

## ***UK Internal Market White Paper Consultation***

The Association for Renewable Energy & Clean Technology (REA) is pleased to submit this response to this consultation. The REA represents a wide variety of organisations, including generators, project developers, fuel and power suppliers, investors, equipment producers, service providers and those working in the organic recycling sectors. Members range in size from major multinationals to sole traders. There are over 500 corporate members of the REA, making it the largest renewable energy trade association in the UK.

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### ***1. Do you agree that the government should seek to mitigate against both 'direct' and 'indirect' discrimination in areas which affect the provision of goods and services?***

The REA broadly welcomes the proposal to give legal footing to the two principles of 'mutual recognition' and 'non-discrimination'. Fundamental to our members' concerns is to ensure the new UK Internal Market avoids any new barriers to trade so that trade between all UK countries continues to take place without disruption following the end of the transition period.

However, we also highlight that until specifics are laid out regarding exactly how these principles will be implemented within the context of a specific industry, it is difficult to be able to comment on what the proposals could mean for the renewable energy, clean technology or organic recycling sectors. There are areas of existing divergence, some of which are highlighted below, where a mutual recognition and non-discrimination principle could disrupt existing industry standards and regulations, depending on how they are implemented. This will need to be worked through in detail with the industries concerned, including understanding where some limited amount of existing divergence in standards may be necessary.

This also applies to the proposals of 'direct' and 'non-direct' discrimination. We do not oppose the inclusion of both within the legislation. However, its implementation will come down to specific sector cases that will need to be worked through with the industry to find an optimal solution. This will require pragmatic approaches from each government, along with an appointed arbiter who can hear industry complaints where trade barriers may arise in the formation of the internal market.

Within the White Paper, the Government frequently reiterates their commitment to maintaining strong standards, especially concerning the environment. This is very welcome, although we call for the Government to consider how this principle could also be given a legal basis. There are concerns that standards could be weakened following the end of the transition period. Alternatively, one administration could impose stricter standards divergent from other countries in the internal market which would equally create new trade barriers. Therefore, this legislation must also be considered in line with the Environment Bill. This includes looking at the role that the new Office of Environmental Protection, along with other relevant legislation across Scotland, Northern Ireland, and Wales, will have in maintaining an appropriate level of consistency within the Internal Market. Crucial for the

industry will be understanding what powers there will be to challenge any damaging divergence of standards, and which body ultimately has the power to resolve disputes.

The REA would like to draw the Governments attention to the following issues where there are either known concerns over possible divergence or where existing divergence exists that will have to be considered as the two principles of mutual recognition and non-discrimination are implemented:

**Environmental Regulation:** environmental regulation is a devolved competence. There are existing examples of divergence which have developed, and which are currently well managed by the industry. One such example is the End of Waste positions of SEPA in Scotland and the EA in England concerning waste-derived composts and digestates. For example, there is a significant difference in the amount of allowed physical contaminant levels in the two positions. It is assumed that environmental regulation will, and should, remain a devolved competence, however, it will need to be worked through with the industry what this means in terms of whether the principle of non-discrimination can be fulfilled where there is existing divergence. Ultimately, we want to avoid specific products being banned from an administration if it meets the required standards.

It is worth noting that total equality in requirements may not always be desirable, indeed when it comes to waste management and environmental regulations there has been a useful process of countries in the UK learning from each other. There has been a natural process of identifying what has worked well in one administration and seeing it replicated elsewhere in the UK. This process of learning from best case should be maintained as long as there are appropriate safeguards in place to avoid any reduction in standards or significant trade barriers.

**Carbon Pricing:** To date, the proposals for a UK ETS has been done in conjunction with all devolved administrations. However, how the UK ETS will operate is dependent on ongoing negotiations with the EU. Understanding how agreements around the UK ETS will operate between the UK countries, in line with principles of mutual recognition and non-discrimination, will be important to the design and success of the new trading scheme.

**State Aid and Subsidy Control:** Some sectors of the renewable energy and cleantech sectors continue to be nascent industries, requiring support and state spending to continue to see them deployed. This continues to be crucial in meeting the UK's Net Zero ambitions and deliver the required energy transition. It continues to be the case that different administrations may identify different low carbon technologies as of strategic importance, based on the resources they have available to them. This will mean they will want to provide different support levels. Again, this is not a problem for the industry but will need to be considered in how the principles of mutual recognition and non-discrimination are implemented. Current EU State Aid arrangements expressly forbid or require consent for state subsidy, it will be important to future policy development to understand if this is to be replicated in the Internal Market and what independent body will have the power to certify or reject a new state spending policy.

***2. What areas do you think should be covered by non-discrimination but not mutual recognition?***

No REA response intended

***3. What would be the most effective way of implementing the two functions outlined above? Should aspects be delivered through existing vehicles or through bespoke arrangements?***

No REA response intended

***4. How should the Government best ensure that these functions are carried out independently, ensure the smooth functioning of the Internal Market and are fully representative of the interests of businesses and consumers across the whole of the UK?***

The White Paper currently does not make clear what arbitrator will have the mandate for dispute resolution and enforcement regarding trade disputes within the internal market. The industry needs a clear authoritative body where complaints regarding discrimination, or failure to enforce mutual recognition, can be raised. There needs to be the possibility of getting a legally binding decision to resolve disputes. Ultimately industry will need access to the courts if unfair trade barriers, which go against the principle of the internal market, do arise.

As described above, the establishment of the internal market will require consultation with separate industries, applying the principles of non-discrimination and mutual recognition to different cases and working out the most appropriate trading system. This will likely need to be done case by case following the basic principles and a pragmatic approach from the relevant Government departments from each administration. This work should be done in consultation with the relevant trade associations to collate views from industry. The REA would be happy to help further explore what the set up of the Internal Market means for the renewable energy, clean technology, and organic recycling industries.

To properly engage industry, we also highlight the Government must be clear with industry and the public about the potential for change and divergence over time. While we strongly welcome the overall aim to keep trade as open as today, just promoting this message could discourage people from engaging as they assume all will be fine. We expect that this will be an ongoing and iterative process, one that industry will need to engage with for a long a time to see the best results. A message of working with industry over the next few months and years to realise an optimal internal trading market will help ensure ongoing industry engagement in a timely manner.

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If you have any questions about this consultation response please contact Mark Sommerfeld ([msommerfeld@r-e-a.net](mailto:msommerfeld@r-e-a.net)).