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30 July 2020

Dear Alok and Simon,

UK Internal Market White Paper

Thank you for your letter dated 16 July 2020, inviting the External Affairs and Additional Legislation Committee to respond to your White Paper proposals for the UK Internal Market.

Ensuring Welsh interests are safeguarded in the development of future intra-UK arrangements, for the management of policy areas that currently sit within EU frameworks or that are otherwise affected by EU exit, is central to our remit. We welcome the opportunity to respond. However, the timing of the consultation on the White Paper, falling as it does in the first four weeks of the Senedd's recess, poses some practical difficulties for us. Additionally, four weeks is arguably a very short consultation period for such a significant and complex proposal.

After considering the White Paper, we have concluded that, to provide a full and meaningful response to the proposals, we will need further information about the proposals. We will also need time at the start of the Senedd's autumn term to consider this information and agree a response.



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We hope that this will be possible prior to the introduction of any legislation. Enclosed with this letter is a set of questions that we would welcome answers to. To help illustrate why we seek answers to these questions, we have also provided some Welsh case studies.

Before turning to these questions and case studies, I would like to share some of the work we have done in this area since 2016.

In our January 2017 report, *Implications for Wales of leaving the European Union*, we identified the possible need for common UK-wide approaches to certain areas of policy.

This issue re-emerged as we considered the EU (Withdrawal) Act 2018. In our December 2017 report on the Bill, we concluded that:

“Decisions about future UK-wide policy frameworks must be agreed between the UK Government and the devolved governments and legislatures. They must not be imposed by the UK Government, even on a time-limited basis.”

Following the passing of the Bill into law, we turned our focus to the programme of work to develop UK-wide common policy frameworks.

In our December 2018 report *Common policy frameworks: Assembly [Senedd] scrutiny*, we stated that:

“[...] having a shared understanding across the nations of the UK of what a UK internal market constitutes, i.e. its foundation principles, objectives, parameters and constraints, is essential if future issues such as the agreement and implementation of future trade agreements are to be navigated successfully.”

In the same report, we concluded that:

“Given the comparatively developed state of the intergovernmental arrangements relating to the frameworks programme, and the fact that JMC EN remains the political locus for both the UK internal market work stream and the frameworks programme, broadening the scope of the frameworks programme might offer a more pragmatic means of reorienting this work in terms of defining the UK internal market.”



You can see from our previous work that we acknowledge the need for intra-UK cooperation in the management of some areas of policy. However, we have also stated that this must be done on the basis of agreement between governments and legislatures and not imposed by the UK Government or Parliament against the will of the other governments and legislatures.

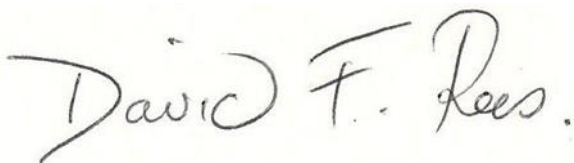
Prior to the UK's exit from the EU, we were the Senedd committee responsible for monitoring draft EU documents from the perspective of subsidiarity. The hard-fought for principles of subsidiarity and proportionality acted as key balancing mechanisms within the EU's internal market, to protect local decision making and ensure common regulation does not extend beyond the issue it seeks to address. There do not appear to be any similar mechanisms proposed in the White Paper.

We look forward to your response to the questions we have enclosed and would welcome a response by 1 September 2020. This will allow us to consider it on 17 September 2020, our first meeting after the recess, and prepare a fuller response to the proposals.

We have decided to publish this letter in the spirit of communicating our approach to our stakeholders, in light of the limited time within which they have to respond to the consultation.

We have also copied this letter to Jeremy Miles MS, Counsel General and Minister for European Transition, and Mick Antoniw MS, Chair of the Legislation, Justice and Constitution Committee.

Yours sincerely,



David Rees MS
Chair of the External Affairs and Additional Legislation Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.



Questions on the Internal Market White Paper

Constraints on devolution

1. Can the Secretary of State please confirm that, beyond the reservation of subsidy control, the legislation to enshrine a Market Access Commitment will make no other changes to the devolved settlements?
2. Is the UK Government proposing a legal requirement to carry out an assessment of the effect of any new legislative proposals on the UK internal market?
3. What role will the devolved legislatures have in the architecture of the internal market, as it relates to devolved areas?

Scope of the proposals

Can the Secretary of State please clarify the following:

4. Whether the scope of the Market Access Commitment for the UK Internal Market will be broader than the scope of the rules related to the functioning of the EU's Single Market (that are currently in force in the UK)?
5. What the term "existing differences" means and to confirm that the Market Access Commitment will not apply retrospectively? (see our case studies for further illustration)
6. What the term "certain social policy measures" means (and to illustrate this with examples)?
7. Whether the principles of proportionality and subsidiarity will be reflected in the legislation in anyway? If not, why not?
8. Whether any exclusions on the grounds of public interest, as currently enshrined in the rules related to the EU's Single Market, will be permitted? For example, on public health or environmental protection grounds.
9. If any specific mechanisms will be included to maintain high standards within the UK Internal Market?



Governance

10. When will the review of intergovernmental arrangements be complete?
11. What new mechanisms of intergovernmental dispute resolution will be adopted? Will any element of these new dispute resolution mechanisms be enshrined in legislation?
12. What rights of redress against “harmful” barriers to trade will individual citizens and businesses have?
13. Will the legislature or government of one part of the UK be able to refer legislative proposals of another legislature or government to the independent body for assessment?
14. What processes will be put in place for the notification by one part of the UK to the others of any new measures that could impact the Internal Market?

Trade

15. To confirm what role the devolved governments have, or will have, in trade negotiations?

Spending powers

16. To provide further information on what the “clarification of spending powers” entails and when any review will be completed?
17. To confirm whether it is possible for this process to result in the UK Government seeking changes to the existing spending powers and responsibilities of the devolved governments?

Economic modelling

Paragraph 85 of the White Paper utilises a modelled scenario, where intra-UK trade costs increased to the level seen between German states, to suggest a possible reduction in Welsh GDP of £1.2 billion.

The economic analysis on pages 90 to 91 of the White Paper appears to provide the source for the use of the predictions stated in paragraph 85.

However, the economic analysis on pages 90 to 91 states that “*the usage of intra-German trade costs is purely illustrative and does not indicate a prediction for the UK market.*”



Further, it states that the GDP figures “*should not be taken as any indication of the likely GDP impact of policy divergence by the four parts of the UK after the end of the transition period*”.

18. Can you please clarify the apparent discrepancy in the use of these predicted GDP figures in the main body of the paper, as compared with the analytical annex?

Our case studies

Whilst we have provided our case studies to help illustrate the source of some of our questions, we would also welcome a response to them – either through reference to them when answering the above questions, or in direct reply to the questions posed within the case studies.



Case Studies

Social Care example

Part 4 of the Regulation and Inspection of Social Care (Wales) Act 2016 gives Social Care Wales discretion as to which professional qualifications to accept as being sufficient to allow persons to be registered as social workers in Wales, social care managers in Wales and social care workers in Wales.

Are social care services captured by the White Paper? Or is this an example of a pre-existing difference that will be excluded?

If England social care rules allow a person to provide social care services in England with fewer qualification than those allowed by Social Care Wales, would the principle of mutual recognition of professional qualifications apply?

With regard to recognition of professional qualifications, the White Paper is unclear. Paragraph 133(b) on page 46 says (emphasis added):

“Professional qualifications – mutual recognition of professional qualifications means that compliance with regulation required to access a profession in one territory can be used to **demonstrate** compliance towards the access of that profession in another territory. Where access requirements in the other territory differ, a process will be implemented to enable professionals to **demonstrate** compliance. In addition, other profession-specific regulatory requirements needed to practise the profession will be included as part of this process.”

If the White Paper is intended to capture social care services, it is unclear whether “demonstrate” means that:

- a social care worker who can practise social care in England would automatically be allowed to practise social care in Wales, or
- the ability to practise social care in England would provide evidence of suitability to practise in Wales, while leaving the final decision to Social Care Wales.



Registration of Private Landlords example

Part 1 of the Housing (Wales) Act 2014 requires private landlords in Wales to be registered in accordance with the scheme set out in that Act.

Is private landlord registration captured by the White Paper?

If Northern Ireland has a different scheme for authorising private landlords in Northern Ireland, would the principles of mutual recognition and non-discrimination apply? Would a person who carries on business as a private landlord in Northern Ireland be allowed to carry on business as a private landlord in Wales by satisfying the Northern Ireland rules but not the Wales rules?

The scheme set out in the Housing (Wales) Act 2014 already complies with the Provision of Services Regulations 2009. This means that the current Wales scheme must not be discriminatory and must be justifiable in the public interest.

Paragraph 133(c) on page 46 of the White Paper says that the Provision of Services Regulations 2009 rules “will be explicitly brought within the Internal Market system”. However, it is unclear how this will interact with the broader principles of mutual recognition and non-discrimination.

Microbeads example

Each of the four governments in the United Kingdom has made regulations that prohibit the use of microbeads in rinse-off personal care products such as bath products, exfoliators and dental products.

Rinse-off personal care products appear to be goods captured by the White Paper. Therefore, if one of the governments made regulations that lifted the prohibition in respect of such goods, the principles of non-discrimination and mutual recognition would apply.

Would this mean that goods containing microbeads could be placed on the market in Wales, despite the prohibition on the use of microbeads set out in The Environmental Protection (Microbeads) (Wales) Regulations 2018?

While the White Paper repeats many times that the highest standards will be maintained, there is no explanation as to how the internal market will ensure that the highest standards are maintained. For example, will the internal market have minimum standards relating to the use of microbeads plastics in goods? What if one part of the UK completely deregulates this area? Will such matters be dealt



with by common frameworks? And what international obligations might arise so as to override domestic law in this area?

Food Products Containing Meat example

The Products Containing Meat etc. (Wales) Regulations 2014 specify that certain products cannot contain parts of a carcass. They also specify the minimum meat content for various food products such as burgers, pies, pasties and sausage rolls.

Food products appear to be captured by the White Paper. Therefore, if Scotland sets lower standards for food products, the principles of non-discrimination and mutual recognition would apply. This would mean that food of a lower standard could be placed on the market in Wales, despite the restrictions set out in The Products Containing Meat etc. (Wales) Regulations 2014.

While the White Paper repeats many times that the highest standards will be maintained, there is no explanation as to how the internal market will ensure that the highest standards are maintained. For example, will the internal market have minimum standards relating to the use of meat in food products? What if one part of the UK completely deregulates this area? Will such matters be dealt with by common frameworks? And what international obligations might arise so as to override domestic law in this area?

Devolved Taxes example

While the White Paper says that taxation will not be captured by the internal market, it does so in the context of reserved taxes without explicitly excluding devolved taxes.

Land Transaction Tax and Landfill Disposals Tax have the potential to impact on the housing market outside Wales and on waste services outside Wales. It would be helpful to get confirmation that devolved taxes are not intended to be captured by the internal market.

Building Regulations example

Paragraph 17 of the White Paper says that divergent approaches to building regulations would be a barrier to the construction industry in the United Kingdom.

Therefore, while building regulations are clearly intended to be captured by the internal market, it is unclear to what extent any “pre-existing differences” will be excluded.



Will the existing Wales building regulations be excluded? Will the internal market apply only to future changes to building regulations?

This returns to the question at the beginning of this section: how will “pre-existing differences” be excluded from the internal market?

The inclusion of building regulations is also a clear example that the UK internal market is intended to cover goods and services that were not previously regulated under EU law.

Student Finance Support example

Students who ordinarily live in Wales receive financial support from Student Finance Wales, wherever they study in the United Kingdom. Student Finance Wales does not give financial support to students who ordinarily live in England but are studying in Wales.

Would the different student finance schemes across the United Kingdom be subject to principles of non-discrimination and mutual recognition? For example, would Student Finance Wales still be able to reject applications for financial support for students who ordinarily live in England but wish to study in Wales?

Bottled Water Labelling example

The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015 set out specific requirements for bottled water that is labelled as “spring water”. For example, the water must be bottled at the spring source and specific steps must be taken to avoid contamination of the water.

Bottled water appears to be captured by the White Paper. Therefore, if England rules set different standards for bottled spring water, the principles of non-discrimination and mutual recognition would apply. This would mean that bottled spring water that complies with the Wales rules could be sold in Wales as spring water, and bottled spring water that complies with different England rules could also be sold in Wales as spring water.

Does this cause confusion for consumers who want to buy spring water? Is this an issue that arises in all the above examples?

