



# United Kingdom Internal Market Act 2020

## 2020 CHAPTER 27

### PART 1

#### UK MARKET ACCESS: GOODS

##### *Introductory*

#### **1 Purpose of Part 1**

- (1) This Part promotes the continued functioning of the internal market for goods in the United Kingdom by establishing the United Kingdom market access principles.
- (2) The United Kingdom market access principles are—
  - (a) the mutual recognition principle for goods (see sections 2 to 4), and
  - (b) the non-discrimination principle for goods (see sections 5 to 9).
- (3) Those principles have no direct legal effect except as provided by this Part.

##### *Mutual recognition: goods*

#### **2 The mutual recognition principle for goods**

- (1) The mutual recognition principle for goods is the principle that goods which—
  - (a) have been produced in, or imported into, one part of the United Kingdom (“the originating part”), and
  - (b) can be sold there without contravening any relevant requirements that would apply to their sale,should be able to be sold in any other part of the United Kingdom, free from any relevant requirements that would otherwise apply to the sale.
- (2) Where goods are to be sold in a particular way in the other part of the United Kingdom, the condition in subsection (1)(b) has effect as if the reference to “their sale” were a reference to their sale in that particular way.

So, for example, if goods are to be sold by auction, the condition is met if (and only if) they can be sold by auction in the originating part without contravening any applicable relevant requirements there.

- (3) Where the principle applies in relation to a sale of goods in a part of the United Kingdom because the conditions in subsection (1)(a) and (b) are met, any relevant requirements there do not apply in relation to the sale.

### **3 Relevant requirements for the purposes of section 2**

- (1) This section defines “relevant requirement” for the purposes of the mutual recognition principle for goods as it applies in relation to a particular sale of goods in a part of the United Kingdom.
- (2) A statutory requirement in the part of the United Kingdom concerned which—
- (a) prohibits the sale of the goods or, in the case of an obligation or condition, results in their sale being prohibited if it is not complied with, and
  - (b) is within the scope of the mutual recognition principle,
- is a relevant requirement in relation to the sale unless excluded from being a relevant requirement by any provision of this Part.
- (3) A statutory requirement is within the scope of the mutual recognition principle if it relates to any one or more of the following—
- (a) characteristics of the goods themselves (such as their nature, composition, age, quality or performance);
  - (b) any matter connected with the presentation of the goods (such as the name or description applied to them or their packaging, labelling, lot-marking or date-stamping);
  - (c) any matter connected with the production of the goods or anything from which they are made or is involved in their production, including the place at which, or the circumstances in which, production or any step in production took place;
  - (d) any matter relating to the identification or tracing of an animal (such as marking, tagging or micro-chipping or the keeping of particular records);
  - (e) the inspection, assessment, registration, certification, approval or, authorisation of the goods or any other similar dealing with them;
  - (f) documentation or information that must be produced or recorded, kept, accompany the goods or be submitted to an authority;
  - (g) anything not falling within paragraphs (a) to (f) which must (or must not) be done to, or in relation to, the goods before they are allowed to be sold.
- (4) A manner of sale requirement is not within the scope of the mutual recognition principle unless subsection (6) applies.
- (5) For this purpose a “manner of sale requirement” is a statutory requirement that governs any aspect of the circumstances or manner in which the goods are sold (such as where, when, by whom, to whom, or the price or other terms on which they may be sold).
- (6) A statutory requirement that—
- (a) is worded as a manner of sale requirement, but

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(b) appears to be designed artificially to avoid the operation of the mutual recognition principle in relation to what would otherwise be a requirement within the scope of that principle,  
is to be regarded as a relevant requirement, despite subsection (4).

This subsection would apply, for example, where a manner of sale requirement involves an unusually restrictive condition such that it would be impossible to comply with the condition and have a practical chance of selling the goods.

- (7) A statutory requirement which requires the person selling or acquiring the goods to keep or submit, after the sale takes place, any documentation or information required to be produced or recorded beforehand is to be treated as a relevant requirement relating to the sale.
- (8) In this Part “statutory requirement” means an obligation, a condition or a prohibition (however described) imposed by legislation (including legislation imposing mandatory terms into contracts for the sale of goods).

#### **4 Exclusion of certain requirements existing before commencement**

- (1) A statutory requirement in a part of the United Kingdom (“the relevant part”) which—
- (a) applies in relation to a particular sale of goods in that part of the United Kingdom, and
  - (b) would otherwise fall within section 3 as a relevant requirement,
- is not a relevant requirement (so far as relating to the sale) for the purposes of the mutual recognition principle where the conditions in subsection (2) are met.
- (2) The conditions are that, on the relevant day —
- (a) the same statutory requirement would have applied in relation to the sale if it had taken place on that day, and
  - (b) there was no corresponding requirement in force in each of the other three parts of the United Kingdom.
- (3) For the purposes of subsection (2) “the relevant day” is the day before the day on which this section comes into force.
- (4) The re-enactment (without substantive change) of a statutory requirement does not affect its continuity for the purposes of subsection (2)(a).
- (5) For the purposes of subsection (2)(b) “corresponding requirement”, in relation to the statutory requirement in the relevant part of the United Kingdom, means a statutory requirement in another part of the United Kingdom that would have had the same effect in relation to the sale (if it had taken place there on the relevant day).
- (6) For the purposes of subsections (2) and (5) a statutory requirement is to be regarded as the same as another statutory requirement, or having the same effect, if any differences between them are not substantive.

*Non-discrimination: goods***5 The non-discrimination principle for goods**

- (1) The non-discrimination principle for goods is the principle that the sale of goods in one part of the United Kingdom should not be affected by relevant requirements that directly or indirectly discriminate against goods that have a relevant connection with another part of the United Kingdom.
- (2) For the purposes of the application of that principle in any given case—
  - (a) the part of the United Kingdom where sale should not be affected is referred to as the “destination part”;
  - (b) the goods that have a relevant connection with another part of the United Kingdom are referred to as the “incoming goods”;
  - (c) that other part is referred to as the “originating part”.
- (3) A relevant requirement (see section 6) is of no effect in the destination part if, and to the extent that, it directly or indirectly discriminates against the incoming goods (see sections 7 and 8).
- (4) Goods have a relevant connection with a part of the United Kingdom if they or any of their components—
  - (a) are produced in that part,
  - (b) are produced by a business based in that part, or
  - (c) come from, or pass through, that part before reaching the destination part.
- (5) For the purposes of this Part—
  - (a) “components” includes parts, ingredients and constituent materials;
  - (b) a business is “based”—
    - (i) where its registered office is,
    - (ii) if it does not have a registered office, where its head office is, or
    - (iii) if it has neither a registered office nor a head office, where its principal place of business is.

**6 Relevant requirements for the purposes of the non-discrimination principle**

- (1) This section defines “relevant requirement” for the purposes of the non-discrimination principle for goods.
- (2) A relevant requirement, for the purposes of the principle as it has effect in relation to a part of the United Kingdom, is a statutory provision that—
  - (a) applies in that part of the United Kingdom to, or in relation to, goods sold in that part, and
  - (b) is within the scope of the non-discrimination principle.
- (3) A statutory provision is within the scope of the non-discrimination principle if it relates to any one or more of the following—
  - (a) the circumstances or manner in which goods are sold (such as where, when, by whom, to whom, or the price or other terms on which they may be sold);
  - (b) the transportation, storage, handling or display of goods;
  - (c) the inspection, assessment, registration, certification, approval or authorisation of the goods or any similar dealing with them;

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- (d) the conduct or regulation of businesses that engage in the sale of certain goods or types of goods.
- (4) A statutory provision is not a relevant requirement—
  - (a) to the extent that it is a relevant requirement for the purposes of the mutual recognition principle for goods (see section 3), or
  - (b) if section 9 (exclusion of certain existing provisions) so provides.
- (5) The Secretary of State may by regulations amend subsection (3) so as to add, vary or remove a paragraph of that subsection.
- (6) Regulations under subsection (5) are subject to affirmative resolution procedure.
- (7) Before making regulations under subsection (5) the Secretary of State must seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.
- (8) If consent to the making of the regulations is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority, the Secretary of State may make the regulations without that consent.
- (9) If regulations are made in reliance on subsection (8), the Secretary of State must publish a statement explaining why the Secretary of State decided to make the regulations without the consent of the authority or authorities concerned.
- (10) In this section “statutory provision” means provision contained in legislation.

## **7 The non-discrimination principle: direct discrimination**

- (1) A relevant requirement directly discriminates against incoming goods if, for the reason that the goods have the relevant connection with the originating part, the requirement applies to, or in relation to, the incoming goods in a way—
  - (a) in which it does not or would not apply to local goods, and
  - (b) that puts the incoming goods at a disadvantage compared to local goods.
- (2) Goods are put at a disadvantage if it is made in any way more difficult, or less attractive, to sell or buy the goods or do anything in connection with their sale.
- (3) “Local goods”, for the purposes of this section, are actual or hypothetical goods that—
  - (a) lack the relevant connection of the incoming goods with the originating part, but
  - (b) otherwise are materially the same as, and share the material circumstances of, the incoming goods.
- (4) Goods (“the other goods”) lack the relevant connection of the incoming goods with the originating part—
  - (a) where the incoming goods have a relevant connection within section 5(4)(a), if the other goods, or (as the case may be) their components, were produced in the destination part;
  - (b) where the incoming goods have a relevant connection within section 5(4)(b), if the other goods, or (as the case may be) their components, were produced by a business based in the destination part;

- (c) where the incoming goods have a relevant connection within section 5(4)(c), if the other goods, or (as the case may be) their components, came from the destination part and did not pass through anywhere outside that part.

## 8 The non-discrimination principle: indirect discrimination

- (1) A relevant requirement indirectly discriminates against incoming goods if—
  - (a) it does not directly discriminate against the goods,
  - (b) it applies to, or in relation to, the incoming goods in a way that puts them at a disadvantage,
  - (c) it has an adverse market effect, and
  - (d) it cannot reasonably be considered a necessary means of achieving a legitimate aim.
- (2) Goods are put at a disadvantage if it is made in any way more difficult, or less attractive, to sell or buy the goods or do anything in connection with their sale than if the requirement did not apply.
- (3) A requirement has an adverse market effect if, because it—
  - (a) puts at a disadvantage the incoming goods (and any comparable goods that also have a relevant connection with the originating part and are also put at that disadvantage), but
  - (b) does not put at that disadvantage (at all or to the same extent) some or all comparable goods that have a relevant connection with the destination part and no other part of the United Kingdom,it causes a significant adverse effect on competition in the market for such goods in the United Kingdom.
- (4) “Comparable goods” means like goods or interchangeable goods; and—
  - (a) “like goods” are goods that are alike the incoming goods in all respects, or otherwise have characteristics closely resembling those of the incoming goods;
  - (b) “interchangeable goods” are goods that, from the point of view of a purchaser of the goods, could reasonably be said to be interchangeable with the incoming goods.
- (5) The application of subsection (3) is to be determined with regard both to the content of the requirement and to the way in which it operates, or is administered, in practice (as a whole or in particular classes of case).
- (6) “Legitimate aim” means one, or a combination, of the following aims—
  - (a) the protection of the life or health of humans, animals or plants;
  - (b) the protection of public safety or security.
- (7) The Secretary of State may by regulations amend subsection (6) so as to add, vary or remove an aim.
- (8) Regulations under subsection (7) are subject to affirmative resolution procedure.
- (9) Before making regulations under subsection (7), the Secretary of State must seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.

- (10) If consent to the making of the regulations is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority, the Secretary of State may make the regulations without that consent.
- (11) If regulations are made in reliance on subsection (10), the Secretary of State must publish a statement explaining why the Secretary of State decided to make the regulations without the consent of the authority or authorities concerned.
- (12) The application of subsection (1)(d) is to be determined with regard, in particular, to—
  - (a) the effects of the requirement in all the circumstances, and
  - (b) the availability of alternative means of achieving the aim in question.

## **9 Exclusion of certain provision existing before commencement**

- (1) Statutory provision is not a relevant requirement for the purposes of the non-discrimination principle for goods if the same provision was in force in the part of the United Kingdom concerned on the day before the day on which this section comes into force.
- (2) The re-enactment (without substantive change) of statutory provision does not affect its continuity for the purposes of subsection (1).
- (3) For the purposes of subsection (1) the same provision is to be regarded as in force on the day concerned if any differences are not substantive.
- (4) In this section “statutory provision” has the same meaning as in section 6.

### *Exclusions from market access principles*

## **10 Further exclusions from market access principles**

- (1) Schedule 1 contains provision excluding the application of the United Kingdom market access principles in certain cases.
- (2) The Secretary of State may by regulations amend that Schedule.
- (3) The power under subsection (2) may, for example, be exercised to give effect to an agreement that—
  - (a) forms part of a common framework agreement, and
  - (b) provides that certain cases, matters, requirements or provision should be excluded from the application of the market access principles.
- (4) A “common framework agreement” is a consensus between a Minister of the Crown and one or more devolved administrations as to how devolved or transferred matters previously governed by EU law are to be regulated after IP completion day.
- (5) References in this section to devolved or transferred matters include reference to corresponding matters in England.
- (6) When determining whether a matter is a devolved or transferred matter for the purposes of this section, the following provisions are to be ignored—
  - (a) section 30A of the Scotland Act 1998;
  - (b) section 109A of the Government of Wales Act 2006;

- (c) section 6A of the Northern Ireland Act 1998.
- (7) In making regulations under subsection (2), the Secretary of State must have regard to the importance of facilitating the access to the market within Great Britain of qualifying Northern Ireland goods.
- (8) Regulations under subsection (2) are subject to affirmative resolution procedure.
- (9) Before making regulations under subsection (2), the Secretary of State must seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.
- (10) If consent to the making of the regulations is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority, the Secretary of State may make the regulations without that consent.
- (11) If regulations are made in reliance on subsection (10), the Secretary of State must publish a statement explaining why the Secretary of State decided to make the regulations without the consent of the authority or authorities concerned.
- (12) In this section—
- “devolved administrations” means—
- (a) the Scottish Ministers,
  - (b) the Welsh Ministers, and
  - (c) a Northern Ireland department;
- “qualifying Northern Ireland goods” has the same meaning as in section 47.

### *Supplementary*

## **11 Modifications in connection with the Northern Ireland Protocol**

- (1) The United Kingdom market access principles for goods apply, in relation to the sale of goods in a part of the United Kingdom other than Northern Ireland, with the following modifications.
- (For provision affecting the application of those principles in relation to the sale of goods in Northern Ireland, see, in particular, the Northern Ireland Protocol and sections 7A, 7C and 8C of the European Union (Withdrawal) Act 2018.)
- (2) The mutual recognition principle for goods applies in relation to all qualifying Northern Ireland goods as if they were produced in, or imported into, Northern Ireland.
- (3) That principle does not apply in relation to goods produced in, or imported into, Northern Ireland that are not qualifying Northern Ireland goods, unless subsection (4) applies.
- (4) If goods falling within subsection (3) are moved in a way that would, but for the fact that Northern Ireland is a part of the United Kingdom, amount for the purposes of the mutual recognition principle for goods to the importation of the goods into England, Scotland or Wales, the goods are to be regarded for the purposes of that principle as having been so imported.
- (5) 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 (despite section 5(4)).



- (6) Subsection (7) applies for the purposes of paragraph 1 of Schedule 1 in a case where Northern Ireland is the “affected part” within the meaning of sub-paragraph (2) of that paragraph.
- (7) In determining whether the condition in sub-paragraph (3) of that paragraph is met, a pest or disease is to be taken to be present in Northern Ireland if it is, or may be, present in qualifying Northern Ireland goods (including when the goods are in Great Britain).
- (8) In this section “qualifying Northern Ireland goods” has the same meaning as in section 47.

## **12 Guidance relating to Part 1**

- (1) The Secretary of State may issue guidance on any matter relating to—
  - (a) the practical operation of the United Kingdom market access principles, or
  - (b) the effect of any provision of this Part.
- (2) Guidance may be directed towards the public generally or towards any description of persons (such as traders, persons with enforcement functions or a class of such traders or persons).
- (3) In subsection (2) “enforcement function” means a function relating to the enforcement of anything which is (or is capable of being) a relevant requirement for the purposes of either of the market access principles for goods.
- (4) The power of the Secretary of State under subsection (1) includes power to revise or withdraw (in whole or part) any guidance previously issued.
- (5) Before issuing, revising or withdrawing guidance under subsection (1), the Secretary of State must consult the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.
- (6) The Secretary of State must arrange for the publication of—
  - (a) any guidance that has been issued, as revised from time to time;
  - (b) any revisions made under subsection (4);
  - (c) notice of the withdrawal of any guidance under subsection (4).
- (7) In this section “guidance” means guidance under subsection (1).

## **13 Duty to review the use of Part 1 amendment powers**

- (1) In this section “the Part 1 amendment powers” are the powers conferred by sections 6(5), 8(7) and 10(2) (powers to amend certain provisions of Part 1).
- (2) The Secretary of State must, during the permitted period—
  - (a) carry out a review of any use that has been made of the Part 1 amendment powers,
  - (b) prepare a report of the review, and
  - (c) lay a copy of the report before Parliament.
- (3) In carrying out the review the Secretary of State must—
  - (a) consult the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland,

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- (b) consider any relevant reports made, or advice given, by the Competition and Markets Authority under Part 4, and
  - (c) assess the impact and effectiveness of any changes made under the Part 1 amendment powers.
- (4) The permitted period is the period beginning with the third anniversary of the passing of this Act and ending with the fifth anniversary.
- (5) If any Part 1 amendment power has not been used by the time the review is carried out, this section has effect—
- (a) as if the report required by subsection (2), so far as relating to that power, is a report containing—
    - (i) a statement to the effect that the power has not been used since it came into force, and
    - (ii) such other information relating to that statement as the Secretary of State considers it appropriate to give, and
  - (b) as if the requirements of subsection (3) did not apply in relation to that power.

#### **14 Sale of goods complying with local law**

Nothing in this Part prevents goods produced in or imported into a part of the United Kingdom from being sold in another part of the United Kingdom if (apart from this Part) the sale complies with any requirements applicable in that other part of the United Kingdom (or there are no such requirements).

#### **15 Interpretation of references to “sale” in Part 1**

- (1) This section explains the meaning in this Part of references to the sale of goods (however expressed).
- (2) “Sale” does not include a sale which—
- (a) is not made in the course of a business, or
  - (b) is made in the course of a business but only for the purpose of performing a function of a public nature.
- (3) Subsection (2)(b) does not exclude a sale which is—
- (a) made by a public body or authority for commercial purposes, and
  - (b) not made for the purpose of performing a function of a public nature (other than a function relating to the carrying on of commercial activities).
- (4) “Sale” includes—
- (a) agreement to sell,
  - (b) offering or exposing for sale, or
  - (c) having in possession or holding for sale.
- (5) This Part applies in relation to a supply of goods other than a sale as it applies in relation to a sale (and any reference to “sale”, outside this subsection, is to be read accordingly).
- (6) For this purpose “supply of goods” means the transfer of possession or property in goods (whether or not under or by virtue of a contract), and includes, for example, supply by way of—

- (a) barter or exchange,
- (b) the leasing or hiring out of goods, hire-purchase, or bailment of goods, or
- (c) gift (or anything else done free of charge).

## **16 Interpretation of other expressions used in Part 1**

- (1) This section applies for the purposes of this Part.
- (2) “Goods” means any tangible movable, or corporeal moveable, thing (including any packaging or label), but not water or gas that is not offered for sale in a limited volume or set quantity.
- (3) Goods are to be regarded as “produced in” a part of the United Kingdom (if not wholly produced there) if the most recent significant production step which is a regulated step has occurred there.
- (4) A production step occurring in a part of the United Kingdom is “regulated” for the purposes of subsection (3) if —
  - (a) it is the subject of any statutory requirement in that part of the United Kingdom, or
  - (b) it is a step that could materially affect a person’s ability to sell the goods without contravening—
    - (i) any relevant requirement for the purposes of the mutual recognition principle for goods, or
    - (ii) any statutory requirement that is excluded from being a relevant requirement by section 4(1),that would be applicable to a sale of the goods in that part of the United Kingdom (being a sale of a kind for which the goods are being produced).
- (5) A production step is “significant” for the purposes of subsection (3) if it is significant in terms of the character of the goods being produced and the purposes for which they are to be sold or used (but see subsections (6) and (7)).
- (6) A production step falling within any of the following descriptions is not significant (whether or not it is regulated)—
  - (a) activities carried out specifically to ensure goods do not deteriorate before being sold (such as maintaining them at or below a particular temperature);
  - (b) activities carried out solely for purposes relevant to their presentation for sale (such as cleaning or pressing fabrics or sorting different coloured items for packaging together);
  - (c) activities involving a communication of any kind with a regulatory or trade body (such as registering the goods or notifying the goods or anything connected with them or their production);
  - (d) activities carried out for the purpose of testing or assessing any characteristic of the goods (such as batch testing a pharmaceutical product).
- (7) A production step involving the packaging, labelling or marking of goods is not significant (whether or not it is regulated) unless the step is fundamental to the character of the goods and the purposes for which they are to be sold or used.
- (8) Goods are “imported into” a part of the United Kingdom only if they are imported into that part from outside the United Kingdom.

For this purpose the Isle of Man is outside the United Kingdom.

- (9) Goods are to be regarded as imported—
- (a) for goods brought by sea, when the ship carrying them enters the limits of the port at which they are discharged;
  - (b) for goods brought by air, when they are unloaded;
  - (c) for goods brought by land, when they enter the United Kingdom.

In this subsection “port” and “ship” have the same meaning as in the Customs and Excise Management Act 1979 (see section 1 of that Act).

- (10) Goods produced in, or imported into, a part of the United Kingdom (“the original part of the United Kingdom”) which are—
- (a) exported to a place outside the United Kingdom, and
  - (b) re-imported back into any other part of the United Kingdom,
- are, despite the re-importation, to continue to be regarded as goods produced in, or imported into, the original part of the United Kingdom.
- (11) A reference (however expressed) to the production of anything includes—
- (a) cultivation, harvesting and similar activities (in relation to plants or fungi) and
  - (b) rearing, keeping, handling, killing and similar activities (in relation to livestock or other animals).
- (12) A reference (however expressed) to law in a part of the United Kingdom is a reference to—
- (a) the law of England and Wales as it applies in (or in relation to) England,
  - (b) the law of England and Wales as it applies in (or in relation to) Wales,
  - (c) the law of Scotland, or
  - (d) the law of Northern Ireland.
- (13) “Contravening” includes failing to comply.
- (14) “Statutory requirement” has the meaning given by section 3(8).