

# UK Government Internal Market Act 2020

## February 2021

### Background

In December 2020, the [UK Internal Market Act](#) passed into law. The Act attempts to eliminate trade barriers between UK nations following the UK departure from the EU's Single Market and Customs Union on 1st January 2021.

Community Housing Cymru, Scottish Federation of Housing Associations and Chartered Institute of Housing commissioned the Institute for Government to provide a briefing to outline the impact of the final Act on the devolved settlement, with an exploration of some of the types of issues that could be affected, including construction.

This document is intended to provide a brief introduction to briefly summarise some of the issues covered in the Institute for Government's full briefing on the Act, and give further insight into the political context in which this legislation will operate.

For the full detail, you can access the IFG Briefing [here](#).

### Political Context

The Internal Market Act was passed amid significant political controversy, and its passage through Parliament caused concern in each of the devolved nations. Both the Scottish and Welsh Parliaments refused legislative consent for the Bill, raising concerns over the impact on the devolution settlement, and the Welsh Government is currently pursuing legal action to overturn the Act.

The combination of the powers within this Act, and the current UK Government policy agenda of "levelling up" between the nations and regions of the UK through significant infrastructure investment have accentuated fears of a power grab in each of the devolved nations. While issues such as the M4 relief road in Wales and suggestions of a UK-Scottish Government infrastructure vehicle remain live debates, the long term impact of the legislation remains hugely uncertain.

It is possible that conflicts could arise in future between the policy and regulatory agendas of the Westminster Government and devolved administrations, and given the stark contrasts in policy and economic agendas currently, this seems likely.

Professor Nicola McEwen – a Professor of Territorial Politics at the University of Edinburgh – has said that the relative size and dominance of the market in England is likely to mean "there would be an economic imperative for companies to produce to the standards set for England by the UK Government – be they lower or higher".

She added, “while the devolved governments may not face any new legislative constraints, there would be a practical policy impact of placing their producers or service providers at a comparative disadvantage - even on justifiable social or environmental policy grounds, compared to elsewhere in the UK.”

At present, many of the practical effects of the legislation remain unclear. However, there is a clear medium to long-term risk to the ability of devolved administrations to pursue their own policy agendas, including approaches to housing and homelessness.

CHC, SFHA and CIH have worked together closely, with support from the Institute for Government, to unravel this complex piece of legislation and better understand its impact on housing professionals and housing organisations across Wales and Scotland. We used this insight to successfully influence the legislation, and will continue to work to understand its long term impact, as set out later in the briefing.

## **Lobbying**

Given the distinct and divergent policy agendas in housing and homelessness since the advent of devolution, and the comparatively positive policy environment for social housing providers in the devolved nations, housing was an area that was seen as particularly vulnerable to the legislation as it passed through the UK Parliament. The UK Government White Paper, which preceded the legislation, highlighted Building Regulations and Private Rented Sector Regulation as areas where divergence may be problematic in future.

During our lobbying on this legislation, CHC, SFHA and CIH worked across parties with MPs and Peers to raise the significant concerns highlighted by many in relation to the devolved settlement. Working closely with third sector partners from across the UK, we were successful in securing significant changes to the Market Access Principles sections of the legislation through amendments which will introduce Common Frameworks, and lead to a more managed system of policy divergence.

There were also a number of concessions by the UK Government which will see consent sought from devolved governments on issues where the Bill had not previously envisaged them. There are however, still significant concerns across many third sector and business groups, as well as devolved governments as to the overall impact of the legislation.

Many of the long-term implications in specific areas such as housing will remain unclear in the short term, and the role of inter-government relations, the courts and the new Office for the Internal Market will all be significant. We will continue to monitor the situation collectively and work with our members and officials in the devolved administrations to understand this further and influence where necessary.

## **Briefing Summary**

The Institute for Government briefing sets out the following areas in detail:

## 1. Market Access Principles (MAPs) for goods and services

### Mutual recognition for goods and services

**Goods:** Goods produced in, or imported into one part of the UK can be sold in any other part of the UK without the need for it to be subject to any further compliance requirements.

**Services:** A service provider who is authorised to provide a service in one part of the UK is automatically authorised to provide that service in other parts of the UK.

Mutual recognition of services *does not apply* to “Social Services relating to social housing, childcare and adult social care.”

### Non-discrimination for goods and services

One part of the UK cannot set higher standards for a person, good or service than it does for itself.

**Goods:** All requirements that were already in force before the Act are excluded from the principle of non-discrimination, provided they are not ‘substantively changed’.

**Services:** Exemption only applies until a corresponding requirement has been changed in another part of the UK. The non-discrimination of services *does not apply* to “Social Services relating to social housing, childcare and adult social care.”

## 2. Potential implications of the MAPs for housing

Building regulations were listed in the UK Government’s White Paper on this issue as an area where the Internal Market Act could have a significant impact on the ability of devolved administrations to diverge. Following the passage of the legislation, the UK Government has said that many building regulations will be outside the scope of the Internal Market Act. This includes how materials or goods are used.

However, given the complex nature of supply chains and the vast array of materials involved in construction, there remain many ways in which construction could be implicated.

The full briefing gives the example of a developer requiring permission from a regulator to build a certain type of house, which would count as an authorisation requirement and fall within the scope of mutual recognition principle for services.

This means that an authorisation obtained in one part of the UK would be valid in all other parts, although there are certain exclusions for social services relating to social housing. **In practice, this could still have a potentially significant impact on the delivery of market housing, particularly where developers are already operating in multiple markets across the UK.**

Furthermore, it is worth noting that UK Government White Paper also specifically mentioned Private Landlord licensing and registration as a barrier to Mutual Recognition and Non-discrimination.

If one devolved nation has a different scheme for authorising private landlords within their own geographical boundaries, it remains to be seen whether the principles of mutual recognition would apply. A Senedd Research paper on the issue raised this question.

*“Would a person who carries on business as a private landlord in Northern Ireland be permitted to carry on business as a private landlord in Wales by satisfying the Northern Ireland rules, but not the Wales rules?”*

As with the issue of Building Regulations, there has been some rolling back of by UK Government departments on the application of the legislation to this specific issue. However, lawyers and constitutional experts remain concerned, and these two examples only serve to illustrate the lack of clarity this legislation creates.

### 3. Recognition of professional qualifications

The Act ensures that professional qualifications obtained in one part of the UK are recognised in the rest of the UK and are treated in the same way. Exceptions include provisions already in force and any ongoing professional requirements, such as development or training.

### 4. Enforcement of MAPs

**Non-application:** Bodies with market enforcement functions cannot enforce certain requirements on goods or services coming from other parts of the UK.

**The role of the courts:** Where there is a dispute about the interpretation of the principles and whether or not they apply, there will be a role for the courts.

**Office for the Internal Market:** To oversee the functioning of the internal market. The OIM itself will have no enforcement function and will act primarily as an advisory body, feeding into other governance mechanisms.

**Intergovernmental mechanisms** are also expected to play a role in governing the UKIM Act.

### 5. Implications for devolution

#### Policy effectiveness

The MAPs can only be enforced for goods and services produced in one nation, not goods and services then sold in that nation but produced elsewhere in the UK. This

could undermine the ability of each administration to successfully implement some policy aims.

Given the market dominance of England, the risk of English goods undermining devolved regulations is much higher.

### **Market competition effects & Common Framework**

The full briefing highlights the potential for some regulatory standards to be lowered so as to maintain competitiveness across the UK. However, some of these potential effects could be mitigated through Common Frameworks, which were a key concession by the UK Government to lobbying from opposition parties and many businesses and charities.

UK Common Frameworks were introduced to allow for a common approach to be taken on policy areas where powers have returned from the EU, and there is intersection with the competency of devolved administrations. These are being developed in partnership between the UK Government and devolved administrations, and there are likely to be opportunities through engagement with devolved officials to input into this, should areas relevant to housing be covered.

Where Common Frameworks are established, it would allow devolved administrations to enforce their regulations even on goods and services supplied from other parts of the UK. The insertion of Common Frameworks was a significant concession from the UK Government, and may provide for a route to manage divergent policies from a common base position in a similar way to the EU previously.

### **Public functions**

Many of the functions carried out by the devolved administrations, local government, and other public bodies will not be covered by the MAPs.

## **6. Financial powers**

The UK Government will have the powers to spend money directly in devolved policy areas and to administer the UK Shared Prosperity Fund, which will replace EU structural funds. The role of devolved administrations remains unclear, but the scheme is expected to be more centralised than current arrangements for distributing EU funding.

This is likely to provide a substantial challenge to inter-governmental relations. While the UK was a member of the EU, structural funds were distributed directly to devolved governments, allowing them to prioritise their investments within a wider EU framework. The replacement funding, through the Shared Prosperity Fund, will be retained by the UK Government to spend on infrastructure projects, including in areas that are within devolved competence.

This also has the potential to change the dynamic between organisations seeking funding in the devolved nations and both the devolved administrations and UK

Government. There will be new opportunities from the Shared Prosperity Fund in particular, which will highlight the importance of strong local relationships to secure funding.

## **7. Regulation of harmful subsidies (i.e. State Aid)**

The Act amends the devolution statutes to make the regulation of harmful or distortive subsidies a reserved (or excepted in the case of Northern Ireland) matter. The UK government has the power to design and implement a UK-wide scheme for controlling public subsidies to replace the EU state aid. During the EU-UK trade talks in December, the UK Government agreed to set up an “independent authority” to monitor subsidy decisions – further work is expected on this in the coming months.

### **Next steps**

Now the Act has become law, the UK government, working with the devolved administrations, faces several challenges, including:

- Establish an Office for the Internal Market capable of commanding the confidence of all key stakeholders including the devolved administrations.
- Clarify how the market access principles will be enforced, and issue guidance to those with an enforcement role.
- Create a joined-up approach to the UK internal market incorporating work on the market access principles, the Office for the Internal Market, common frameworks and the Northern Ireland Protocol.
- Consult with the devolved administrations on the Shared Prosperity Fund and future subsidy control regime.

CHC, SFHA and CIH will continue to work together, with support from the Institute for Government to monitor these issues. Guidance on the legislation is expected in the coming months, and as the technical and political landscape becomes clearer, we will communicate these changes and their implications with our respective members.

Where joint lobbying opportunities arise, such as on Common Frameworks, we will look to align our influencing priorities to ensure that devolved administrations can continue to exercise the primary decision making levers over housing and homelessness policy.