
How does the UK Internal Market Bill relate to Northern Ireland?

*As the UK Internal Market Bill has its Second Reading in the House of Lords, how does it relate to Northern Ireland? **Katy Hayward** provides the answers, in 5 key points.*

The [UK Internal Market Bill](#) has already generated a lot of controversy, not least for its clauses dealing with the Ireland/Northern Ireland Protocol. The UK government says these powers to breach the Withdrawal Agreement are a necessary 'safety net' to see unhindered trade across the UK; the EU has launched infringement proceedings in response. This briefing presents an overview of the implications, limitations and consequences of the Bill as they relate to Northern Ireland, through 5 essential points.



1. The UK Internal Market Bill attempts to avoid new barriers to trade within the UK but it does not/cannot in itself guarantee that trade can continue unhindered in across the UK as it did before Brexit.

- The Bill enshrines two different types of principles to make the operation of the UK internal market as smooth as possible after the end of the transition period.
- *Market access principles* mean (put very simply) that goods and services from any of the four parts of the UK

can be legally sold in Britain. These principles and their implications are explained in this [briefing paper](#).

- The *unfettered access principle* means that there should be as few restrictions and changes as possible in the way that NI goods move from NI into GB. This is a commitment that has been repeated by the UK government, including in the [New Decade, New Approach](#)
- However, things will be very different for the UK internal market come 1 January 2021 due to the Protocol on Ireland/Northern Ireland in the UK-EU Withdrawal Agreement. This means that NI will continue to follow the same EU rules on goods and on customs that it follows now, even if other parts of the UK choose to diverge from them.
- This allows NI and EU goods to move across the Irish border and into/from the EU as they do now. But it does mean that there will be a change in the procedures to be applied on goods coming from Britain into Northern Ireland.
- The *UK Internal Market Bill does nothing to minimize these GB to NI requirements*; indeed, by not containing measures to prevent a ‘race to the bottom’, it allows for increased GB to NI friction in trade.

2. The Protocol on Ireland/Northern Ireland means that what is agreed (or not) at the UK-EU level will have a direct impact on internal trade within the UK. As such, a UK-EU deal will have a greater impact on Northern Ireland’s trade with the rest of the UK than the UK Internal Market Bill.

- The detail (and mitigations) around procedures to be applied on the movement of goods between GB and NI from 1 January have to be agreed between the UK and the EU in the Joint Committee co-chaired by Michael Gove and Maros Sefcovic. *What the Joint Committee can agree will largely depend on what sort of a deal the UK and the EU arrive at in the next few weeks (if they come up with a deal at all).*
- If there is no deal between the UK and EU, then customs controls (including duties) will come into force in trade between them. This will have a knock-on effect on the movement of goods from GB into NI because the EU will want to make sure that GB businesses don’t try and access the EU via NI as a means of avoiding tariff barriers.
- The [Trader Support Service](#) has been established to help NI businesses bring goods in from GB, including managing the associated paperwork. The scale of the task will be greater and more complicated without a UK-EU deal.
- The GB/NI border is also a regulatory one. If England, Scotland or Wales lower standards for the production of goods, then those goods can continue to be sold elsewhere in Britain but not in NI. Goods will not be allowed to enter NI unless they meet EU standards. *It also has an effect in the other direction.* Lowering standards of goods and imports may reduce prices in GB, thus leaving NI goods at a competitive disadvantage.
- This is also true of imports from third countries. The risks associated with NI’s unique position could potentially increase depending on what is included in future UK Free Trade Agreements (FTAs). This would be manifest in controls on goods entering NI from GB.
- In sum, *the Protocol means that the greater GB divergence from EU rules and the greater the distance between the UK and EU come 1 January (e.g. no UK-EU deal), then the greater the friction on the movement of goods from GB into NI will be.* The UK Internal Market Bill does nothing to address this.

3. The UK Internal Market Bill has less of a restrictive impact on the effectiveness of devolved legislation in Northern Ireland than it does in Scotland and Wales; but this is because the powers of the NI Assembly are already constrained by the Ireland/Northern Ireland Protocol.

- The UK Internal Market Bill has been [criticized](#) by both the Welsh and Scottish Governments for undermining the very principle of devolution. This is principally because, although the Bill only curtails devolved competence in specific ways (e.g. by making state aid a reserved rather than a devolved matter), it will undermine the effectiveness of devolved legislation in relation to goods and services.
- The UK Internal Market Bill would also be a protected enactment, meaning that the devolved legislatures cannot legislate in a way that contravenes the Bill.
- Devolved legislatures may be able to make laws to, for example, raise standards, but because they cannot stop goods made to a lower standard from being sold in their market from elsewhere in the UK, the effect of those laws will be limited; indeed, they could only end up primarily disadvantaging local producers in terms of costs etc.
- The situation for Northern Ireland is rather different. NI will continue to follow EU rules in relation to goods (though not services). Dynamic alignment means that if those rules are amended or replaced, then NI will

have to follow them still, even though it will have had no hand or part in shaping them. This is explained, with some recommendations as to what might be done to address this deficit, in this [report](#).

- Just as there is a strong case for improving the scope for democratic accountability and scrutiny around the implementation of the Protocol, there is also a need for improving the scope for consultation and consensus-building with the devolved governments around the future operation of the UK internal market.

4. The UK Internal Market Bill has been significantly altered since it first appeared before the House of Commons in September in such a way that raises further concerns from Northern Ireland.

- Part 5 of the UK Internal Market Bill (now clauses 42-47) covers the Ireland/Northern Ireland Protocol and its interaction with the UK internal market. It *allows the UK government to break the Protocol* in order to: (i) waive the requirement for export declarations from NI to GB [cl.44] and (ii) curtail the scope of EU state aid rules that could potentially apply in the UK through the Protocol [cl.45].
- Part 5 has already been amended in the House of Commons. These amendments allow for new checks and controls to take place on the movement of goods from NI into GB on the grounds of biosecurity or for the purposes of VAT and excise.
- The government has ‘doubled down’ on equipping of government Ministers to break the law through future secondary legislation under clauses 44 and 45. Clause 47 now explicitly disapplies section 6(1) of the Human Rights Act, which requires public authorities to act in a way that is compatible with the European Convention on Human Rights (ECHR) rights.
- The amendments also mean that regulations made under these UKIM Bill clauses are considered primary legislation for the purposes of the Human Rights Act. Consequently, the regulations made under them could only be subject to a declaration of incompatibility and not struck down on the grounds of human rights (as they normally could be, as secondary legislation).
- These amendments have the effect of shutting off routes for legal challenges to the UKIM Bill. It was never very likely that a case would be taken on the grounds of human rights, but clause 47 now closes off the possibility of a challenge to Ministers’ use of these powers on the basis of the 1998 Good Friday/Belfast Agreement.
- In recognition of the importance of the ECHR in Northern Ireland, Article 2 of the Protocol states: “The United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement... results from its withdrawal from the Union”. The UK Internal Market Bill now explicitly limits the incorporation of convention rights in law and the means by which holders of these rights can bring challenges before domestic courts.

5. Even though the UK Internal Market Bill does nothing to smooth movement of goods from GB into NI and it assumes that the Protocol will be implemented, the future economic position of Northern Ireland depends on what happens to this Bill because of its significance for the UK/EU negotiations.

- The Bill gives powers to British government ministers to create secondary legislation that expressly breaches the NI/IRL Protocol. Such breaches would only serve a purpose if the Protocol is otherwise fully operational. Nonetheless, the NI Secretary of State’s confirmation that the Bill ‘does break international law’, casts doubt on the intentions of the government vis-à-vis the implementation of the Protocol.
- The *justification given by the UK government for these powers is that this is just a ‘safety net’ or insurance policy*. However, there nothing in the legislation that makes sure it is only used in the event of there being no UK-EU agreement. What is more, it is a doubtful that the functioning of the UK internal market really stands or falls on whether there is no exit summary declarations NI to GB, or on the potential effect of EU state aid rules in GB in very specific circumstances. *If it is a safety net, it is arguably under the wrong target*.
- President von der Leyen announced that the EU Commission viewed the draft legislation itself as sufficient to be considered as breaking international law, because it betrayed the principles of good faith in Article 5 of the Withdrawal Agreement. [Infringement proceedings](#) are underway.
- Such *legal proceedings are not merely symbolically significant; they mean that, as we exit the transition period (and thus as the Protocol comes into full force), the UK and EU could well be in a full-blown legal dispute over the Protocol*.
- Even aside from that, is almost impossible to see a UK-EU deal in the next few weeks if clauses 44, 45 and 47 stand as they are in the UK Internal Market Bill, i.e. equipping ministers to break the previous UK-EU Withdrawal Agreement.
- In such a situation in which the UK and EU are in legal dispute, in which there is no UK-EU deal, [the UK is not](#)

[ready](#) to operationalize the Protocol, and the UK has given itself powers to break parts of that Protocol, where does this leave Northern Ireland? Whatever it means in practice, we can be sure it would mean *acute legal, political and economic uncertainty* to Northern Ireland at a time of post-Covid-19 crisis and recession.

- Northern Ireland remains at the nexus of the UK-EU relationship and their tensions are manifest in its insecurity.

This article gives the views of the author, and not the position of LSE Brexit, nor of the London School of Economics.