

The Rt Hon Alok Sharma MP, Business Secretary

The Rt Hon Simon Hart MP, Secretary of State for Wales

7 August 2020

Dear Alok and Simon

UK internal market White Paper and consultation

Thank you for your letter of 16 July, which we considered at our meeting on 3 August.

We note that the consultation on your proposals lasts for only four weeks over the traditional parliamentary summer recess period. We also understand that the intention is for the subsequent UK Bill to complete its passage through the UK Parliament before the end of the year.

The timeframe for consideration of your proposals is wholly inadequate. Furthermore, given that the White Paper contains little detail as to how the mechanisms for managing an internal market will work in practice, there is little scope for meaningful engagement by the devolved legislatures and stakeholders before the introduction of a UK Bill.

It would have been preferable for us to have been able to question the UK Government on its proposals, with the aim of identifying what it is seeking to achieve. In particular, this would have enabled us fully to consider your argument that primary legislation is the best solution for managing internal barriers to trade at the end of the transition period. This is not least because we believe any UK Bill on the internal market should be central to the UK Government's thinking, rather than being rushed through the UK Parliament at the end of the Brexit transition process (with a range of Bills covering, for example, trade, fisheries and agriculture much further advanced).

In the absence of such an opportunity, we enclose a series of questions that we would have required responses to had we been consulted and engaged properly.



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Given the lack of detailed and relevant information, we are yet to conclude whether a UK Bill of the kind proposed in the White Paper is needed.

If such a UK Bill is to be introduced, it could potentially impact the way the Senedd seeks to legislate in the future and have profound constitutional implications for the UK. At the very least it must:

- be developed from open, transparent and meaningful consultation on proposals that are at a formative stage, such consultation being based on clear and well-defined principles;
- be introduced only after there has been consultation on a draft Bill, which we deem to be a basic and fundamental requirement for all Bills of constitutional significance;
- reflect detailed discussions with the devolved governments and legislatures on how the provisions of the Bill would work in practice and their practical impact on the devolution settlements;
- adopt an approach that works for each part of the United Kingdom;
- interact logically and coherently with all statutory and non-statutory common frameworks to be agreed under the ongoing work programme;
- not seek to re-centralise power, either directly or indirectly, by allowing the UK Government and the UK Parliament to dominate policy areas that are devolved;
- include provisions agreed by all parties setting out an independent governance structure that ensures parity between all governments of the UK and a robust dispute resolution mechanism;
- provide the devolved governments and legislatures with the same freedoms to protect their citizens and economies in key areas of public health, consumer and environmental standards that they previously enjoyed under the EU's single market;
- enshrine within it the key constitutional principles of subsidiarity and proportionality, which have governed the operation of the internal market through the UK's membership of the EU, and have been faithfully guarded by all the legislatures of the UK;
- not be imposed on the devolved countries of the United Kingdom without their consent;
- not rely on the use of intergovernmental agreements with the devolved governments, as a means of bypassing scrutiny by devolved legislatures of matters that should be included within the UK Bill.

Yours sincerely,



Mick Antoniw MS

Chair of the Legislation, Justice and Constitution Committee

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



cc.

David Rees MS, External Affairs and Additional Legislation Committee, Senedd Cymru

Russell George MS, Economy, Infrastructure and Skills Committee, Senedd Cymru

Bruce Crawford MSP, Finance and Constitution Committee, Scottish Parliament

Michelle Ballantyne MSP, Economy, Energy and Fair Work Committee, Scottish Parliament

Dr Caoimhe Archibald, Committee for the Economy, Northern Ireland Assembly

Colin McGrath, Committee for the Executive Office, Northern Ireland Assembly

Rt Hon Stephen Crabb MP, Welsh Affairs Committee, House of Commons

William Wragg MP, Public Administration and Constitutional Affairs Committee, House of Commons

Rt Hon the Baroness Taylor of Bolton, Constitution Committee, House of Lords



Enclosure - Questions relating to the UK Internal Market White Paper

The need for primary legislation and the principles behind it

1. Why is primary legislation needed to regulate the UK's Internal Market?
2. If primary legislation is needed, what is your current thinking as to how the legislative consent process will work? In particular, is this a "normal" situation for the purposes of the legislative consent convention?
3. What constitutional principles will underpin this primary legislation?
4. Will the constitutional principles of proportionality and subsidiarity that currently underpin the operation of the EU Single Market be enshrined in the legislation in any way?
5. What mechanisms will be put in place to ensure that the UK maintains high standards and that there will be no 'race to the bottom' within the UK?

Devolution and scope of the Internal Market

6. Can you confirm that beyond a new reservation on subsidy control, the legislation to enshrine a Market Access Commitment will make no other changes to the devolved settlements? And how will you work with the devolved governments in framing any new reservations?
7. The White Paper states that the UK's Internal Market will be overseen by the UK Parliament. What role will there be for the devolved legislatures, and how will their voice be heard?
8. In relation to the scope of the Internal Market, can you clarify:
 - The meaning of 'pre-existing differences' and whether the Internal Market legislation would apply retrospectively in any way to devolved legislation.
 - The meaning of 'Certain social policy measures with little Internal Market impacts' and the scope of legislation that will come within this exclusion.

Oversight, impact assessments and enforcement

9. Can you elaborate on the governance and institutional mechanisms that will be established to oversee the Internal Market in the UK?
10. Will there be any requirement (legal or otherwise) for the UK's governments and regulators to carry out an assessment of the effect of any new legislative proposals on the UK Internal Market prior to their introduction?
11. Will the legislation generate any new rights of redress to internal trade barriers for individuals and business and, if so, how will these be enforced?



Dispute resolution and common frameworks

12. How will dispute mechanisms ensure parity between the four governments of the UK?
13. Who will be the final arbiter of disputes between the four governments of the UK?
14. How will you ensure that the relationship between common frameworks and the legal architecture associated with the Internal Market is clearly defined and easy to navigate?
15. If increased divergence arises through a process agreed through the common frameworks programme, will this be excluded from the scope of the Market Access Commitment?

