

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fifth Delegated Legislation Committee

DRAFT UNITED KINGDOM INTERNAL MARKET
ACT 2020 (SERVICES EXCLUSIONS)
REGULATIONS 2023

Wednesday 25 October 2023

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The Committee consisted of the following Members:

Chair: JULIE ELLIOTT

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|-----------------------------------------------------------------|------------------------------------------------------|
| † Ali, Rushanara (<i>Bethnal Green and Bow</i>) (Lab) | Osborne, Kate (<i>Jarrow</i>) (Lab) |
| † Costa, Alberto (<i>South Leicestershire</i>) (Con) | † Penning, Sir Mike (<i>Hemel Hempstead</i>) (Con) |
| † Crosbie, Virginia (<i>Ynys Môn</i>) (Con) | † Penrose, John (<i>Weston-super-Mare</i>) (Con) |
| † De Cordova, Marsha (<i>Battersea</i>) (Lab) | † Seely, Bob (<i>Isle of Wight</i>) (Con) |
| † Dixon, Samantha (<i>City of Chester</i>) (Lab) | † Stafford, Alexander (<i>Rother Valley</i>) (Con) |
| Greenwood, Margaret (<i>Wirral West</i>) (Lab) | † Thomson, Richard (<i>Gordon</i>) (SNP) |
| † Huddleston, Nigel (<i>Minister for International Trade</i>) | † Wood, Mike (<i>Dudley South</i>) (Con) |
| † Knight, Sir Greg (<i>East Yorkshire</i>) (Con) | Abi Samuels, <i>Committee Clerk</i> |
| † McDonald, Andy (<i>Middlesbrough</i>) (Lab) | |
| † Morris, David (<i>Morecambe and Lunesdale</i>) (Con) | † attended the Committee |

Fifth Delegated Legislation Committee

Wednesday 25 October 2023

[JULIE ELLIOTT *in the Chair*]

Draft United Kingdom Internal Market Act 2020 (Services Exclusions) Regulations 2023

2.30 pm

The Minister for International Trade (Nigel Huddleston): I beg to move,

That the Committee has considered the draft United Kingdom Internal Market Act 2020 (Services Exclusions) Regulations 2023.

The statutory instrument, which was laid before the House on 20 July, will help to ensure that seamless internal trade is maintained for the shared prosperity and welfare of people and businesses across the nations of the United Kingdom. It will enable effective operation of services regulations in the United Kingdom by adding, amending and removing service sectors excluded from the market access principles in part 2 of the United Kingdom Internal Market Act 2020. I will cover both the purpose and the impact of the instrument, starting with the former.

The UK internal market plays a vital role in maintaining equality of opportunity and certainty for businesses, no matter where they are in the UK. It does so by ensuring that there is an internal market in which the free flow of goods and services is protected across the whole United Kingdom. The UKIM Act was introduced to preserve the United Kingdom's internal market as powers previously exercised by the EU were returned to the UK. The Act establishes two market access principles—mutual recognition and non-discrimination—in relation to goods and services.

The principle of mutual recognition means that service providers, such as businesses, that meet authorisation requirements to provide their service in one part of the UK can provide their service in other parts of the UK without having to comply with any additional authorisations or requirements.

Sir Greg Knight (East Yorkshire) (Con): Paragraph 3.2 of the explanatory memorandum produced by the Minister's Department states:

“Welsh Ministers consented to the instrument. However, consent from all Devolved Governments has not been provided within the period of one month...the Secretary of State may make the instrument without that consent.”

Could the Minister tell the Committee why that consent was not forthcoming? Was it to do with opposition to any part of the policy, or was it more to do with incompetence?

Nigel Huddleston: I thank my right hon. Friend for that comment. I am not here to speak on behalf of the devolved Administrations, but he is correct. I will come on to legislative consent in a moment. It is probably not unusual. I will not speak on behalf of the SNP but I understand that, while we have been co-operating and engaging with the devolved Administrations throughout,

some of the opposition is more to do with the broader aspects of UKIM than the specifics of this statutory instrument. I will return to that in a few moments.

The other market access principle, the non-discrimination principle, prevents service providers from being discriminated against based on where they are in the UK. For example, if a regulator were to require a service provider to pay a higher fee because they were from another UK nation, that would be discriminatory.

The Act's market access principles will apply only to new or substantively amended authorisation or regulatory requirements for providing services introduced after 31 December 2020. For example, a new licensing requirement for accountancy services would be in scope of both the mutual recognition principle and the non-discrimination principle of the UKIM Act if it were enacted on or after that date. However, service sectors listed under either or both parts of schedule 2 on services exclusions related to mutual recognition or non-discrimination are not in scope of those market access principles. Additionally, the market access principles do not apply where the requirement is a response to a public health emergency or has a legitimate aim, as set out in the Act.

There is a power under section 18(2) of the UKIM Act to amend schedule 2. During the Act's passage, the Government committed to review and further develop the list of services exclusions after the Act received Royal Assent. That commitment was made because the list in schedule 2 is mainly based on exclusions in the most relevant pre-UKIM Act regulatory framework, the Provision of Services Regulations 2009, which is retained EU law. The exclusions in schedule 2 were therefore based on the sectors originally excluded with intra-EU trade in mind, rather than intra-UK trade.

In February 2021, the former Department for Business, Energy and Industrial Strategy publicly consulted on whether the existing service exclusions were fit for purpose in a post-EU exit context. The consultation had three main aims: first, to establish whether there were any instances in which regulators had previously disapplied the existing mutual recognition requirement to recognise authorisations under the previous retained EU law; secondly, to establish whether any other changes needed to be made to the services excluded in schedule 2 to better reflect the UK's circumstances post EU exit; and thirdly, to ask for any other ways in which the internal market for services could be further strengthened.

Following the Department's assessment of the consultation responses, including engagement with other Departments and the devolved Governments, this technical statutory instrument will make the following changes. First, it will add exclusions from the mutual recognition principle for services for the supply of gas, electricity and water, sewerage and waste sector services, services for the construction and operation of heat networks, and qualifications-awarding services. The change will mainly reflect how those sectors currently operate. The exclusions will maintain the status quo in areas where mutual recognition was not already in operation to reflect long-standing regulatory arrangements in the UK.

Without those exclusions, for example, regulators in the gas and electricity supply sector would not be able to regulate as they have done previously, as they would have to accept authorisations from another part of the UK. Evidence from the consultation responses highlighted

that that could have a harmful impact on those sectors, causing consumer protection and public safety issues, due to the different standards and systems in parts of the UK. Not making those modifications to the existing exclusions schedule could also lead to higher regulatory costs, as it could instigate market framework changes that industry is not prepared for.

Secondly, the SI will amend the existing exclusion relating to social services. The change will not alter the scope of the exclusion, but will provide clarity that it applies to children's social care and childcare services provided by both public and private providers.

Finally, the SI will remove the existing exclusions for financial services, electronic communications services, statutory audit services, postal services and services of temporary work agencies. Our view is that exclusions are not needed in areas where the UKIM Act market access principles will have little to no impact on how a service is actually regulated or provided in the UK because the sector is either reserved or already operates on a UK-wide basis. Removing the exclusions and making the services in question subject to the mutual recognition and non-discriminatory principles should have little impact on how they are provided in the UK. Details on these changes can be found in the Government response to the consultation, published in July 2022.

My officials have worked collaboratively and transparently with the devolved Governments and their counterparts on this policy over the last two years. I thank the devolved Governments for their engagement and for sharing the public consultation with their stakeholders. We received responses from stakeholders operating in Scotland, Wales and Northern Ireland, and we have continuously engaged with Ministers and officials in the devolved Governments on the proposals. We adapted the policy based on their feedback in cases where the evidence supported the changes and the integrity of the UK internal market was not undermined.

We sought the consent of the devolved Government Ministers to this instrument, as required under the Act. We have not received consent from the Scottish Government or Northern Ireland, but I am happy to report that the Welsh Government provided formal legislative consent. Under section 18(10) of the UKIM Act, the Secretary of State may make the instrument without consent from all the devolved Governments so long as an explanatory statement is published to state why they are proceeding without such consent. The Secretary of State for Business and Trade published a written statement on the Parliament website on 20 July—the same day this instrument was laid—explaining why the changes are being made without consent from the Scottish Government or the Department for the Economy in Northern Ireland.

Following an extensive public consultation and engagement process, I can assure Members that the instrument will ensure that the services exclusions in schedule 2 to the UKIM Act are appropriate and effective. The changes reflect how these services are currently provided and regulated in the UK. I commend the draft regulations to the Committee.

2.40 pm

Rushanara Ali (Bethnal Green and Bow) (Lab): It is a pleasure to serve under your chairmanship, Ms Elliott. I want to start by thanking officials for their hard work

in trying to create the best possible outcomes from a difficult starting point. Members will be aware of the tortuous route that has led to this moment. On Second Reading, my hon. Friend the Member for Manchester Central (Lucy Powell) called it the “infernally market Bill”, and I am sure she spoke for a lot of people in doing so. However, we are where we are.

Two principles should guide us, and the Minister has referred to them. One is that we must support the various trades and businesses specified in the statutory instrument, from audio-visual to medical and healthcare services and legal and notarial services. This panoply of service-based businesses is essential to the functioning of UK plc. Each, in a way, helps the country to tick over, and they are essential to the growth and prosperity that we desperately need in our economy and have been lacking for too long. The UK internal market is crucial to ensuring equality of opportunity, preventing discrimination and ensuring certainty for business and mutual recognition, no matter where businesses or services are located in the United Kingdom.

Even where some of the trades listed in part 1 of schedule 2 to the UKIM Act might require close regulation and transparency—for example, debt collection and gambling services—those businesses have a right to operate under the law, with proper regard for ethical considerations, and they need to be covered by the wider framework without friction in terms of their operation. We wish to see all the services listed in part 1 free from unnecessary barriers to trade within the United Kingdom.

The second principle is that we support devolution within the framework of the United Kingdom. It was the last Labour Government who accelerated the devolution settlement, which has served us well for over two decades. Devolution is a process, not an event, as the late, much missed Donald Dewar dubbed it, but it must never be a process that leads to the break-up of the United Kingdom. The UK remains stronger for its unity between Scotland, Wales, England and Northern Ireland, and nothing should endanger that. We do not support anything that creates unnecessary barriers to trade within the United Kingdom. As such, we will not oppose the Government on this matter, but we will keep a close eye on the real-world consequences for businesses in the coming months and years.

The Minister said that there has been some dialogue with the devolved Governments but there are outstanding issues. I urge the Government to seek consent from all the devolved authorities, to ensure that we maintain unity and fluidity throughout the UK internal market and that there is proper co-operation and dialogue between our Government and the devolved authorities.

2.43 pm

Richard Thomson (Gordon) (SNP): It is a pleasure to serve under your chairship, Ms Elliott. As the Minister said, my party did not support the United Kingdom Internal Market Act. The powers that ought to have gone to devolved Governments in the aftermath of Brexit—which, again, we did not support—seem to have found themselves stuck in Westminster, largely due to the Act. Many of our fears have been borne out in the way that the Act has operated, particularly with regard to how the UK Government have used it to interfere

[Richard Thomson]

utterly unjustifiably in things such as a simple deposit return scheme. That is not how we would wish an internal market to work, and the Act has not helped in that respect.

The lack of legislative consent motions is largely academic. I say that for two main reasons. First, the UK Government have shown over the last few years—this one have, anyway—that even if they do not have a legislative consent motion, they will just go ahead anyway. Secondly, in this case, as the Minister said, there has been constructive engagement with the devolved Administrations, even if some issues remain. Nevertheless, I welcome the fact that there has been constructive engagement.

I draw Members' attention in particular to two areas—heat regulation and the exclusion of the education sector, particularly qualifications-awarding services—where the UK Government have recognised that there are sound policy objectives for having different regulatory approaches in different parts of the UK. I very much welcome that. Of course, it is well known and well understood that Scotland and the rest of the UK have different education and qualification systems, and—if I may be so bold as to say so, Ms Elliott—long may that remain so. Next time the Minister has the ear of the Prime Minister, who has been talking enthusiastically about his British baccalaureate, which he wishes to replace A-levels, he might wish to try to prevail on the Prime Minister to refer to it as what it is: an English baccalaureate. We will be keeping our system in Scotland, so long as the internal market Act does not get in the way of that.

2.46 pm

Nigel Huddleston: I should say, Ms Elliott, that it is a pleasure to serve under your chairmanship for the second time.

I thank hon. Members for their contributions to the debate. Revisions of the UKIM Act, as we have just seen, naturally bring up historical opposition, for reasons that I think we all understand, but I hope that the regulations will be considered on their own merits in relation to protecting the UK internal market. As the hon. Member for Gordon mentioned, there has been constructive dialogue, which is much appreciated, and there have been changes to this SI as a result.

This instrument is a direct result of a public consultation, and therefore a rare amendment to the exclusions list, following the intention to make the scope of the UKIM Act better to support intra-UK trade. I trust that hon. Members recognise the need for the instrument, and I assure the Committee that the Government are more committed than ever to facilitating a workable system of domestic services trade that achieves our strategic business and trade objectives. We believe that the instrument will foster exactly that outcome, making the internal market arrangements for the UK services sector simpler and more workable in a post-EU context.

I will endeavour to pass on the message that the hon. Member for Gordon asked me to pass on next time I have a brush-by with the Prime Minister, or perhaps he can do so himself—but that is probably straying slightly beyond the scope of the regulations. I thank hon. Members again for their contributions and commend the regulations to the House.

Question put and agreed to.

2.47 pm

Committee rose.

