- 5 The Government ran a consultation on the proposals between 16 July and 13 August, inviting views on key questions related to the non-discrimination principle and independent monitoring and advice functions. Businesses showed support for the measures in order to avoid trade barriers and provide certainty for firms.
- 6 Additionally, respondents raised concerns on the need to protect regulatory autonomy, protect Northern Ireland's place in the UK internal market and provide an independent insight into the UK internal market's functioning.
- 7 The measures in this Bill are therefore designed to create a coherent approach to market access and support for the UK internal market.
 - a. The principles of mutual recognition and non-discrimination of goods and services form the Market Access Commitment. These will allow people and businesses to trade as they do now, without additional barriers based on which nation they are in.
 - b. Modifications to the market access commitment principles, alongside additional provisions prohibiting new NI-GB checks, will give effect to providing unfettered access of qualifying goods from Northern Ireland to Great Britain.
 - c. The measures on the recognition of professional qualifications will allow professionals qualified in one of the four UK nations to access the same profession in a different nation without needing to requalify.
 - d. The Office for the Internal Market (OIM) within the Competition and Markets Authority (CMA) will be provided with new functions, including monitoring the health of the internal market and advising and reporting on proposals and regulations and their potential or actual impact on the UK internal market.

- e. Measures which take steps to clarify specific elements of the Northern Ireland Protocol in domestic law, concerning tariffs, export procedures and state aid, to remove any ambiguity.
 - f. The provisions to ensure a uniform approach across the UK to the application of EU State aid law under Article 10 of the Northern Ireland Protocol.
 - g. The power to provide financial assistance will allow the UK Government to provide financial assistance for a number of priority purposes across the whole of the UK.
 - h. Reservation of subsidy control to allow the UK Government to regulate the effects of distortive or harmful subsidies, whether that is in relation to international trade or the UK internal market.
- 8 As part of its vision for the UK internal market, the Government is also engaging in a process to agree a common approach to regulatory alignment with the devolved administrations. The Common Frameworks Programme aims to protect the UK internal market by providing high levels of regulatory coherence in specific policy areas through close collaboration with devolved administrations.
- 9 The Bill is a key part of the Government's coronavirus recovery plan. It provides regulatory stability for businesses and consumers as the UK responds to and recovers from the pandemic.

Mutual recognition for goods

- 10 The Bill introduces a principle of mutual recognition to underpin the operation of the UK internal market for goods.
- 11 Mutual recognition will allow any good that meets relevant regulatory requirements relating to sale in the part of the UK it is produced in or imported into to be sold in any other part of the UK without having to adhere to relevant regulatory requirements in that other part. For example, a packet of crisps made in one part of the UK that met the relevant requirements in that part (for example on the composition of the crisps or the packaging) could be sold in any other part of the UK without having to meet any other relevant requirements that apply there.
- 12 Within their areas of legislative competence, the UK Government and the devolved administrations will retain the capacity to enforce their own requirements on goods produced in or imported into the relevant part of the UK. This means that local producers will have to comply with the local regulation.
- 13 The scope of mutual recognition for goods will cover certain regulatory requirements that a particular good has to satisfy in order to be sold. Requirements in scope include those relating to the production, characteristics and presentation of goods, and requirements relating to the assessment, authorisation and documentation of goods (the full list is provided in clause 3).
- 14 Regulatory requirements on goods that do not meet the criteria set out above will not be covered by mutual recognition, with certain categories instead covered by the principle of non-discrimination. The scope of non-discrimination is set out below.
- 15 Certain requirements in areas where there is existing regulatory difference across UK will not be retrospectively subject to mutual recognition. A substantive change to such existing requirements after this point will bring them into scope.
- 16 There are certain other areas that are excluded based on the definitions of key terms. The definition of 'sale' for the purposes of mutual recognition and non-discrimination (set out in Clause 14) will generally exclude sales that are not made in the course of a business or for the

purpose of performing a public function. For example, the supply of medication by the NHS to a patient through a prescription would not be covered as it is a sale made by a public authority fulfilling a public function.

- 17 Additionally, there will be certain specific policy areas or regulatory requirements which are explicitly excluded from the scope of mutual recognition for goods. These are set out in the section on exclusions.

Non-discrimination for goods

- 18 The non-discrimination principle means direct or indirect discrimination based on differential treatment of local and incoming goods is prohibited.
- 19 Direct discrimination is where an incoming good receives unfavourable treatment compared to a local good. For example, a requirement that incoming produce has to be chilled but local produce does not.
- 20 An incoming good is a good that is either produced in, produced by a company based in, or comes from, or passes through, a part of the UK (the “originating part”) that is not the “destination part” of the UK where it is to be sold.
- 21 Indirect discrimination is where incoming goods are not directly discriminated against, but where regulation disadvantages incoming goods and distorts the market. If this distorted the market and was not justified, then it would not be enforceable due to being indirect discrimination.
- 22 Indirect discrimination can be justified if it is necessary to achieve a legitimate aim:
 - a. the protection of the life or health of humans, animals or plants, or
 - b. the protection of public safety or security.
- 23 The non-discrimination principle for goods will apply to certain types of statutory provision (“relevant requirements”).
- 24 This includes requirements on the manner of sale of goods (e.g. when, by whom, to whom or on what terms they may be sold). Non-discrimination also covers certain other requirements, to the extent that they do not constitute requirements that need to be complied with to lawfully sell a good. This includes: requirements on the transportation, storage, handling or display of goods; requirements relating to the inspection, assessment, registration, certification, approval or authorisation of goods; and the conduct or regulation of businesses that engage in the sale of certain goods or types of goods.
- 25 Relevant requirements that exist on the day before the day on which the non-discrimination principle comes into force will not be subject to the principle. A substantive change to an existing requirement after this point will bring it into scope.

Exclusions from mutual recognition and non-discrimination for goods

- 26 There are certain specific exclusions from mutual recognition and non-discrimination for goods. An exclusion is a policy area, area of regulation or type of relevant requirement which will not be subject to the principles upon introduction in January 2021. The Bill will provide the BEIS Secretary of State with a power to alter these exclusions to retain flexibility for the internal market system in response to changes in market conditions.
- 27 Tax, rates, duties and similar charges are explicitly excluded from the market access principles.

- 28 There are certain other areas which will be excluded from the scope of mutual recognition but included within the scope of non-discrimination. These are:
- a. Chemicals in relation to authorisations and restrictions under the UK Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) regime,
 - b. Food or feed deemed to pose a threat to the health of humans or animals,
 - c. Pesticides in relation to the authorisation for sale of products and approval of active substances, and
 - d. Fertilisers in relation to safeguarding measures taken by each administration.
- 29 Certain sanitary and phytosanitary (SPS) measures relating to animal and plant health serious threats will be exempt from mutual recognition and non-discrimination. This will ensure that the sanitary and phytosanitary measures exclusion can be implemented, effectively taking account of differences in pest and disease prevalence across the UK, and in a way that prevents the spread of pest and disease in practice. Any measure falling under this exclusion would need to be supported by a risk assessment demonstrating the measure was reasonable and justified.
- 30 A relevant requirement made by an Act of Parliament, or under an Act of Parliament, which has effect in more than one part of the UK is excluded from the principle of indirect discrimination where the place of origin and place of destination are both covered by the relevant requirement. For example, a relevant requirement under an Act of Parliament that applies to both England and Wales will be excluded from indirect discrimination if the good originated in England and was destined for Wales, or vice versa.
- 31 See Schedule 1 for the list of goods exclusions referred to under Clause 10.

Services

- 32 The Provision of Services Regulations 2009 (“the 2009 Regulations”) established a principles-based framework for the regulation of services in the UK. Amongst other requirements, the 2009 Regulations establish a principle that an authorisation to provide a service in any part of the UK applies to the whole of the UK (unless an overriding reason related to the public interest can be shown).
- 33 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.
- 34 The reason for these changes is to ensure the continued smooth functioning of the internal services market after the UK leaves the EU single market at the end of December 2020.
- 35 Some services sectors will, by virtue of being listed in Schedule 2 to the Bill, be outside all or parts of the services rules in the Bill pending any decision by the Secretary of State to make regulations to bring them within those rules in whole or in part. This will, in practical terms, match the status quo in respect of services which:
- a. were out of scope of the 2009 Regulations altogether;
 - b. use the current derogation to the mutual recognition rules in the 2009 Regulations, which is not replicated in the Bill; or
 - c. were otherwise exempted from other parts of the 2009 Regulations.
- 36 In addition, legal services have been exempted from the mutual recognition rules in the Bill. This recognises the historic differences in the legal systems of the different parts of the UK.

- 37 The principle of mutual recognition set out in the Bill will replace the part of the 2009 Regulations which establishes that an authorisation to provide a service in any part of the UK applies to the whole of the UK. This principle would prohibit a services regulator (which means any organisation exercising regulatory functions that can limit or prevent someone from providing a service) from requiring an additional authorisation if the service provider already has an authorisation from another part of the UK.
- 38 The non-discrimination rules will prohibit a services regulator from imposing directly or indirectly discriminatory requirements on a service provider. Direct discrimination would be based explicitly or obviously on where a provider is from in the UK, whereas indirect discrimination would not seek to explicitly discriminate against providers from any part of the UK, but would have the effect of putting them at a disadvantage compared to a comparable service provider from another part of the UK.
- 39 A derogation also applies to the mutual recognition and the direct discrimination rules, so that they can be disapplied in response to a public health emergency. Indirect discrimination will only be permitted where it is necessary to achieve a legitimate aim, as set out in the Bill.

Professional qualifications

- 40 The Bill introduces a system for the recognition of professional qualifications across the UK internal market. This will allow professionals qualified in one of the four UK nations to access the same profession in a different nation without needing to requalify. These provisions will only apply in relation to professions for which new qualification or experience requirements are introduced, or existing ones changed, in any part of the UK.
- 41 This Part of the Bill is concerned with access to professions that are regulated in law. This is where access to a profession, including undertaking certain activities or using a specific professional title, is limited by legislation to individuals who hold specific qualifications or experience.
- 42 Often, access to a profession or occupation will require specific professional qualifications (such as a degree, diploma or award) attesting that an individual has attained a certain level of competence, training or knowledge relevant to that profession. Examples include a Bachelor of Medicine degree or a Postgraduate Certificate in Education. There may also be requirements to hold more general qualifications to a certain level (such as a requirement to have a certain number of A levels), or to have undertaken certain types of experience.
- 43 Although beyond the scope of this part of the Bill, in addition to professionals regulated in law, some professions are voluntarily regulated by professional bodies without underpinning legislation. Such professions include those regulated through voluntary membership of a professional body, including chartered professional bodies, which often require compliance with certain requirements and qualification standards, but do not restrict access to the profession generally.
- 44 There is currently no overarching system or consistent approach for the recognition of professional qualifications between the nations making up the UK internal market. Therefore, if professional divergence increases across the UK, professionals could have greater limitations on their ability to practise across the UK than exists currently.
- 45 Accordingly, the main objective of this part of the Bill is to avoid new barriers to the movement of professionals within the UK internal market, by making provision for an overarching system of mutual recognition of professional qualifications that applies across the UK.
- 46 This part of the Bill establishes that an individual who is qualified to practise a profession in one of the four UK nations will be automatically recognised in respect of the equivalent

profession in another part of the UK, without needing to requalify. This principle will only apply to a profession when a new provision in respect of qualifications or experience is introduced, or when there is a change made to existing qualification or experience requirements for a profession which results in a limit to the access to a profession in a part of the UK.

- 47 This Part of the Bill also allows for the disapplication of the automatic recognition process, provided that an alternative process for recognition is instituted that complies with specific principles set out in the Bill. The process will have to have legislative backing and will be administered by the relevant professional regulator (or, if there is not one, the UK Government or the devolved administration that is responsible for the profession).
- 48 The principles that must be complied with for the alternative process include: for the purposes of accessing a profession, qualifications or experience obtained in another part of the UK must be taken into account and are to be treated the same as 'like' qualifications or experience obtained in the relevant part (where the individual is seeking recognition). If the qualifications or experience do not meet the required standard, an assessment should be offered to allow the professional the opportunity to demonstrate the required knowledge and skills. If the knowledge and skills required can be demonstrated either by qualifications, experience, or the assessment, the individual must be recognised and permitted to practise the profession in the relevant part.
- 49 Professionals also benefit from provisions ensuring equal treatment in respect of the ongoing practice of a profession under this part of the Bill. Professionals qualified in another part of the UK cannot be treated less favourably in respect of ongoing practice requirements than those qualified in the relevant part, based on where in the UK their qualifications or experience were obtained or the type of qualifications they have (unless this is justified). This means that professionals cannot be required to meet higher ongoing requirements than locally qualified professionals as part of their ongoing practice, such as continuing professional development or insurance requirements.

Independent monitoring and functions of the CMA

- 50 To ensure that there are independent arrangements to support the UK internal market on an ongoing basis, this Bill provides for a set of reporting, advisory and monitoring functions supported by information gathering powers.
- 51 The Competition and Markets Authority (CMA) was chosen by UK Government Ministers as the most appropriate body to operate these new UK internal market functions. An Office for the Internal Market (OIM) will be established within the CMA to carry out these responsibilities, ensuring that necessary functions are carried out with sufficient independence, impartiality and visibility.
- 52 The CMA was established in 2013 by the Enterprise and Regulatory Reform Act ("ERRA") as a non-Ministerial department which performs its functions on behalf of the Crown. Competition law functions were transferred to the CMA on 1 April 2014. Under section 25(3) of ERRA, the CMA has a statutory duty to seek to promote competition, both within and outside the UK, for the benefit of consumers. The OIM will have a distinct objective for the CMA when carrying out its functions of supporting the effective operation of the UK internal market in place of the CMA's general objective of promoting competition for the benefit of consumers.
- 53 The Bill will confer new functions on the newly established OIM within the CMA to cover monitoring of the 'health of the market', as well as reporting and advice on the economic impact of proposals and regulations on the UK internal market, including on intra-UK trade, investment, and competition. These functions will provide all administrations, legislatures and

external stakeholders with published reporting on developments in the UK internal market. The existing information-gathering powers are provided for under section 174 of the Enterprise Act 2002, though they have had to be modified to apply to UK internal market functions.

- 54 Schedule 1 of this Bill amends Schedule 4 to ERRA and provides for the establishment of a new OIM panel and OIM task groups. The provisions build on the existing governance arrangements of the CMA but are adapted and tailored to ensure the smooth running of the UK internal market functions described in Part 4.

Northern Ireland Protocol

Northern Ireland's place in the UK internal market and customs territory

- 55 The Northern Ireland Protocol provides that certain EU customs legislation applies to and in the UK in respect of Northern Ireland, not including the territorial waters of the UK. This includes administrative requirements in relation to the movement of goods between Great Britain and Northern Ireland.
- 56 This provision seeks to streamline the movement of goods between Great Britain and Northern Ireland by placing a duty on all UK authorities, including relevant devolved authorities, administering the Protocol to have the highest possible regard to: (i) Northern Ireland's integral place in the UK's internal market as set out in Article 6(2) of the Protocol; (ii) Northern Ireland's place in the UK customs territory; and (iii) the need to facilitate the free flow of goods between Great Britain and Northern Ireland. It thus seeks to support the streamlining of trade in line with the obligations set out in the Protocol.
- 57 Article 6(2) of the Northern Ireland Protocol provides that "[h]aving regard to Northern Ireland's integral place in the United Kingdom's internal market, the Union and the United Kingdom shall use their best endeavours to facilitate the trade between Northern Ireland and other parts of the United Kingdom, in accordance with the applicable legislation and taking into account their respective regulatory regimes as well as the implementation thereof".

Unfettered access

- 58 Clause 41 requires appropriate authorities not to exercise their functions in a way that would result in a new check, control or administrative process on the movement of qualifying Northern Ireland goods from Northern Ireland to Great Britain. Additionally, an exercise of function should not result in an existing check, control or administrative process being used for the first time, or for a new purpose or to a new extent.
- 59 The Northern Ireland Protocol provides that certain EU customs legislation applies to and in the UK in respect of Northern Ireland, not including the territorial waters of the UK. Without modification, this would include export declarations for goods leaving Northern Ireland and travelling to Great Britain.
- 60 As set out in the 20 May Command Paper, the UK is discussing the disapplication of the requirement for export declarations for goods moving from NI to GB through the UK-EU Joint Committee. The measures would provide a power to disapply or modify the requirement for export declarations or other exit procedures, retaining the ability to act as necessary if a negotiated outcome in the Joint Committee should not be possible.

State Aid and the Northern Ireland Protocol

- 61 The United Kingdom left the European Union ("EU") on 31 January 2020 following the conclusion of an agreement ("the Withdrawal Agreement") under Article 50 of the Treaty on

European Union (TEU). The Withdrawal Agreement included the Protocol on Ireland/Northern Ireland (“the Protocol”).

- 62 Article 10 of the Protocol provides that EU State aid rules will apply in relation to trade in goods and electricity between Northern Ireland and the EU. Such EU State aid law will apply in domestic law via section 7A of the European Union (Withdrawal) Act 2018, to the extent that it is consistent with any interpretation that the Government may set forth in Regulations. The UK Government is seeking to ensure a uniform approach across the UK to the application of EU State aid law under the Protocol, through a series of measures that enables the UK Government to set out its interpretation of the Article 10 provisions and ensures all potential grantors of aid are bound by this interpretation.
- 63 To support this uniform approach, this Bill gives powers to the Secretary of State to make regulations setting out how the Secretary of State considers Article 10 of the Protocol is to be interpreted. Finally, the Bill stipulates that only the Secretary of State may give the European Commission a notification or information relating to aid where Article 10 applies. EU State Aid law requires notifications or information relating to aid to be provided to the European Commission. At present, this function is performed by the Foreign Secretary via the UK Mission in Brussels.

Certain provisions to have effect notwithstanding inconsistency or incompatibility with international or other domestic law

- 64 The Protocol sets out that EU state aid rules will apply in certain cases where this is relevant to trade between Northern Ireland and the EU (Article 10) and that Union customs legislation applies to and in the UK in respect of Northern Ireland, not including the territorial waters of the United Kingdom.
- 65 The Government seeks to ensure that provisions in the UK Internal Market Bill relating to the application of exit procedures to goods, when moving from Northern Ireland to Great Britain (Clause 44) and the ability to make regulations regarding Article 10 of the Protocol (concerning state aid) (Clause 45), are able to have effect notwithstanding any relevant international or domestic law with which they may be incompatible or inconsistent.

Power to provide financial assistance

- 66 Currently, the UK Government does not have a single, comprehensive statutory power to provide financial assistance across a range of policy areas throughout the whole of the UK.
- 67 The general power to provide financial assistance within this Bill would provide the UK Government with the ability to provide financial assistance for the purposes of economic development, culture, sporting activities, infrastructure, domestic educational and training activities and exchanges, and international educational and training activities and exchanges.
- 68 The power to provide financial assistance in this Bill is intended to enable the UK Government to provide funding to local authorities, sectoral organisations, community groups, educational institutions and other bodies and persons in order to support and promote these policy areas across the UK.
- 69 The UK Government has a number of existing statutory powers to provide financial assistance in various policy areas. For example, the Industrial Development Act 1982 allows the Secretary of State to provide financial assistance to industry in relevant circumstances. The powers under the Industrial Development Act 1982 may be used by UK Ministers to provide funding in any part of the United Kingdom (the powers are also exercisable concurrently with UK Ministers by Scottish and Welsh Ministers by virtue of the devolution settlements in Wales and Scotland).

- 70 Other existing statutory powers to provide financial assistance extend to some, but not all, of the UK, for example section 31 of the Local Government Act 2003 which only extends to England and Wales, or section 126 of the Housing Grants, Construction and Regeneration Act 1996 which does not extend to Northern Ireland.
- 71 UK Ministers have general common law powers to provide financial assistance, which are exercised by Ministers in accordance with the 1932 Public Accounts Committee Concordat and HM Treasury guidelines. Common law powers, however, are subject to HM Treasury limits. In addition, under the devolution settlements, common law powers in devolved areas have been transferred to the devolved administrations (although in Wales many of these powers are exercisable concurrently with UK Ministers).
- 72 The general power to provide financial assistance in the Bill will be exercisable alongside the existing statutory and common law powers currently available to UK Ministers. The purpose of the power in the Bill is to provide UK Ministers with a single, comprehensive power to provide financial assistance in all parts of the United Kingdom across a range of policy areas.

Economic development

- 73 Economic development is intended to cover providing financial assistance to support the economy of the UK or an area or region of the UK including through investment in employment, education, training, skills, social inclusion, innovation, research and development, enterprise support, regeneration, low carbon initiatives and protection of the environment.

Culture

- 74 This is designed to cover funding for cultural activities, projects and events throughout the UK, as well as specific organisations that support such initiatives.

Sporting activities

- 75 This is designed to cover funding for sporting activities, projects and events throughout the UK, as well as specific organisations that support such initiatives.

Infrastructure

- 76 Infrastructure includes (but is not limited to) water, electricity, gas, telecommunications, sewerage or other services (for example, the provision of heat), railway facilities (including rolling stock), roads or other transport facilities, health, educational, cultural or sports facilities, court or prison facilities, and housing.

Education and training - International and domestic activities and exchanges

- 77 This is designed to cover international and domestic education and training mobilities for students, pupils, learners and staff at education providers.

Subsidy Control

- 78 This Bill will reserve to the UK Parliament the exclusive ability to legislate for a UK subsidy control regime once the UK ceases to follow EU state aid rules at the end of the Transition Period.
- 79 This legislation means the UK Parliament can legislate for a UK-wide regime to regulate the effects of distortive or harmful subsidies, whether that is in relation to international trade or the UK internal market. Any future regime will be subject to Article 10 of the Protocol on Ireland/Northern Ireland in the Withdrawal Agreement whilst it applies to the UK.

- 80 The areas that have been and will be exclusively reserved to the UK Parliament in respect of each of the devolved nations are set out in three main pieces of devolution legislation. These are the Scotland Act 1998 (see Schedule 5 ‘Reserved Matters’), the Northern Ireland Act 1998 (see Schedule 2 ‘Excepted matters’) and the Government of Wales Act 2006 (see Schedule 7A ‘Reserved Matters’).

Constitutional embedding and devolved competence

- 81 Parts 1 to 3 of the Bill ensure that devolved administrations can exercise the new powers they gain consequent on the end of the transition period without undermining the operation of the UK’s internal market.
- 82 The devolved administrations are restricted in their ability to legislate by the UK’s current membership of the European Union single market. Leaving the single market removes those restraints and sees new powers flow to the devolved administrations. But there do need to be rules that govern how all the parliaments of the UK legislate to ensure the UK’s internal market is not disrupted. Those rules the Bill puts in place are only those required for the functioning of the internal market.
- 83 Part 4 of the Bill confers on the Competition and Markets Authority (CMA) advisory, reporting, monitoring and intelligence-gathering functions to assist with the effective operation of the UK internal market. These clauses provide that the Scottish Ministers, Welsh Ministers and Northern Ireland departments may request that the CMA exercise its functions in relation to a particular matter, just as the UK Government may do so. Where the CMA provides a report at the request of one of the devolved administrations on the impacts of a regulation implemented by another administration, there is a duty on the UK government and all devolved administrations to make a statement before its legislature.
- 84 Part 5 requires public authorities, including the devolved administrations, to have regard to the need to maintain Northern Ireland’s integral place in the UK internal market, when dealing with matters arising from the Northern Ireland Protocol. It also prohibits such authorities from imposing new checks, controls or administrative processes on goods from Northern Ireland. It prohibits any public authority other than the Secretary of State from making a state aid notification to the European Commission under Article 10 of the Protocol.
- 85 Part 6 grants power to a UK Minister of the Crown to provide funding across the following range of purposes: economic development, infrastructure, culture, sporting activities, and international educational and training activities and exchanges. These purposes fall within wholly or partly devolved areas under the Scotland Act 1998, Government of Wales Act 2006 and Northern Ireland Act 1998. The new powers sit alongside the existing powers by which the UK Government can fund in relation to devolved matters across the devolved nations, in particular the Industrial Development Act 1982. This creates a means for the UK Government to provide funding across a range of largely devolved areas that would sit alongside any funding provided by the devolved administrations in those areas.
- 86 Part 7 amends the Scotland Act 1998, Government of Wales Act 2006 and Northern Ireland Act 1998 in order to make clear that the regulation of distortive or harmful subsidies is a reserved matter. The scope of the new reservation will regulate the effects of distortive or harmful subsidies, whether that is in relation to international trade or the UK internal market.
- 87 The Bill will be a protected enactment under the Scotland Act 1998 and the Government of Wales Act 2006. It will be an entrenched enactment under the Northern Ireland Act 1998. This means that it cannot be modified by the devolved legislatures, and so it will not be open to those legislatures to disapply the provisions of the Bill or modify their effect.

Legal background

- 88 The relevant legal background is laid out in the Government's statement on the legal position of the Bill and the Northern Ireland Protocol, which can be found in the related documents section of these notes.

Territorial extent and application

- 89 The Bill extends to England, Wales, Scotland and Northern Ireland, and will form part of the law of all four parts of the UK.
- 90 The Bill contains provisions which cover reserved and devolved subject areas. It also makes amendments to the Scotland Act 1998, the Northern Ireland Act 1998 and the Government of Wales Act 2006, to protect the Bill from modification by the devolved legislatures. The Bill's provisions replace the existing limits on the effect of legislation made in exercise of devolved legislative or executive competence that came into being as part of EU membership and will cease to have effect at the end of the Transition Period. The limits contained in the Bill are necessary to ensure the continued freedom to trade within the UK internal market.
- 91 There is a convention that the UK Government will not normally legislate with regard to matters that affect or are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned.
- 92 The Government has therefore sought legislative consent for the clauses contained in this Bill.
- 93 See the table in Annex A for a summary of the position regarding territorial extent and application in the UK.

Commentary on provisions of Bill

Part 1: UK Market Access: Goods

Chapter 1: Introductory

Clause 1: Purpose of Part 1

- 94 This Clause sets out the purpose of Part 1 of the Bill, which is to promote the continued functioning of the UK internal market for goods by establishing two new market access principles in UK law.
- 95 These principles are the mutual recognition principle for goods (set out in Clauses 2 to 4) and the non-discrimination principle for goods (set out in Clauses 5 to 9).
- 96 Subsection (3) provides that these principles have no direct legal effect except as provided by Part 1 of the Bill.

Chapter 2: Mutual recognition: goods

Clause 2: The mutual recognition principle for goods

- 97 This clause sets out the principle of mutual recognition for goods, including the effect of mutual recognition and the criteria a good must meet to benefit from the mutual recognition principle.
- 98 Subsection (1) sets out that in order to benefit from mutual recognition, a good must not contravene any relevant requirements that would apply if the good were to be sold in the part of the UK that it was produced in or imported into. If a good complies with these requirements, then it can then be sold in each of the other parts of the UK without complying with any relevant requirements that would otherwise apply to the sale there.
- 99 In cases where there are no relevant requirements that would apply to the sale of a good in the nation it was produced in or imported into, mutual recognition will still permit the good to be sold in other parts of the UK without complying with the relevant requirements that apply in those other parts.
- 100 The relevant requirements for the purposes of mutual recognition are set out in Clause 3 and includes a range of requirements that would prohibit the sale of a good or prohibit the sale of a good if not complied with. The definitions of “goods”, “sale”, “production”, “importation” and other key terms are provided in Clauses 13 and 14.
- 101 Subsection (2) provides that the effect of mutual recognition will be limited by reference to the particular types of sale that a good is lawfully permitted to undergo in the part of the UK where it was produced in or imported into.
- 102 Subsection (3) provides that when a good is being sold in a part of the United Kingdom and the conditions in subsection (1) are met, the relevant requirements that apply in that part will have no application in relation to the sale. This complements subsection (1) which provides that a good can be sold free from relevant requirements in the place it is sold if the relevant conditions are met.

Clause 3: Relevant requirements for the purposes of section 2

- 103 This Clause defines “relevant requirement” for the purposes of the mutual recognition principle for goods. As set out in Clause 2, relevant requirements are those requirements which, if complied with by a good in the part of the UK where the good was produced in or

imported into, do not need to be complied with when the good is being sold in another part of the UK.

- 104 Subsection (2) provides that relevant requirements for the purposes of mutual recognition are any statutory requirements that prohibit the sale of the goods, or result in their sale being prohibited if not complied with; are within scope of the mutual recognition principle, as set out in subsection (4); and are not otherwise excluded. Exclusions are set out in Clause 4 and Schedule 1.
- 105 Subsection (4) provides the types of statutory requirements that are in scope of the mutual recognition principle. This includes any statutory requirement which relates to the characteristics, presentation or production of goods; the identification or tracing of an animal; the inspection, assessment, authorisation of goods or any similar dealing with them; and the documentation that must be produced, kept or accompany that goods or be submitted to an authority. Subsection (4)(g) also provides that any requirement not falling within the listed categories that apply to or in relation to the goods before they are allowed to be sold should also be captured.
- 106 Subsection (4)(a) clarifies that manner of sale requirements are not in scope of the mutual recognition principle unless subsection (4)(c) applies.
- 107 Subsection (4)(b) clarifies that manner of sale requirements include pricing requirements, for example Minimum Unit Alcohol Pricing or plastic bag charges, which are therefore not in scope of the mutual recognition principle.
- 108 Subsection (4)(c) clarifies that mutual recognition will only apply if a requirement appears to artificially present something as a manner of sale requirement, which would otherwise be a relevant requirement for mutual recognition. This is designed to capture artificially restrictive requirements that disguise, in practice, a total ban on a good being sold.
- 109 Taken together subsections (2), (4), and (4)(a) bring within scope of mutual recognition specified requirements that apply to goods before they are allowed to be sold, and which prevents a good being sold, or would prevent a good being sold if not complied with, whether in law or in practice.
- 110 Subsection (6) provides that statutory requirements which require the person selling a good to keep or submit, after the sale of the good takes place, any documentation or information that was also required to be produced or submitted in order to sell the good, is treated as a 'relevant requirement'.
- 111 Subsections (7), (8) and (9) provide that the BEIS Secretary of State may amend the lists of what is included and excluded from the scope of relevant requirements in consultation with devolved administrations.
- 112 Subsection (10) sets out that requirements which are imposed by legislation as mandatory terms into contracts for the sale of goods are within scope if they meet the relevant criteria in subsection (2).

Clause 4: Exclusion of certain requirements existing on the relevant day

- 113 This Clause provides for the exclusion of certain existing requirements from the scope of mutual recognition in areas where different regulatory requirements will exist in different parts of the UK on the day specified in subsection (3), which is the day before the day on which this clause comes into force.
- 114 Subsection (1) sets out that statutory requirements which would otherwise be classified as a relevant requirement under Clause 3 should not be so classified if they meet the conditions set

out in subsection (2) below. In effect this means that statutory requirements meeting these conditions will be excluded from the scope of mutual recognition and remain unaffected by it.

- 115 Subsection (2) sets out the conditions mentioned above. Subsection (2)(a) sets the condition that the same statutory requirement would have applied to the sale had it taken place on the relevant day (the day before the day on which this section comes into force). Subsection (2)(b) sets the condition that there was no corresponding requirement in force in each of the other three parts of the UK on that day.
- 116 Subsection (3) provides that “the relevant day” is the day before the day on which this section comes into force.
- 117 Subsection (4) provides that the re-enactment of a statutory requirement, without substantive change, does not affect its continuity for the purposes of subsection (2)(a).
- 118 Subsection (5) defines “corresponding requirement” for the purposes of subsection (2)(b). This is a statutory requirement that would have the same effect in another part of the UK as the statutory requirement that actually applies in the relevant part of the UK on the day before the day when this section comes into force.
- 119 Subsection (6) provides that, for the purposes of subsection (2) and (5), a statutory requirement should only be regarded as the same as another statutory requirement if any differences between them are not substantive. This clause therefore excludes from the scope of mutual recognition any substantial existing regulatory differences, in other words, areas in which substantively different relevant requirements currently exist in different parts of the UK.

Chapter 3: Non-discrimination: goods

Clause 5: The non-discrimination principle for goods

- 120 This Clause sets out the principle of non-discrimination for goods. This principle states that the sale of goods in one part of the UK should not be affected by directly or indirectly discriminatory relevant requirements due to a relevant connection that the good has with another part of the UK. The non-discrimination principle will cover both direct discrimination (Clause 7) and indirect discrimination (Clause 8).
- 121 Subsection (2) provides the meaning of “destination part”, “incoming goods” and “originating part”. These are important concepts in the operation of the principle of non-discrimination.
- 122 Subsection (3) provides that, to the extent it directly or indirectly discriminates against incoming goods, a relevant requirement will have no effect in the ‘destination part of the UK’. The ‘destination part’ is the part of the UK where the goods are sold. In other words, while legislation might be made that on its face has a discriminatory effect, it will not be able to be enforced to the extent that it has such an effect.
- 123 Subsection (4) provides for when a good has a relevant connection with a part of the UK (if it is produced in, produced by a business based in, comes from or passes through that part of the UK before reaching the destination part of the UK). These are the matters on the basis of which discrimination is not permitted.
- 124 Subsection (5) provides the meaning of “components” and a business “based in” a part of the UK, for the purposes of Part 1 of the Bill.

Clause 6: Relevant requirements for the purposes of the non-discrimination principle

- 125 This Clause defines “relevant requirement” for the purposes of the non-discrimination principle for goods.

126 Subsection (2) sets the criteria for a statutory provision to be a relevant requirement. A relevant requirement is one which applies in the part of the UK to, or relation to, goods sold in that part and is within scope of the non-discrimination principle.

127 Subsection (3) states that statutory provisions in scope of non-discrimination are those relating to: the circumstances or manner in which the goods are sold; transportation, storage, handling, or display of goods; inspection, assessment, registration, certification, approval or authorisation of the goods, or any similar process dealing with them; the conduct or regulation of businesses that engage in the sale of certain goods or certain types of good.

128 Subsection (4) sets out which statutory provisions are not relevant requirements and therefore not in scope of non-discrimination. These include requirements that are defined as “relevant requirements” for the purpose of mutual recognition for goods (as defined in Clause 3(2)) and certain existing provision covered in Clause 9.

129 Subsection (5) provides that the Secretary of State may, by regulations, amend the list of statutory provisions within scope of the non-discrimination principle in subsection (3). Subsection (6) provides that the power must be exercised by affirmative resolution procedure. Subsection (7) provides that power may not be exercised before all devolved administrations have been consulted.

130 Subsection (8) provides the definition of “statutory provision” for the purpose of this clause.

Clause 7: The non-discrimination principle: direct discrimination

131 This Clause explains what direct discrimination is for the purposes of Clause 5. It explains that direct discrimination is where relevant requirements apply to incoming goods in a way that they do not apply, or would not apply, to local goods and that puts the incoming goods at a disadvantage compared to local goods.

132 Subsection (2) provides that an incoming good would be put at a disadvantage if it is more difficult or less attractive to sell the goods, buy the goods or do anything in connection with their sale.

133 Subsection (3) defines “local goods” for the purposes of direct discrimination. It provides that local goods are those that are the materially the same as the incoming good and share the material circumstances of the incoming good but are not produced in, or produced by a business based in, the originating part of the UK and do not come from, or pass through, the originating part of the UK before reaching the destination part of the UK.

134 Subsection (4) explains how other goods are deemed to lack the relevant connection to the originating part of the UK that the incoming goods have. This differs depending on the way in which the incoming goods have a relevant connection to the originating part of the UK.

135 Subsection 4(a) provides that if the incoming good was produced in the originating part, the other good is produced in the destination part. Subsection 4(b) provides that if the incoming goods are produced by a business based in the originating part, the other goods are produced by a business based in the destination part. Subsection 4(c) provides that if the incoming goods come from or pass through the originating part before reaching the destination part, the other goods have come from the destination part and did not pass through anywhere outside that part.

Clause 8: The non-discrimination principle: indirect discrimination

136 This Clause provides for the principle of indirect discrimination.

137 Subsection (1) provides that a relevant requirement will indirectly discriminate against incoming goods where the requirement does not directly discriminate but applies to, or in relation to the incoming good in a way that puts it at a disadvantage, has an adverse market

effect and cannot be reasonably considered a necessary means of achieving a legitimate aim. Subsection (2) provides the circumstances in which a good will be put at a disadvantage.

138 Subsection (3) provides that a requirement has an adverse market effect if it puts incoming goods at a disadvantage but does not put comparable goods with a relevant connection to the destination part (or comparable goods with a relevant connection to another part of the UK) at that disadvantage and as a result, it causes a significant adverse effect on competition of those goods in the UK.

139 Subsection (4) provides the meaning of comparable goods as “like goods” or interchangeable goods. “Like goods”, and “interchangeable goods” are then defined further.

140 Subsection (5) provides that the criteria for whether a requirement has an adverse market effect in subsection (3) must have regard to the content of a requirement and the way it operates, or is administered, in practice.

141 Subsections (6) lists the ‘legitimate aims’ for the purposes of the test for indirect discrimination in subsection (1).

142 Subsection (7) provides a power to the Secretary of State to add to, vary or remove an aim from the list of legitimate aims by regulations. Subsection (8) provides that the power in subsection (7) must be exercised by the affirmative resolution procedure.

143 Subsection (9) provides that in considering whether a relevant requirement cannot be reasonably be considered a necessary means of achieving a legitimate aim for the purposes of subsection (1)(d), regard must be had to the effects of the requirement in all the circumstances and the availability of alternative means to achieving the legitimate aim.

Clause 9: Exclusion of certain provision existing at the passing of this Act

144 This Clause provides that certain existing provisions will not be relevant requirements for the purpose of the non-discrimination principle for goods.

145 Subsection (1) provides that statutory provisions in force in the part of the UK concerned on the day before the day on which this section comes into force are not relevant requirements for the purposes of the non-discrimination principle.

146 Subsection (2) provides that subsection (1) does not apply if a statutory provision is substantively changed after the day on which this Bill is passed.

147 Subsection (3) provides that re-enactment without substantive change does not affect the status of a provision as an existing provision.

148 Subsection (4) provides that “statutory provision” has the same meaning as in Clause 6.

Chapter 4: Exclusions from market access principles

Clause 10: Further exclusions from market access principles

149 Further exclusions from the application of mutual recognition and non-discrimination for goods are set out in Schedule 1.

150 Subsections (2) and (3) provide that the Secretary of State may amend Schedule 1 by the affirmative procedure.

Chapter 5: Supplementary

Clause 11: Modifications in connection with the Northern Ireland Protocol

151 This Clause sets out modifications to the market access principles for goods in relation to the sale of goods in Great Britain.

- 152 Subsections (2) and (3) state that the mutual recognition principle applies to all qualifying Northern Ireland goods (but not other goods originating in Northern Ireland unless subsection (4) applies).
- 153 Subsection (4) enables goods falling within subsection (3) (to which mutual recognition would not otherwise apply) to benefit from mutual recognition if they move from Northern Ireland into England, Scotland or Wales, in the same way as goods imported into those places from outside the UK.
- 154 Subsection (5) provides that goods that are not qualifying Northern Ireland goods do not have a “relevant connection” with Northern Ireland for the purposes of the non-discrimination principle for goods.
- 155 Subsections (5)(a) and (5)(b) enable appropriate actions to be taken in respect of biosecurity threats associated with qualifying Northern Ireland goods by excluding these actions from the principles of mutual recognition and non-discrimination in the same way as legislation provided for under Schedule 1.

Clause 12: Guidance relating to Part 1

- 156 This Clause provides the Secretary of State with a power to issue statutory guidance about the practical operation and effect of the market access principles of mutual recognition and non-discrimination for goods. This could include guidance on enforcement, for market surveillance authorities and UK traders.
- 157 The UKIM Bill will not directly introduce any new enforcement bodies, powers or penalties, relying instead on enforcement provisions in existing goods regulation to ensure compliance with the requirements of the mutual recognition principle.
- 158 Subsection (2) provides for guidance to be addressed to any description of persons. Guidance will be needed to explain how the existing enforcement framework will work to give effect to the new market access principles, including how this affects the roles and responsibilities of regulators and what it means for traders in terms of regulatory compliance.
- 159 Subsection (4) provides for the SoS to revise guidance from time to time, and withdraw it, as appropriate.

Clause 13: Sale of goods complying with local law

- 160 This Clause, which is most pertinent with regards to the principle of mutual recognition, sets out that nothing contained in Part 1 of the Bill prevents goods produced in or imported into a part of the UK being sold in another part of the UK if the sale complies with any requirements applicable in that part (or if there are no such requirements). So where goods do not meet the criteria for mutual recognition, or where traders do not wish to make use of the principle for their goods, these goods can continue to be sold in a particular part of the UK by complying with the requirements relating to sale that apply there.

Clause 14: Interpretation of references to “sale” in Part 1

- 161 This Clause supplies the meaning of “sale of goods” for the purposes of Part 1 of the Bill.
- 162 Subsections (2) and (3) provide that “sale” excludes sales which are not made in the course of a business or are made in the course of a business but only for the purpose of performing a public function. “Sale” will generally exclude sales made by public bodies or authorities, except where these sales are made for commercial purposes and not for the purpose of performing a public function (other than a function related to the carrying on of commercial activities). For example, the supply of medication by the NHS to a patient through a prescription would not be covered as it is a sale made by a public authority fulfilling a public function.

- 163 Sales by public bodies or authorities which are carried out for purely commercial purposes would be captured. For example, if a public body were to set up a gift shop selling merchandise, this would be captured as ‘sale’ for the purposes of this part as it would be commercial activity not directly related to its public functions.
- 164 Subsection (4) provides that “sale” includes some earlier actions with a view to sale, namely an agreement to sell, offering or exposing for sale or having in possession or holding for sale.
- 165 Subsection (5) provides that other types of supply-related activities should also be treated as “sales” for the purposes of this Part. These other types of supply are listed in subsection (6) and include things like the leasing or hiring out of goods, or the gifting of goods where no consideration is given in exchange. Earlier actions with a view to these types of supply would also be covered e.g. an agreement to hire.
- 166 Relevant regulatory requirements for the purposes of mutual recognition and non-discrimination for goods will therefore include any requirements relating to these activities. However as set out in Clause 2, the effect of mutual recognition will be limited by reference to the particular type of sale that is taking place in the nation where a good is being sold.

Clause 15: Interpretation of other expressions used in Part 1

- 167 This Clause sets out definition of terms used for the purposes of this Part.
- 168 Subsection (2) defines “goods” for the purposes of this Part. ‘Goods’ means any tangible movable or corporeal moveable thing (including its packaging or label), with the exception of water or gas that is not offered for sale in a limited volume or set quantity. This will therefore not cover water or gas that is piped directly into buildings as a utility but will cover bottled water or canisters of gas. This definition does cover agricultural goods, including live animals, germinal products and animal by-products.
- 169 Subsection (3) defines “produced in” for the purposes of this Part. If the good is not wholly produced or made within one part of the UK, it can still be classed as “produced in” a relevant part of the UK if the most recent significant production step has taken place in that part, so long as it is regulated in that part.
- 170 Subsection (4) defines “regulated” as part of the wider definition of “produced in”. A significant step is regulated if it is covered by any statutory requirement in the part where it takes place or could materially affect a person’s ability to lawfully sell the good in that part.
- 171 Subsections (5), (6) and (7) define what is meant by “significant” for the purposes of the wider definition of “produced in”. Subsection (5) sets out that a production step is significant if it is significant in terms of the character and purpose of the goods. Subsection (6) specifies steps that are not to be considered significant, even if they are regulated. Subsection (7) further specifies that packaging, labelling or marking of goods is not significant unless fundamental to the character of the good.
- 172 Subsections (8) and (9) define “imported into” for the purposes of this part. Goods brought by sea are imported when the ship carrying them enters the limits of the port at which they are discharged. Goods brought by air are imported when they are unloaded. Goods brought by land are imported when they enter the UK. For the purposes of the definition of “imported into”, goods that arrive in the UK from the Isle of Man are to be treated in the same way as any other imported goods.
- 173 Subsection (10) states that where a good is ‘produced in’ or ‘imported into’ in one part of the UK (the original part), and is then exported outside of the UK before being re-imported back into the UK, the good should still be regarded as having been produced in or imported into the original part of the UK.

174 If a good was imported into one part of the UK and then underwent a significant regulated production step in a different part, the good would be treated as having been produced in that other part.

175 Subsection (10)(a) clarifies that the references to “production” in Clause 3 subsection (4)(c) should be taken to include specified production processes associated with agricultural products. This reflects the fact that the definition of “goods” in Clause 14 includes agricultural products.

176 Subsections (11), (12) and (13) provide definitions for terms used in this clause.

Part 2: UK Market Access: Services

Clause 16: Services: overview

177 This Clause sets out the scope of the provisions on the regulation of services in this Part.

178 Subsections (3) and (4) provide definitions for authorisation requirement and regulatory requirement which are used throughout this Part.

179 Subsection (5) provides for provisions that are neither an authorisation requirement for the purposes of Clause 18, nor a regulatory requirement for the purposes of Clauses 19 and 20, meaning that they are not within scope of the rules on mutual recognition, direct discrimination or indirect discrimination in Part 2.

180 Subsection (5)(a) establishes that provision within the meaning of the mutual recognition principle for goods in section 2 are not authorisation requirements or regulatory requirements, for the purpose of Part 2. Subsection (5)(b) establishes that provision of the sort described in section 22(1) and 26(1) (professional qualifications and regulation), to the extent it has the effect described in those subsections, is not an authorisation requirement or regulatory requirement for the purposes of Part 2. Subsection (5)(c)(i) provides that legislative requirements in force, or otherwise in effect, the day before the day on which the section comes into force are not authorisation requirements or regulatory requirements. Subsection (5)(c)(ii) provides that a requirement which comes into force or otherwise takes effect on or after the day on which the section comes into force is not an authorisation requirement or regulatory requirement to the extent that it re-enacts or replicates (without substantive change) a provision that was in force immediately before that day. Subsection (5)(d) provides that requirements applied to both service providers and persons that do not provide services are not authorisation requirements or regulatory requirements. Subsection (5)(e) provides that a requirement to notify or register with a regulator is not an authorisation requirement or regulatory requirement, for the purpose of Part 2. Subsection (5)(f) provides that a requirement to provide evidence of being authorised to provide services in a part of the UK, other than the part in which the requirement applies, is not an authorisation requirement or regulatory requirement for the purposes of Part 2.

181 Subsections (6) and (7) provide that subsection (5)(c) does not apply if a corresponding authorisation requirement in another part of the United Kingdom is substantively changed on or after the day on which Clause 5 comes into force.

182 Subsection (8) defines “service provider” and “permanent establishment” for the purpose of this Part.

Clause 17: Services: exclusions

183 This Clause provides that services or activities listed in Schedule 2 are excluded from either, or both of the market access rules in Part 2.

184 Subsection (1) sets out the matters contained within Schedule 2, which excludes certain services and requirements from either or both of the market access rules in Part 2 the Bill. Subsection (2) requires the Secretary of State to keep Schedule 2 under review and sets out the Secretary of State's power to add, amend or remove items from that schedule by regulations. Subsection (3) provides that those regulations are subject to the affirmative resolution procedure.

185 Subsection (4) provides that during the period of three months beginning with the day the section comes into force, regulations may be made subject to the made affirmative resolution procedure.

Clause 18: Services: mutual recognition of authorisation requirements

186 This Clause establishes a principle of mutual recognition of authorisations requirements in relation to the provision of services.

187 Subsection (1) provides that an authorisation requirement is required to be met in order to carry out a service in one part of the UK (Scotland, Wales, Northern Ireland, England), does not apply if the service provider has been authorised to provide that service in another part of the UK.

188 Subsection (2) sets out that for the purposes of the principle of mutual recognition in subsection (1), a person is authorised to provide services if they have the permission of a regulator, where that regulator has functions that extend to, at least, the whole of a part of the UK. It does not, therefore, apply to authorisations, related to less than the whole of a part of the UK, for example, to carry out services in a particular local authority's area.

189 Subsection (3) provides that a person is not authorised to provide services, and therefore the mutual recognition principle does not apply, if the authorisation only allows a service provider to provide their services in relation to a particular premises, location or piece of infrastructure. This would mean, for example, that a licence to provide a certain service from a particular shop would not permit that person to provide the service from any shop.

190 Subsection (4) allows a derogation from the general rule in subsection (1), to the extent that the authorisation requirement in question can reasonably be justified as a response to a public health emergency.

Clause 19: Direct discrimination in the regulation of services

191 This Clause explains what direct discrimination in the regulation of services is.

192 Subsection (1) sets out that any regulatory requirement that directly discriminates against a service provider will be of no effect in relation to that service provider.

193 Subsection (2) provides the test for when a regulatory requirement will directly discriminate against a service provider for the purposes of this clause.

194 Subsection (3) provides that that a regulatory requirement will not directly discriminate against a service provider to the extent that it can be reasonably justified in response to a public health emergency.

195 Subsection (4) provides the circumstances under which a services provider is considered to have a relevant connection to a part of the UK, for the purposes of Clauses 19 and 20.

Clause 20: Indirect discrimination in the regulation of services

196 This Clause explains what indirect discrimination in the regulation of services is.

197 Subsection (1) sets out that any regulatory requirement that indirectly discriminates against a service provider will be of no effect in relation to that service provider.

- 198 Subsection (2) provides the test for when a regulatory requirement will indirectly discriminate against a service provider for the purposes of this Clause.
- 199 Subsection (3) provides what, for the purposes of subsection (2), constitutes a “disadvantage” towards a service provider.
- 200 Subsection (4) defines what an “adverse market effect” is for the purpose of the test for indirect discrimination under subsection (2).
- 201 Subsection (5) provides that both the content of the requirement and the way in which it operates, or is administered, in practice are to be considered in applying the test for adverse market effect in subsection (4).
- 202 Subsection (6) provides public policy objectives that could be considered a “legitimate aim” for the purposes of the test for indirect discrimination in subsection (2).
- 203 Subsection (7) contains a power allowing the Secretary of State by regulations to add to, remove from, or vary the list of legitimate aims in subsection (6). Subsection (8) states that regulations are subject to the affirmative resolution procedure.
- 204 Subsection (9) provides that, in considering whether a regulatory requirement can be reasonably considered a necessary means to achieving a legitimate aim under subsection (2)(d), particular consideration has to be given to the effects of the requirement in all circumstances, and to the availability of alternative means of achieving that aim.

Clause 21: Interpretation of Part 2

- 205 Subsection (1) of this Clause contains definitions of terms contained within Part 2 of the Bill, including “authorisation requirement,” “legislative requirement,” “public health emergency,” “regulator” and “regulatory requirement.”
- 206 Subsection (1)(a) provides that if a function conferred on a regulator by legislation can only be exercised in a way that would directly or indirectly discriminate against a service provider under Clause 19 or 20, the function of the regulator is to be treated as though it was a regulatory requirement for the purposes of those non-discrimination clauses. Such a function would therefore be of no effect if it can only be exercised to directly or indirectly discriminate against a service provider.
- 207 Subsection(1)(b) states that subsection (1)(a) does not affect the continuation in force, or continuing effect of existing requirements as provided for in subsection (5)(c) and subsection (6).
- 208 Subsection (2) provides that any effect of the direct and indirect discrimination provisions for goods (in Clause 5) and services (in Clauses 19 and 20) is to be disregarded when considering whether a person is authorised to provide services in another part of the UK for the purposes of mutual recognition for services in Clause 18.

Part 3: Professional Qualifications and Regulation

Clause 22: Access to professions on grounds of qualifications or experience

- 209 This Clause sets out when a professional qualified in one part of the UK is automatically treated as qualified in respect of that profession in another part of the UK (the automatic recognition principle). This Clause also explains the situations where the automatic recognition principle does not apply.
- 210 Subsections (1) and (2) introduce the automatic recognition principle. They provide that where a provision (defined in Clause 27) limits access to a profession in the relevant part of the UK to those that have certain qualifications or experience, UK residents who are

“qualified” in another part of the UK (as explained in Clause 23) will be treated as if they were qualified to practise that profession in the relevant part.

211 Subsection (3) excludes provisions relating to ongoing professional requirements, such as continuous professional development, from the automatic recognition principle. UK residents will still need to comply with such requirements when working in another part of the UK.

212 Subsection (4) provides that subsections (1) and (2) are to be read subject to Clauses 24 and 25.

Clause 23: Meaning of “qualified” UK resident

213 This Clause sets out when an individual is considered a “qualified” UK resident for the purposes of being able to rely on automatic recognition principle.

214 Subsections (1) and (2) define “qualified” (in relation to UK residents) as meaning qualified (in accordance with subsection (3) to (5)) in any part of the UK other than the one in which recognition is being sought, to undertake the full range of activities which comprise the practice of the profession for which recognition is being sought.

215 Subsections (3) to (5) explain what it means to be “qualified” in relation to those activities. To the extent that the relevant activities fall with a corresponding regulated profession in the other part, an individual must be qualified to access that profession (subsection (3)). Otherwise an individual must meet any specific qualification requirements attaching to specific activities (subsection (4)). To the extent that the activities are unregulated in the other part, any UK resident is qualified (subsection (5)).

216 Subsection (6) provides for the operation of subsection (3) in certain cases. Where there are corresponding regulated professions in the two parts of the UK, an individual cannot rely on the ability to undertake the activities outside of a regulated profession in the ‘other part’ (subsection (6)(a)); and where there are overlapping professions in the ‘other part’, only qualifications to access the profession closest to the one for which recognition is being sought count (subsection (6)(b)).

217 Subsection (7) provides that only qualifications obtained in the UK, and experience obtained mainly in the UK can be relied on for the purposes of this clause. How to determine where a qualification is obtained is explained in Clause 27(5).

Clause 24: Exception from section 22 where individual assessment offered

218 This Clause sets out an exception to the application of the automatic recognition principle in Clause 22.

219 Subsection (1) provides that the automatic recognition principle will not apply where a process which complies with the clause enables a UK resident to seek recognition of their professional qualifications or experience in order to practise the profession concerned. This does not affect the position of any individual who has practised the profession before the process was available (who will still be able to rely on automatic recognition).

220 Subsection (2) provides that the process must allow the relevant regulatory body to be able to grant access to the profession following an application by a UK resident.

221 Subsection (3) provides that any process engaging this clause must comply with the principles set out in subsection (4).

222 The principles in subsection (4) include those that have qualifications or experience obtained in one part of the UK should be treated equally to like qualifications or experience obtained in the part where recognition is sought, and should be able to be relied on to demonstrate the necessary knowledge and skills requires to access the profession.

- 223 Subsection (4) also provides that where an applicant cannot rely on qualifications and experience alone to demonstrate the necessary knowledge and skills required to access a specific profession, the process should allow the applicant to undertake a test or assessment in order to be able to demonstrate that they do in fact have the knowledge and skills that are not demonstrated by their qualifications or experience.
- 224 Subsection (4) further provides that if the applicant can demonstrate the necessary knowledge and skills, either on the basis of the qualifications or experience they can evidence, or through the test or assessment, the regulatory body should recognise the applicant and allow them to practise the profession in that part of the UK.
- 225 Subsections (5) and (6) set out a situation where a regulatory body does not have to offer an assessment in accordance with subsection (4) before declining an application. In effect, this is where the gaps in the applicant's knowledge and skills are such that an individual assessment would be just as demanding as doing whatever would be needed for the applicant to obtain the qualifications or experience that are normally needed to access the profession.
- 226 Subsections (7) and (8) provide that a decision on an application under the process must be made within reasonable time and sets out the consequences if that is not done (namely that automatic recognition can be relied on once the failure is established).
- 227 Subsection (9) provides that the regulatory body must publish information about the procedure for making an application under the process, including providing information on how the process satisfies the principles it must comply with.
- 228 Subsection (10) defines terms used in this clause. In the event that there is no specific regulatory body responsible for a profession, it provides that the responsibility for administering a process complying with the clause will rest on relevant minister or department.

Clause 25: Other exceptions from section 22

- 229 Subsection (1) provides that the automatic recognition principle does not apply to existing provision except as provided for in subsection (3).
- 230 Subsection (2) describes an "existing provision" as a provision in force on the date that this Bill is passed (or a provision made after that date if it simply re-enacts such provision already in force at the date the Bill is passed).
- 231 Subsection (3) sets out the circumstances where the automatic recognition principle will apply to an existing provision. This is when, after the Bill is passed, that part or a different part of the UK makes provision that affect the circumstances in which individuals are qualified in respect of the profession concerned.
- 232 Subsection (4) defines "relevant part" and "qualified" for the purpose of this clause.
- 233 Subsections (5) and (6) exclude certain legal professions from the scope of Clause 22(2). This means that the automatic recognition system will not apply to these professions.

Clause 26: Professional regulation not within section 22: equal treatment

- 234 This Clause provides that a UK resident practising a profession in a part of the UK with qualifications or experience obtained in another part of the UK, must be treated on the same basis, in respect of ongoing professional requirements, as a locally qualified professional. This includes those who have been recognised through the automatic recognition principle or through a process complying with Clause 24, but also applies to other UK residents with qualifications or experience obtained in the UK.

235 A professional who holds qualifications or experience from outside of the part of the UK in which they are practising must be treated as if their qualifications or experience were the same as the qualifications or experience held by a locally qualified professional. If the qualifications or experience are different in type and cannot be obtained in the relevant area, the applicant should be treated on the same basis unless more onerous requirements can be justified due the differences in the qualifications or experience.

Clause 27: Interpretation of Part 3

236 This Clause defines certain terms used in this Part of the Bill (or provides for them to be read in certain ways in certain cases).

237 Subsection (1) provides that the ability to practise a profession includes being able to undertake the activities that make up a profession, use a professional title or be registered where this is required.

238 Subsections (2) to (4) deal with cases where there are two or more routes to practise and none of them complies with Clause 24. For the purposes of automatic recognition principle, a qualified UK resident gets the benefit of the least demanding route. For example, if those with qualification A were allowed to practise the profession without further individual assessment and those with qualification B were allowed to practise the profession only after a further individual assessment, a qualified UK resident would be automatically recognised without having to undergo the individual assessment.

239 Subsection (5) provides that where a qualification is to be treated as “obtained” depends on where the body that issues it is based. That in turn is to depend on where the registered office, head office or principal place of operation of the body is.

240 Subsection (6) avoids circularity by ensuring that, when the Part describes the sorts of provision that it affects, the effect of the Part on those provisions is to be disregarded.

241 Subsection (7) defines various other key terms in this Part.

Part 4: Independent Advice on and Monitoring of UK Internal Market

Chapter 1: Reporting, advisory and monitoring functions

Clause 28: Functions of the CMA under this Part: general provisions

242 This Clause defines a regulatory provision for the purposes of the CMA’s UK internal market reporting, advisory, and monitoring functions, as well as stating which of these regulatory provisions are within scope. A regulatory provision is defined to cover relevant requirements for trade in goods and services, as well as the recognition of professional qualifications within the UK internal market.

243 Regulatory provisions are in scope under subsection (1) if they meet the conditions in subsections (2) and (4).

244 Subsection (2) defines regulatory provisions by reference to the mutual recognition and non-discrimination principles for goods and services, as defined in Clauses 3, 6 and 15 and for access to professions or professional regulation under Clause 22 or 26.

245 Subsection (4) sets out that a regulatory provision applies to one or more of England, Scotland, Wales and Northern Ireland, but does not apply to the whole of the United Kingdom. For example, a regulation in Wales that only applies within Wales but not in any other part of the United Kingdom would fall within scope.

246 Subsection (6A) provides a defence of absolute privilege in relation to advice given, or reports made, in the exercise of functions under Part 4.

247 Subsections (7) and (8) define “regulatory provision” to include legislation as defined in Clause 54 covering primary and subordinate legislation, retained EU legislation and provision made under legislation, but not anything to give effect to the Northern Ireland Protocol.

248 Subsection (9) states that “the CMA” refers to the Competition and Markets Authority throughout this Part.

Clause 29: Objective and general functions

249 This Clause sets out the CMA’s objective when carrying out functions under Part 4, of supporting the effective operation of the UK internal market, with particular reference to the purposes of Parts 1, 2 and 3 of this Bill.

250 Subsection (3) disapplies the CMA’s existing statutory objectives of promoting competition for the benefit of consumers, and its functions of giving information or advice to the public, as well as the provision of information and advice to Ministers and other public authorities when carrying out its functions under Part 4.

251 Subsection (4) allows the CMA to give information or advice to the Secretary of State on matters relating to any of its functions under Part 4.

Clause 30: Office for the Internal Market panel and task groups

252 Subsection (1) enables the functions of the CMA under Part 4 to be carried out on the CMA’s behalf by the Office for the Internal Market task groups constituted under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 to do anything that could be done under Part 4 of the Bill. This is to ensure the effective conduct of the CMA’s Part 4 functions.

253 Subsection (2) introduces Schedule (1) which contains provisions on the new Office for the Internal Market panel and task groups.

Clause 31: Monitoring and reporting on the operation of the UK internal market

254 This Clause establishes the wider market and system monitoring that the CMA may undertake in relation to the internal market. The CMA may undertake reviews of the matters in subsection (1) on an ad hoc basis. These include matters, whether about particular sets of regulations, sectors or regions, that either are relevant to the continuing effectiveness of an integrated internal market or relate to concerns about this effectiveness and extend to the provisions of Parts 1 to 3. The areas this monitoring may consider include but are not limited to cross-border competition, cross-border investment, nature and levels of trade between different parts of the UK and access to goods and services.

255 As per subsections (2) and (3), the CMA may undertake pieces of research of its own volition or be requested to do so by other parties, including UK government, all devolved administrations and legislatures and publish it.

256 Subsections (4) to (8) set out the two categories of reporting the CMA must undertake to give shape to ongoing monitoring. Firstly, an annual health of the market assessment will set out broad trends and developments in the UK internal market, including levels of integration across different sectors, regions and nations. Secondly, at least every five years the CMA will produce a review of the impact of the measures to protect and manage the internal market as set out in previous clauses of the Bill. This will be expected to include the effectiveness of and levels of familiarity with the mutual recognition and non-discrimination principles, including whether improvements may be necessary. This will also be expected to consider the views of all relevant stakeholders to present an overview of how well the internal market is serving

interested parties across the UK. Both types of reports will be published by the CMA and copies will be laid before both Houses and all the devolved legislatures.

257 Subsection (9) defines a “relevant 12-month period” and a “relevant 5-year period”.

Clause 32: Advising etc on proposed regulatory provisions on request

258 This Clause sets out the provision for the CMA to advise on a regulatory proposal prior to it being passed or made in law. If the administration of one part of the UK wishes to do so it may request non-binding advice from the CMA on an approach to regulation it or any other person proposes to make in the relevant part of the UK.

259 Subsection (3) sets out the conditions as to when an authority may make this request. An authority includes the UK Government, Scottish Government, Welsh Government and Northern Ireland Executive. Subsection (5) states that this request can be made solely by the Minister in the UK Government or any devolved administration or jointly by two or more.

260 Subsection (4) sets out that the advice or report will examine the potential economic impact of the proposal on the functioning of the UK internal market. This could include proposal’s economic impact on competition or trade distortions, indirect or cumulative effects or impacts on prices, the quality of goods and services or choice for consumers. Subsection (7) states that the CMA may decline to provide a report but must give reasons for doing so.

261 Subsections (8) and (9) state that once the advice or report is shared with the authority who made the original request, it will soon after and no later than 15 days after being shared with the requesting national authority, be shared with all other national authorities who did not make the request and the CMA must publish the report. If the request was made by two or more authorities, advice, reasons, or a report must be provided to them simultaneously.

262 Subsection (11) defines “relevant part of the United Kingdom” for the purpose of this Clause.

Clause 33: Provision of report on request after regulatory provision is passed or made

263 The preceding Clause sets out the provision for the CMA to advise on a proposed regulatory provision prior to it taking effect. This Clause details the CMA’s reporting procedure on regulatory provisions which have already been passed or made in law.

264 Under subsections (1) to (3), the regulatory provision and which part(s) of the United Kingdom it applies to must be specified in the request made by the relevant national authority. Any UK government or devolved Minister, either solely or jointly, can make a request to the CMA about a regulatory provision once it has entered into force. The requesting administration must consider whether any other person or body is able to provide an independent report in the first instance before the request to the CMA is made.

265 Subsection (4) and (5) set out that if the CMA declines a request to provide a report it must set out its reasons for doing so and publish the notice. Joint requests must be provided to all administrations who made the request simultaneously. and the CMA must publish the report soon after.

266 Subsection (7) defines “relevant part of the United Kingdom” for the purpose of this Clause.

Clause 34: Report on request on provision considered to have detrimental effects

267 This Clause describes the reporting procedure for enacted regulatory provisions which are considered to have detrimental effects on the UK internal market.

268 Subsections (1) to (5) set out that the CMA may undertake a report on the economic impact of a regulatory provision which has been passed or made into law, provided it falls within scope of Clause 28(2) and 28(3) and is considered to be having an actual or anticipated detrimental

impact on the functioning of the UK internal market. The CMA may do this only at the request of a UK Government Minister or any devolved administration, rather than a third party. The requesting administration(s) must first consider whether any other person is able to provide an independent report. Subsection (6) provides that the CMA may decline such requests but must give reasons if it does so and must publish the notice.

269 Subsection (7) states that where the CMA does provide a report, it must provide copies to all other administrations in other parts of the United Kingdom who did not request the report. For example, if the Welsh government made the request for a report, then England, Scotland and Northern Ireland administrations would also receive copies of the report.

270 Subsections (8) to (10) set out that as soon as practicable after being informed that no further time for consideration by administrations is needed, and no later than six months after provision of the report to the UK Government and all devolved administrations, the CMA must lay the report before each House of Parliament and all devolved legislatures. After this, the report will be published by the CMA.

Clause 35: Statements on reports under section 34

271 This Clause sets out the process the CMA, UK Government and devolved administrations must follow once a report has been produced by the CMA and laid before the legislatures under Clause 32.

272 Subsection (2) requires the national authority responsible for implementing the regulatory measure that was the subject of the CMA's report to then make a written statement in the relevant legislature. For example, if the impacts of a Welsh Government regulation had been reported on, Welsh Ministers would need to make a written statement in Senedd Cymru. In the case of Northern Ireland, the First Minister and deputy First Minister must make a joint statement. Subsection (3) defines "Parliament".

273 Subsection (4) sets out that in relation to Westminster, this duty is to be fulfilled by laying a copy of a written statement before each House of Parliament.

274 Subsections (5) to (9) provide definitions for terms used for the purpose of this clause.

Clause 36: Reports under this Part

275 This Clause allows the CMA to exclude particular categories of information from its reporting on impacts on the internal market. The categories are information the CMA believes it is contrary to the public interest to disclose, commercial information that will significantly harm the business interests of another person, or information about the private affairs of another person.

Clause 37: General advice and information with regard to exercise of functions

276 This Clause sets out that the CMA must publish guidance about how it expects to approach the exercise of its monitoring, advisory and reporting functions. This advice or information may include factors the CMA may take into account when considering whether to carry out its functions.

277 Subsections (3) and (4) state that the CMA may publish revised or new advice or information at any time and that this must be published in such a manner it considers appropriate.

Chapter 2: Information-gathering powers

Clause 38: Information-gathering powers

278 This Clause sets out the powers the CMA will have to gather information in support of its functions in this Part.

279 As provided in subsections (2) and (3), the CMA will be able to give an information notice or require the production of a document by an individual, business or public authority. The notice must describe the type of information required, as well as when and how it is expected to be relayed. Under subsection (6) the notice must make clear which precise function of the CMA is relevant as well the legal and financial consequences of non-compliance.

280 Subsection (8) sets out that no information can be requested if it cannot be compelled to be given in the course of civil judicial proceedings before the court, and that a notice may not require a person to go more than 10 miles from their residence without having their travelling expenses paid or offered to them.

281 Subsection (9) provides a definition of “the court” to include the High Court or Scotland’s Court of Session.

Clause 39: Information-gathering powers: enforcement

282 This Clause establishes what action the CMA is able to take in response to non-compliance with the information requests described in the previous clause.

283 Subsections (4) and (5) set out the conditions where financial penalties may not be imposed because more than 4 weeks have expired since the CMA exercised its relevant functions.

284 Subsection (6) requires the CMA to publish its policy approach in relation to subsequent action should it decide that a request for information has not been adequately fulfilled. This policy approach must make clear what factors the CMA will use to decide the nature and amount of any financial penalty imposed. This approach can be revised, and revisions must also be publicised. Subsection (9) requires the CMA to consult such other parties as it sees fit in the process of putting together or revising the policy approach.

285 The CMA can use its own discretion to decide whether the request for information has been complied with or not, though it must explicitly account for this approach. In making this decision, the CMA may also make reference to any obstruction or delay in the fulfilling of a request to produce documents. If it decides that a person has not fulfilled the request or has obstructed the production of documents, it is able to impose a financial penalty as described under subsection (1).

Clause 40: Information-gathering powers: penalties

286 The Clause sets out how the CMA will decide on appropriate financial penalties in cases of non-compliance with a notice. This provision directly mirrors section 174 of the Enterprise Act 2002, ensuring consistency across the CMA’s functions. The CMA will be able to choose between a range of possible types of penalties and fix appropriate amounts having regard to their statement of policy on penalties and the facts of the case. The CMA will not be able to compel or levy a financial penalty against the UK Government, Scottish Government, Welsh Government or Northern Ireland Executive.

287 Subsections (2) to (4) state that the penalty can be a single, fixed amount, a daily rate or both. In any of these cases, the Secretary of State must specify maximum amounts through secondary legislation not exceeding £30,000 for a fixed amount and £15,000 for the daily rate. As stated in subsection (7), the Secretary of State must consult the CMA and any other relevant persons before deciding on the maximum amounts and daily rates.

288 Subsections (8) and (9) state that the calculation of the daily rate must not include any days before the CMA requested the information from the person in question. The penalty stops accumulating on the day that the requirements under the information request are satisfied or the day the CMA has concluded the exercise of the relevant function. The CMA can specify an earlier date for the rate to stop accumulating should it wish, whether before or after the penalty imposed.

289 Subsection (10) references provisions in sections 112 to 115 of the Enterprise Act 2002, which set out procedural requirements and provide for appeals to the Competition Appeal Tribunal should a person wish to appeal a penalty decision made by the CMA apply to decisions of the CMA under Clause 37.

Chapter 3: Interpretation

Clause 41: Interpretation of Part 4

290 This Clause sets out key definitions for the purpose of this part. This includes a definition of the CMA itself and clarity about how broadly the “operation of the internal market in the United Kingdom” should be understood. This includes specific areas or regions within the internal market, not just cross-cutting trends across the market as a whole.

291 Subsections (4) to (7) provide definitions of “regulatory provision”, “relevant competence” and “relevant national authority”. The latter covers the UK Government and the three devolved administrations: the Scottish Government, Welsh Government and a Northern Ireland Department.

292 Subsection (7) defines devolved competence in Part 4 so that executive and legislative competence in each territory is included.

Part 5: Northern Ireland Protocol

Chapter 1: Northern Ireland's place in the UK internal market and customs territory

Clause 42: Northern Ireland's place in the UK internal market and customs territory

293 This Clause provides that an appropriate authority must 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.

294 The matters listed in subsection (1) are:

- a. the need to maintain Northern Ireland's integral place in the UK's internal market;
- b. the need to respect Northern Ireland's place as a part of the UK's customs territory; and,
- c. the need to facilitate the flow of goods between Great Britain and Northern Ireland.

295 Subsection (3) sets out the meaning of “appropriate authority”.

Chapter 2: Unfettered access

Clause 43: Unfettered access to UK internal market for Northern Ireland goods

296 The Clause supports the delivery of the UK Government's commitment to unfettered access for Northern Ireland goods moving from Northern Ireland to Great Britain. It does so by precluding new checks, controls or administrative processes on qualifying goods as they move from Northern Ireland to Great Britain. It similarly precludes the use of existing checks, controls or processes being used for the first time, or for a new purpose or to a new extent.

297 In this way it supports that the application of the Northern Ireland Protocol in Northern Ireland does not lead to new barriers for trade for Northern Ireland businesses. The clause provides for exceptions where such checks, controls or administrative processes are necessary for either administrating arrangements which facilitate access for qualifying Northern Ireland

goods to the internal market in the UK; or in order to secure compliance with, or give effect to, international agreements or arrangements that the UK is, or will be, a party to; or is necessary where goods have been declared for a voluntary customs procedure; or is necessary for the purposes of VAT or excise duty in consequence of the Northern Ireland Protocol; or is necessary to deal with a threat to biosecurity (human, animal or plant health).

298 The Clause applies to checks, controls or administrative processes applicable to the direct movement of qualifying Northern Ireland goods from Northern Ireland to Great Britain. A Minister of the Crown may by regulations amend the type of movement to which this clause applies.

299 Subsection (7) sets out the meaning of appropriate authority.

Clause 44: Power to disapply or modify export declarations and other exit procedures

300 This Clause provides a power for a Minister of the Crown to make provision about the application of exit procedures (applicable by virtue of the Northern Ireland Protocol or otherwise) to goods, or a description of goods, when moving from Northern Ireland to Great Britain. These regulations may (among other things) make provision disappling, or modifying the application of, exit procedures, stating or restating the application of exit procedures.

301 Subsection (3) sets out considerations which may be taken into account when a Minister of the Crown is exercising this power.

302 Subsection (5) confirms that provisions made under regulations may provide 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.

Chapter 3: Notifications under Article 10 of the Northern Ireland Protocol

Clause 45: Regulations about Article 10 of the Northern Ireland Protocol

303 Subsection (1) 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.

304 Subsection (2) provides that Regulations may disapply or modify the effect of Article 10 as it applies under the Withdrawal Agreement.

305 Subsection (3) provides examples of the broad way in which Regulations may be used for this purpose. Regulations may make provision that is incompatible or inconsistent with any relevant international or domestic law.

306 Subsection (4) provides that the Regulations may modify any legislation.

307 Subsection (5) specifies the procedures that must be used to make the Regulations.

308 Subsections (6) and (7) provide definitions for the purpose of this clause.

Clause 46: Notification of State aid for the purposes of the Northern Ireland Protocol

309 This Clause applies when the UK may be required, due to Article 10 of the Northern Ireland Protocol, to give the European Commission a notification or information relating to aid.

310 It provides a 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 will be subject to Regulations made under Clause 43(1) when interpreting Article 10.

Chapter 4: Certain provisions to have effect notwithstanding inconsistency or incompatibility with international or other domestic law

Clause 47: Further provision related to sections 42 and 43 etc

311 Subsection (1) provides that the following provisions in the UKIM Bill have effect notwithstanding any incompatibilities or inconsistencies with relevant international or domestic law:

- a. Clause 42 which provides a power to disapply or modify export declarations and other exit procedures;
- b. any regulations made under subsection 42(1);
- c. Clause 43 regarding regulations about Article 10 of the Northern Ireland Protocol;
- d. any regulations made under subsection 43(1);
- e. this Clause; and,
- f. any other provision of this Act so far as relating to the provisions above.

312 Subsection (2) sets out the non-exhaustive implications of this.

313 Subsection (3) provides that the standard time limit for an application for judicial review of regulations under sections 42 and 43 may not be extended.

314 Subsection (4) amends the European Union (Withdrawal) Act 2018 to make reference to this clause.

315 Subsection (5) defines “relevant international or domestic law” and “relevant separation agreement law”.

Part 6: Financial Assistance Powers

Clause 48: Power to provide financial assistance for economic development etc

316 This Clause is a general power to provide financial assistance for a number of specified purposes. Those purposes are economic development, infrastructure, culture, sporting activities, domestic educational and training activities and exchanges, and international education and training activities and exchanges.

317 For the purpose of this Clause, subsection (2) makes provision about the interpretation of certain terms.

Clause 49: Financial assistance: supplementary

318 This Clause makes supplementary provision in connection with the power to provide financial assistance in Clause 46.

319 Subsection (2) makes clear that the power does not affect the operation of existing statutory or common law powers available to UK Ministers to provide financial assistance.

Part 7: Final Provisions

Clause 50: Regulation of distortive or harmful subsidies

- 320 This Clause reserves to the UK Parliament the exclusive ability to legislate for a subsidy control regime once the UK ceases to follow EU State aid rules. This can address the effects of distortive or harmful subsidies, whether that is in relation to international trade or the UK internal market.
- 321 For this purpose, the Clause provides interpretations of “subsidy”, a “distortive or harmful” subsidy and a “public authority”.
- 322 This Clause amends Schedule 5 to the Scotland Act 1998 and Schedule 7A to the Government of Wales Act 2006 for Scotland and Wales respectively to make the regulation of distortive or harmful subsidies a ‘reserved matter’. In respect of Northern Ireland, the provision amends Schedule 2 to the Northern Ireland Act 1998 to make regulation in this area an ‘excepted matter’. The effect of these amendments is that the devolved legislatures cannot legislate in this area as it will be an exclusive competence of the UK Parliament.

Clause 51: Protection of Act against modification

- 323 This Clause inserts references to the United Kingdom Internal Market Bill into the Scotland Act 1998, the Government of Wales Act 2006 and the Northern Ireland Act 1998, so that the Bill is treated as a protected or entrenched enactment under each. This means that the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly may not pass legislation that amends the Bill or modifies its application.

Clause 52: Further provision in connection with the Northern Ireland Protocol

- 324 This Clause confirms that when Articles 5 to 10 of the Northern Ireland Protocol cease to apply, Clauses 11, Part 5 and section (8)(c)(5)(a) of the European Union (Withdrawal) Act 2018 will cease to have effect.
- 325 This Clause states that nothing in the Bill limits the power to make provision under section (8)(c) of the European Union (Withdrawal) Act 2018, or the effect of such regulations, except for regulations under section (8)(c)(1) which modify the operation of Clause 41, subject to some exceptions.

Clause 53: Regulations: general

- 326 This Clause makes provision in relation to powers conferred by the Bill on Ministers to make regulations. It provides that regulations made under the powers are to be made by statutory instrument. The powers may be used to amend, repeal or modify the effect of legislation, including Acts of Parliament. When exercised for their stated purpose, the powers may also be used to make supplementary, incidental, consequential, transitional, transitory or saving provision.

Clause 54: Regulations: references to parliamentary procedures

- 327 This Clause prescribes the parliamentary procedures which apply in relation to powers conferred by the Bill on ministers to make regulations. It sets out the procedure that applies where a power is exercisable by affirmative resolution procedure, made affirmative procedure, or negative resolution procedure. Where a power provides for regulations to be made by negative resolution procedure, this Clause permits the provisions of such regulations to be included in regulations made by affirmative resolution procedure or made affirmative procedure.

Clause 55: Interpretation: general

328 This Clause sets out definitions of a number of terms used in this Bill. Definitions that are specific to Parts 1, 2, 3 and 4 of the Bill respectively are set out in Clauses 13, 14, 21, 27 and 39.

Clause 56: Extent, commencement and short title

329 This Clause provides that the whole of the Bill extends to the whole of the UK. It provides a power for the Secretary of State to make regulations in order to commence provisions of the Bill.

330 Paragraph 4 provides that Clauses 42, 43 and 45 may only be commenced on a date on or after that approved in a motion approved by resolution in the House of Commons, and referred to in a motion tabled in the House of Lords.

Schedules

Schedule 1: Exclusions from market access principles

331 This Schedule sets out what legislation will be excluded from the market access provisions and the requirements needed for this exclusion to apply.

332 Paragraph 1, subparagraph (1) sets out the exclusions from the market access principles which will be applied if the requirements within paragraph 1 are met.

333 Subparagraphs (2) to (4) set out the circumstances of an animal or plant health serious threat for which an exclusion from mutual recognition would be deemed necessary. This paragraph also sets out the conditions which the legislation is required to meet to allow for the exclusion to be implemented.

334 Subparagraphs (5) and (6) set out the necessary obligations and publication requirements which the nation of the UK who was introducing the exclusion would need to go through to prove that an exclusion is required and justified.

335 Subparagraph (7) sets out the assessment against the legislation being introduced to ensure that these measures are in line with similar measures which has previously been enforced for similar threats.

336 Subparagraph (8) defines “pest or disease” as it is referred to in paragraph 1.

337 Paragraph 2 sets out the circumstances of a food or feed serious threat for which an exclusion from mutual recognition would be deemed necessary. This paragraph also sets out the conditions which the legislation is required to meet to allow for the exclusion to be implemented.

338 Paragraph 2, subparagraph (8) defines “food and feed” as it is referred to in paragraph 2.

339 Paragraph 4 sets out the definitions to be used in reference to the responsible administration within the paragraph.

340 Paragraph 5 sets out that in the circumstances of a public health emergency a relevant requirement may be deemed to be reasonably necessary, in which case it would not be deemed as a directly discriminatory action.

341 Paragraph 5, subparagraph (2) sets out the definitions for the purpose of this schedule.

342 Paragraphs 6 to 8 sets out the narrow exclusion from mutual recognition that will apply to chemicals. Where the Bill refers to chemicals, this is strictly in relation to REACH regulation (Registration, Evaluation, Authorisation and Restriction of Chemicals). This exclusion is limited to Authorisations and Restrictions.

- 343 Paragraphs 9 and 10 set out the narrow exclusion for fertilisers and pesticides from mutual recognition. For pesticides, the exclusion will apply to safeguarding measures taken by the administrations under retained EU law and existing domestic regulation. For fertilisers, the exclusion is limited to the authorisations for the sale of a product and the approval of active substances.
- 344 Paragraph 11 defines the exclusions from both mutual recognition and non-discrimination provisions for any legislation that has an impact on tax or tax related activities. These are excluded as the provisions are governed by existing fiscal frameworks.
- 345 Paragraph 12 provides that indirect discrimination does not apply to requirements made by, or under, Acts of Parliament where these requirements apply both to goods in the originating and destination parts.

Schedule 2: Services exclusions

- 346 This schedule is divided into four parts. Services listed in Part 1 are not subject to the mutual recognition rules in Clause 18. Services listed in Part 2 are not subject to the non-discrimination rules in Clause 19 and Clause 20. If a service is listed in both Part 1 and Part 2 of the Schedule, then none of the rules in Part 2 of the Bill apply to regulation of that service.
- 347 Requirements listed in Part 3 are not subject to mutual recognition rules in Clause 18. Requirements listed in Part 4 are not subject to non-discrimination rules in Clause 19 and Clause 20. Parts 3 and 4 of the Schedule are intended to avoid unforeseen consequences of the UKIM services rules on unrelated areas of government activity, namely taxation.

Schedule 3: Constitution etc of Office for the Internal Market panel and task groups

- 348 This Schedule is about the constitution of the Office for the Internal Market panel and task groups, to the latter of which the functions of the CMA under Part 4 may be delegated by virtue of Clause 30 – Office for the Internal Market panel and task groups.
- 349 Paragraph 2 provides for the appointment by the Secretary of State of an OIM panel Chair who will also be a member of the CMA Board and appointments to the new OIM panel. Before making these appointments, the Secretary of State must consult Ministers in the devolved administrations.
- 350 Paragraphs 3 to 7 defines the length of time a person can sit on the OIM panel, as well as making provision for concurrent panel appointments, limited re-appointments and resignations.
- 351 Paragraph 8 inserts a new Part 3A after Part 3 in Schedule 4 to the Enterprise and Regulatory Reform Act 2013.
- 352 Part 3A sets out further governance arrangements for members of the OIM panel, and the constitution and membership of the OIM task groups as set up by the OIM panel Chair from OIM panel members to undertake work to carry out the CMA's functions under Part 4 of this Bill.

Commencement

- 353 The commencement dates of provisions of this legislation are to be set out in regulations made by the Secretary of State under Clause 56.

Financial implications of the Bill

354 The costs for the additional functions for the CMA under Part 4 of the Bill include 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 ~£4m in the first year, with a total cost of ~£29m over a 10-year appraisal period (2021/22 prices, discounted to 2021/22). This cost will be borne by the CMA.

355 Clause 46 relating to the power to spend will allow for the transfer of funding.

Parliamentary approval for financial costs or for charges imposed

356 A money resolution was required on 14 September in relation to--

- a. Clause 46 of the Bill, which provides that Ministers of the Crown may provide financial assistance for the purposes set out in that Clause, and
- b. administrative expenditure that may be incurred by the CMA or Ministers of the Crown in connection with provision in Parts 4 to 6.

357 The House of Commons was asked to agree that any such expenditure arising from the Bill (should it become an Act) will be taken out of money provided by Parliament.

358 A ways and means resolution was not required as no charges are imposed by the Bill.

Compatibility with the European Convention on Human Rights

359 Lord Callanan has made a statement under section 19(1)(a) of the Human Rights Act 1998 that, in his view, the provisions of the Bill are compatible with the Convention rights.

360 To the extent that Parts 1 to 3 of the Bill engage Convention rights, and lead to comparable traders being treated differently, this may engage the right not to be discriminated against under Article 14 ECHR. However, any such differential treatment is justified by the twin aims of devolving regulatory powers to the constituent parts of the UK and establishing a market access commitment that ensures the continued smooth functioning of the UK internal market.

361 In some cases, an individual's right to private and family life under Article 8 ECHR may be engaged by the CMA's proposed power in Part 4 to require information. This power is connected with its advisory, reporting, monitoring and intelligence-gathering functions in relation to the UK internal market. Any such impact on an individual's right is clearly prescribed in the Bill and any information must be held securely by the CMA in accordance with the requirements of the Data Protection Act 2018. This is justified by the interests of the economic well-being of the UK.

362 The imposition of a civil penalty for breach of the requirement to produce documents and information to the CMA engages the right to a fair trial in Article 6(1) ECHR. The limits within which a civil penalty may be imposed and the independent appeal procedure that is available ensure this is compatible with Article 6(1) ECHR.

363 The Government has published an ECHR memorandum which explains in detail its assessment of the compatibility of the Bill's provisions with the Convention rights.

Related documents

364 The following documents are relevant to the Bill and can be read at the stated locations:

- The Government's UK Internal Market White Paper:
<https://www.gov.uk/government/publications/uk-internal-market>
- ECHR Memorandum for the United Kingdom Internal Market Bill as amended in House of Commons Committee: <https://publications.parliament.uk/pa/bills/cbill/58-01/0185/ECHR%20MEMO%20UKIM%20IV%20FINAL.pdf>
- Government Legal Position: United Kingdom Internal Market Bill and Northern Ireland Protocol: <https://www.gov.uk/government/publications/hmg-legal-position-ukim-bill-and-northern-ireland-protocol>

Annex A – Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Legislative Consent Motion needed?
Part 1: UK Market Access: Goods	Yes	Yes	Yes	Yes	Yes (S, W, NI)
Part 2: UK Market Access: Services	Yes	Yes	Yes	Yes	Yes (S, W, NI)
Part 3: Professional Qualifications and Regulation	Yes	Yes	Yes	Yes	Yes (S, W, NI)
Part 4: Independent Advice on and Monitoring of UK Internal Market	Yes	Yes	Yes	Yes	Yes (S, W, NI)
Part 5: Northern Ireland Protocol	Yes	Yes	Yes	Yes	Yes (S, W, NI)
Part 6: Financial Assistance Powers	Yes	Yes	Yes	Yes	Yes (S, W, NI)
Part 7: Final Provisions	Yes	Yes	Yes	Yes	Yes (S, W, NI)

UNITED KINGDOM INTERNAL MARKET BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the United Kingdom Internal Market Bill as brought from the House of Commons on 30 September 2020 (HL Bill 135).

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