

EXEC-0431-2020
12 August 2020

The Rt. Hon. Alok Sharma MP
Secretary of State for Business,
Energy and Industrial Strategy

RESPONSE BY THE NORTHERN IRELAND EXECUTIVE TO THE INTERNAL MARKET WHITE PAPER CONSULTATION

Thank you for the opportunity to comment on the proposals in the Internal Market White Paper published last month. The Executive is of the opinion that the proposals in the White Paper will have a far reaching and important consequences for our economy's interaction with England, Scotland and Wales in the years to come. It was therefore essential that we took the opportunity to consider the White Paper in some depth and as a result we have a number of comments and concerns. We have, for convenience, set these out in the attached Annex A.

It will be important to ensure that your Department provides further detail and takes into account these considerations set out in this Executive response to ensure our businesses and consumers retain optimal participation in the Internal Market, prevent the risk of measures eroding our competitiveness and maximise the economic benefit from the proposals outlined.

The complexity of these proposals and the significance of their impact means that we will expect significant engagement at official level on draft legislation prior to your Government seeking our legislative consent for this Bill.

We look forward to your response and further engagement on these important policy proposals.

We are copying this letter to the Chancellor of the Exchequer, the Chancellor of the Duchy of Lancaster, the Secretary of State for Northern Ireland and the First Ministers of Scotland and Wales.

Yours sincerely

A handwritten signature in black ink that reads "Arlene Foster". The signature is written in a cursive style with a large, prominent 'A' and 'F'.

**THE RT HON ARLENE FOSTER MLA
FIRST MINISTER**

A handwritten signature in blue ink that reads "Michelle O'Neill". The signature is written in a cursive style with a large, prominent 'M' and 'O'.

**MICHELLE O'NEILL MLA
DEPUTY FIRST MINISTER**

RESPONSE BY THE NORTHERN IRELAND EXECUTIVE TO THE INTERNAL MARKET WHITE PAPER CONSULTATION

Introduction

The Executive believes strongly that Northern Ireland's vitally important relationship with the market of England, Scotland and Wales must be protected for the benefit of our businesses and consumers. The proposals outlined in the White Paper to legislate for an Internal Market will be one of the most important determinants of our businesses market access for years to come.

Whilst the intention of the White Paper proposals to minimise internal regulatory barriers is welcome, there is a lack of detail and legal certainty throughout the paper. It is also difficult to come to a view on these proposals without sight of the Government's plans for unfettered access, qualifying goods as identified in the Withdrawal Agreement Act, highly regulated goods and goods transiting through Dublin port. It is only through detailed consideration of these interlinked policies can we effectively consider the totality of our access to the GB market.

The timeframe in which to respond to the White Paper proposals has been challenging, particularly over the holiday period and Assembly recess. While the Executive has well established stakeholder groups at which key policies can be discussed, we have been unable to consult meaningfully with our stakeholders on the proposals which is disappointing. The following is the Executive's initial response to the consultation proposals:

Costs of divergence in standards for trade

While the proposed legislation will reduce the costs of trade between England, Scotland and Wales, it will have much less of an impact on our trade with GB. Our concerns are that if GB businesses benefit from lower costs than our businesses, they will gain a competitive advantage. Similarly where GB businesses are faced with higher compliance costs to access our market, they may ultimately decide that the benefits of that access are outweighed by its cost which will have serious implications for our supply lines.

The outcome of the future relationship negotiations with the EU will be important in determining the extent of possible divergence. It is imperative that the future relationship that is agreed with the EU, particularly on Level Playing Field provisions, takes into account the specific implications for us in both the implementation of the Protocol and the operation of the Internal Market. This would ensure that any

divergence on standards and therefore any competitive disadvantage for our businesses is minimised. In the absence of such an agreement, the risks to businesses here would be much greater and more complicated and there would need to be as a minimum, an on-going assessment of the cost of any competitive disadvantage to our businesses resulting from our requirement to implement the Protocol and GB businesses being able to diverge from EU standards.

Mutual Recognition, Non-Discrimination and Subsidy Control

The principles to enshrine a Market Access Commitment incorporating mutual recognition and non-discrimination within the Internal Market are welcome however we would like to make the following points:

- There is a pressing need for additional detail on how the legislation will operate and particularly on its scope. Further information would also be welcome on the impact assessments of the proposals on statutory duties such as equality and rural impacts.
- For the market access provided under the proposed 'Unfettered Access SI' there will be a 'qualifying status' definition for NI goods. We are currently unclear as to whether the same definition would be used for this mutual recognition and non-discrimination legislation and would welcome clarity on this issue.
- The paper does not include enough detail on how the proposed Internal Market legislation would operate alongside the Protocol. As the White Paper recognises, mutual recognition or non-discrimination cannot be reciprocal as the provisions in the Protocol require GB goods entering NI to meet EU requirements.
- We welcome the commitment that where our businesses gain product approvals and certification from EU authorities and bodies these will be recognised for the purpose of placing goods on the GB market. However, we will need to see this reflected in both this legislation and in product specific SIs on unfettered access.
- We will not have the same ability to adjust regulations to mitigate competitive disadvantage to our businesses in response to changes in standards in other UK nations which will potentially significantly undermine our position in the Internal Market in the longer term.
- The White Paper offers minimal detail on state aid / subsidy control, despite this being an integral feature of the functioning of an Internal Market. We would be

very concerned if the proposed subsidy control regime leaves our businesses disadvantaged within the Internal Market, given the requirements of the Protocol which determine the limits on such interventions here. Early consultation with us on your proposals for subsidy control will be very important given the interaction with the Protocol and the implications for our key sectors such as the agri-food industry.

- Mutual recognition of professional qualifications is essential to enable suitably qualified individuals to pursue employment anywhere within the UK. Further clarity is needed on the processes and systems that will be put in place to facilitate mutual recognition. The White Paper also refers to areas that would be excluded but provides no detail on either the areas or rationale for exclusion.

Devolution

We will need a full assessment of the proposals on devolved powers prior to considering any legislative consent motion. While we support the principle of operating within the internal UK market our devolved institutions must still retain the ability to innovate for the betterment of our region. For example:

- the Internal Market proposals should not restrict the ability of the Executive to grow its devolved taxation as well as spending powers in order to best serve our local economy, society and citizens;
- there are already differences between NI and GB on some aspects of employment law and we should still have some scope to shape regulation to fit local circumstances without compromising the fundamentals of the Internal Market.

The White Paper proposals set out that reserved policies will be out of scope however we will be different due to the Protocol, for example, for the regulation of goods. Therefore it will be important to ensure that our businesses are protected from any discrimination as a result of reserved policies and we would welcome clarity on how this will be achieved.

Oversight

Additional information on the proposed advisory body to report on the functioning of the Internal Market and how it will work in practice is needed, particularly clarity on the dispute resolution processes, including the final arbitration and decision making and the Executive's role in this. It is our opinion that the functions should be carried out by an independent body with equal contribution from the four administrations and it should operate within the confines of legislation.

We agree that there is a need for legislation which prohibits direct and indirect discrimination. Any alleged breaches of this legislation could be investigated by the Competition and Markets Authority (CMA) which should have enforcement powers and adequate recourse to the Courts. Mutual recognition would require an agreement between all four administrations, including an agreed position on minimum standards.

If there is mutual recognition of divergent standards across the Internal Market, it will also raise significant issues in terms of surveillance by regulators to protect consumers. In effect, regulators in any given region could be seeking to ensure compliance with up to four different regimes, depending on the origin of the goods in question.

Further detail is also required on monitoring and reporting on the health of the Internal Market, for example, the process for addressing an issue that is distorting the market.

Executive Asks

In addition to the issues set out above we also would like to make the following points:

- The Executive needs to be consulted on the legislation for unfettered access as a matter of urgency so that we can understand how this legislation will interact with the proposed regulation of the Internal Market. Without sight of this legislation we cannot give a comprehensive response to the Internal Market Proposals.
- We need the maximum possible clarification of the vital issues of potential divergence and of the subsidy regime as soon as possible, as these will have potentially very significant effects on the competitiveness of our businesses.
- Our priorities are to protect the interests of NI businesses that sell to the GB market and seeking to ensure that:
 - Our businesses will have exactly the same protections under mutual recognition and non-discrimination as GB businesses for sales into the GB market;
 - Non-discrimination provisions will extend to our consumers who already face possible discrimination in the provision of e-commerce services;
 - The policy on subsidies takes proper account of the Protocol and prohibits discrimination.
- The Executive has been clear that any additional or unique costs related to the implementation of the Protocol on businesses and organisations locally

must be recognised and recompensed. This should include any additional costs from the Internal Market proposals including any unintended consequences which become apparent once the Protocol, Internal Market and subsidy control regime is in operation.

- In addition trade and security should not be considered in isolation and we would welcome sight of any fraud and organised crime impact assessments that have been carried out on the proposals.