

Mick Antoniw MS
Counsel General and Minister for the Constitution

15 February 2022

Dear Mick

Common frameworks and retained EU law: request for further information

We would like to thank you and your officials for your oral evidence to the Committee on 31 January 2022.

We note you agreed to write on the divergence between Welsh law and EU law, and how you and the Welsh Government would see these matters being managed and, where necessary, what public scrutiny and public information is to be made available.

Within your anticipated correspondence, we would also be grateful if you could provide further information in relation to the following matters.

Progress of the common frameworks programme

In correspondence with us in November 2021, you said it would be 'hugely desirable' for common frameworks to be scrutinised and finalised by the time of the dissolution of the Northern Ireland Assembly. Due to delays in the publication of frameworks, this timeline is no longer realistic. We welcome your continued commitment to not finalising common frameworks until committees have had the opportunity to carry out scrutiny.

1. We consider it a significant step forward for transparency that most provisional common frameworks have now been published. Could you confirm if you expect that all common frameworks will be published at least in provisional form by the time of the dissolution of the Northern Ireland Assembly, with the exception of the frameworks for recognition of professional qualifications and services?

Transparency and accountability

We asked you about ensuring that the Senedd and stakeholders can understand common frameworks and their impact on Welsh Government decision-making.

We very much welcome your positive responses on:

- notifying the Senedd when legislation relates to a common framework;
 - notifying the Senedd when a common framework dispute is escalated to Ministers;
 - notifying the Senedd and stakeholders when a common framework is reviewed, and considering their recommendations before the review process concludes; and
 - publishing annual reports on all individual common frameworks.
2. Could you confirm that the Welsh Ministers will abide by these commitments, and set out in writing the processes that you will follow?

We also asked about meeting your commitment in the Inter-institutional Relations Agreement to “maintain a dedicated page of its website providing all relevant formal intergovernmental agreements, common frameworks, concordats, memorandums or other resolutions that the Welsh Government has in place with the UK Government.” You explained that finalised frameworks would be published on the Welsh Government website.

3. Given that common frameworks have now been in operation for over a year, we consider this insufficiently transparent. We believe that such a page should be set up as soon as possible, even if you consider it expedient to provide links to the UK Government website until frameworks are finalised. Could you confirm the date when you expect this to become available?

Making decisions and resolving disputes

We discussed how the four governments will make decisions and resolve disputes through common frameworks.

4. Common frameworks do not generally provide for stakeholders to be routinely involved in intergovernmental decision-making processes. Could you explain the reasons for this approach? How you will keep stakeholders routinely informed of intergovernmental discussions through common frameworks?
5. Some common frameworks provide for the making of legislation or policy to be postponed until the four governments have agreed on how to proceed. What risks have you identified with this approach?
6. Have any Welsh Government policies or initiatives been delayed because of the common frameworks process?

Cross-cutting issues

We discussed the intergovernmental agreement on the process for agreeing exclusions from the Internal Market Act in common framework areas and the agreement of standard text for common frameworks on international obligations and UK-EU agreements. We would be grateful for further information about how these processes will work in practice.

UK Internal Market Act

7. Is the Welsh Government seeking, or does it plan to seek, any exclusions through the process for agreeing exclusions from the Internal Market Act in common framework areas?
8. Does the Welsh Government support the Scottish Government's request for an exclusion from the Act for single use plastics legislation?
9. What principles or evidence would the Welsh Government rely on if it sought an exclusion?
10. Would the Welsh Government be likely to seek broad exclusions of whole policy areas, or exclusions of specific items of legislation?
11. At what point in policy development or the legislative process would the Welsh Government seek an exclusion?
12. Is the Welsh Government content to notify the Senedd and stakeholders when it seeks an exclusion?
13. Do you consider that finalised frameworks should make reference to the exclusions process?

Subsidy Control Bill

14. What concerns, if any, do you have about the impact of the UK Subsidy Control Bill on any common frameworks?

Professional Qualifications Bill

15. Do you have any concerns about the impact of the Professional Qualifications Bill on any common frameworks?

International obligations

16. You stated that the UK faces difficulties regarding international obligations. Could you give details of any difficulties you have identified arising from international obligations, particularly in devolved areas or in areas that affect Wales?
17. The agreed text on international obligations for common frameworks suggests that frameworks will be based on an updated International Relations Concordat following the conclusion of the Intergovernmental Relations Review. Are there plans to update this concordat, and do you consider that there are any risks if an updated concordat is not agreed?
18. The agreed text on international obligations states that the governments will consider "any implications stemming from international trade which have a direct bearing on the operation of

the common framework". Do you consider that this gives the Welsh Government adequate involvement in the negotiation of international trade agreements in common framework areas?

UK-EU obligations

19. Agreed text in some common frameworks describes provision for Welsh Government attendance at meetings established by the UK-EU Trade and Cooperation Agreement's institutional framework. How will you ensure that Welsh Government policy teams in common framework areas coordinate with Welsh Government representatives at UK-EU meetings?
20. Agreed text on the Northern Ireland Protocol indicates that if the law in a common framework area changes in Northern Ireland by virtue of the Protocol, the four governments will consider the implications of that change in Great Britain and whether to take action. At what point in the EU legislative process will the four governments do this?
21. Some stakeholders in Northern Ireland have raised concerns about the limited extent to which common frameworks are taking account of cross-border links on the island of Ireland. What consideration are the Welsh Ministers giving to this issue in deciding whether to approve common frameworks?

Changes to the status of retained EU law

You set out your initial response to the UK Government's announcement of plans to legislate on the status of retained EU law.

22. What is your assessment of the extent to which changing the legal status of the body of retained EU law within devolved competence is devolved?
23. Do you think that the status of that law needs to be changed? If so, why and how should it be changed? If not, why not?
24. The UK Government has set out plans to enable retained EU law to be amended more quickly. Could you confirm that any such changes in common framework areas will be managed through common frameworks?

Future divergence from EU law

You said that the Welsh Government should hold EU standards as a minimum and that the Welsh Government intends to maintain and improve upon standards. You also confirmed that the Welsh Government will not be keeping pace with planned changes to EU law on blood, tissues and cells because a joint UK approach is preferred. In correspondence with us in November, you said that the Welsh Government does not have a "central mechanism" to monitor differences between EU and Welsh law.

25. Without a central mechanism, how is the Welsh Government monitoring EU law to learn about and understand differences that may develop between Welsh and EU law?

26. What assessment have you made of the risks of involuntary or 'passive' divergence developing between EU law and Welsh law?
27. On what basis do you assess whether a joint approach with other parts of the UK, keeping pace with EU law, or distinct Welsh legislation would be preferable?
28. How will your approach differ in different areas, for example Welsh Government priority areas or areas subject to the Trade and Cooperation Agreement's level playing field provisions?
29. Do you think there are any risks that making decisions jointly through common frameworks could impede Welsh Government ambitions to improve upon standards?

We would be grateful to receive a response to these questions by 1 March.

Yours sincerely,

Huw Irranca-Davies

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Chair