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Dear Mark,

Thank you for your letter of 10 February in relation to the Common Framework for public procurement.

I set out my response to your questions below:

## General

### 1. Why is a framework needed for this policy area?

The intention of the Framework is to safeguard the interests of businesses across the UK by considering any divergence in procurement practices by the four nations.

The framework provides a mechanism for the four nations in the UK to continue to develop and publish their own policies and legislation for procurement whilst acknowledging the effects of any divergence.

The framework sets out the mechanisms for the handling of domestic and international policy issues on public procurement and sits alongside the World Trade Organisation's (WTO) Government Procurement Agreement (GPA) framework.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

As procurement is not a reserved matter, the framework is an important agreement to protect our interests within the UK and internationally.

**2. The Welsh Government aims to promote environmental sustainability in procurement. Why does the principle on the management of common resources not apply to this framework?**

Management of common resources is not part of the rationale for this Common Framework because the framework is only a mechanism by which the four nations in the UK make each other aware of any new policies in order to consider the effects of any possible divergence. Therefore, the opportunity for sharing resources is not applicable.

**Scope for divergence**

**3. How will the governments determine whether a proposal for policy or legislation is in scope of the framework's decision-making processes?**

Policy leads for each Nation will assess the impact of their public procurement proposals on the other nations at a domestic level (or where there is potentially wider significance). If there is an impact, then it falls within the scope of the Framework and the other nations will be notified and be given the opportunity to discuss any concerns at the monthly Common Framework Working Group meeting.

**4. What scope for divergence will the framework allow? Is this wider or narrower than the scope for divergence under EU law?**

**5. If the scope for divergence is different from the scope for divergence under EU law, why is that?**

It is our understanding that the scope for divergence is the same as the scope for divergence under EU law.

**6. Will the Welsh Government's proposed Social Partnership and Procurement Bill be subject to any consultation or decision-making through the framework?**

Representatives from the other three Nations have been made aware of the Social Partnership and Procurement Bill. The Common Framework remit is to consider any impact of policy divergence on the other nations and not for the purpose of consultation or decision-making

**7. The Welsh Government plans to take forward reforms to procurement law through the planned UK Procurement Bill. What assessment has the Welsh Government made of the impact of diverging from retained EU law on procurement on stakeholders in Wales?**

To understand the best way forward for procurement reform in Wales, an engagement exercise took place with the public, private and third sectors to understand their appetite for potential procurement reform in Wales and the proposals outlined in the UK Government's Green Paper. Welsh stakeholders indicated they have an appetite for procurement reform.

Procurement policy officials and the legal team are currently assessing UK Government's policy instructions for the bill for changes to current practices that could have potential impacts on Welsh Stakeholders. Any concerns are fed back to UK Government so they can be considered in the drafting of the bill clauses.

**8. What assessment have you made of the implications of the UK Subsidy Control Bill for public procurement in Wales?**

As matters currently stand, it does not appear that there will be implications for public procurement in Wales stemming from the Subsidy Control Bill. However, many of the provisions within the Bill are subject to change through the use of secondary legislation and much of the detail of how the Bill will work in practice will be contained within secondary legislation and guidance and so this position could be subject to change and will be kept under review.

**9. The framework would require the Welsh Government to notify the other governments three months before the introduction of primary legislation or making of secondary legislation. What are the implications of this for the competence of the Welsh Government and the Senedd and what impact could divergence have on procurement policy in cross-border areas?**

The Framework does not prevent or inhibit the Welsh Ministers' executive competence to implement new policies or the Senedd's competence to pass legislation.

Historically, there has been a low level of divergence in procurement policy between the nations with no adverse effect on contracting authorities or suppliers and this is not expected to change. However, with the Framework in place, divergence, including on procurement policy in cross-border areas, will now be considered whereas it has not been in the past.

**International obligations**

**10. What international obligations are relevant to this framework and if the framework needs to be amended in future to reflect a new international obligation, what revision process will be engaged?**

When the UK negotiates, enters into and implements replacement and new Free Trade Agreements (FTA's) which include procurement chapters, the agreed procurement obligations are included in the FTA's themselves and not within the Common Framework. Any new International Obligations are then enacted into

Domestic Procurement Regulations if needed. This revision process is outside the remit of the Framework. The Framework would not need to be amended when a new Trade Agreement is agreed.

The Framework will ensure that when developing new policies, International Obligations are considered.

Review points are scheduled into the Framework. It is expected that these will give both stakeholders and the Senedd additional opportunities to engage in the development and evolution of Frameworks.

If changes are made to the Framework then these will be notified to Senedd committees in order for them to carry out the level of scrutiny they deem appropriate and necessary.

**11. Could the Welsh Government confirm when an updated four-government International Relations Concordat is expected and are there any risks to the framework if this is not agreed?**

In January 2022, the Welsh Government, along with the UK Government, the Scottish Government, and the Northern Ireland Executive, agreed to use the package of reforms which emerged from the joint IGR Review as the basis for the conduct of intergovernmental relations. While the reform package does not entirely replace the existing Memorandum of Understanding on Devolution, it is anticipated this will become a largely dormant document. In future, we hope that the Review and the package of reforms will be codified in a new MoU and, if all governments agree, underpinned in statute. For the time being, international policy formulation will be developed in line with the current Devolution MoU and its accompanying International Relations Concordat. International obligations will be implemented in line with these agreements. In this respect, the parties will automatically use any updated IR Concordat, and the wider outcomes of the joint IGR Review, as the basis for such international considerations.

**12. How will intergovernmental forums established by the framework interact with interministerial groups on trade and on the UK-EU Trade and Cooperation Agreement?**

The policy area covered by this Common Framework intersects with the EU-UK Trade and Cooperation Agreement (TCA) and therefore topics relevant to the framework may be considered from time to time by relevant TCA Specialised Committees or the Partnership Council. Where a UK-EU meeting agenda includes an item concerning implementation in an area of devolved competence, UK Government will facilitate the attendance of the Scottish Government, Welsh Government and Northern Ireland Executive of a similar level to that of the UK Government representatives with final discretion as to the UK delegation a matter for the UK co-chair. UK Government will engage the devolved governments as fully as possible in preparation for these meetings regardless of attendance, and on all relevant implementation matters.

**13. What recourse, if any, does the framework provide to the Welsh Government if it does not support UK Government amendment to its WTO GPA schedules?**

UK Government is cooperating with the Welsh Government (WG) and the other nations at official level on the GPA schedules in line with the Common Framework. However, if there was reason to oppose the UK Government on an amendment to the WTO GPA schedules, the Common Framework provides the forum whereby issues can be discussed and in the event that agreement cannot be met, escalation via the dispute procedure is available

**UK-EU arrangements**

**14. Could the Welsh Government explain how UK-EU meetings in areas covered by the framework will be communicated to the framework Working Group and Liaison Group?**

The Common Framework agreement clearly sets the governance for the TCA whereby officials from the Devolved Administrations are involved in and invited to attend all future meetings of the Committee that cover matters of devolved competence.

'International Agreements' is a standing item on the Working Group meeting agenda to provide an update on any progress on trade deals including updates on UK-EU meetings that have taken place and any issues arising for the group to discuss.

**15. The UK-EU Trade and Cooperation Agreement establishes a number of new governance committees. Why were Welsh Government officials not present at the first and only meeting of the Trade Specialised Committee on Public Procurement?**

The UK Cabinet Office briefed the Working Group meeting on 21 July 2021 on the Trade Specialised Committee on Public Procurement. Then on 15 September, the Working Group meeting discussed the agenda that was limited to exchanges of information on proposed legislation and procurement policies. The WG have been made aware of the opportunity to attend these meetings ([click this link to a see letter from Lord Frost](#)) however, the WG did not take up this offer on this particular occasion as it was considered that there were no items on the agenda which warranted attendance.

**16. Could the Welsh Government explain whether and how the outcomes of that meeting with the EU were communicated to the framework, Working Group and Liaison Group?**

The outcome was reported back by a UK Cabinet Office official at the November 2021 Working Group meeting and recorded in the minutes.

**17. Could the Welsh Government confirm whether the framework's mechanisms will be used to monitor EU procurement law, and whether the Welsh Government is carrying this out itself or in partnership with other governments?**

There is an indirect mechanism to consider EU procurement law via the UK/EU Trade Cooperation Agreement (TCA), and the TCA is referred to in the Framework at 3.1 and 3.13. If any aspect of EU Procurement law infringes on the TCA then it would be reported at the Working Group meetings as an area within scope of the Framework.

**Governance and dispute resolution**

**18. Do you consider the dispute resolution mechanism to be robust enough for its intended purpose and how will the framework ensure that disputes are resolved in a timely way and decisions are not delayed?**

The dispute resolution mechanisms are considered to be robust and proportionate. These have been jointly developed and agreed by the four nations. The dispute resolution mechanism allows for disagreements to be escalated as disputes to Ministers, where appropriate and necessary, for timely resolution.

**Transparency and accountability**

**19. Did the Welsh Government engage with any stakeholders in Wales in developing the framework? How does the framework reflect the response of stakeholders?**

Welsh Government carried out a technical stakeholder engagement exercise with Contracting Authorities in Wales in October 2020 which gave stakeholders an opportunity to feed in their expertise.

The engagement was 'light touch' due to the non-legislative classification of the framework and COVID-19 restrictions and consisted of an online engagement exercise, with written feedback requested in return.

Feedback received by Welsh Government officials fed into inter-governmental and departmental discussions to guide the wider common frameworks development.

**20. How will the Senedd and stakeholders be updated on the continuing operation of the framework and contribute to the review and amendment process?**

**21. If changes are made in future, how will the Senedd be notified? What scrutiny procedure will apply to the changes?**

There is a commitment to consistent reporting on Frameworks post-finalisation however the details are currently being developed. Review points are scheduled into each Framework. It is expected that these will give the Senedd additional opportunities to engage in the development and evolution of Frameworks.

The Interministerial Standing Committee will monitor the progress of the Frameworks programme in order to fulfil the role given to it by the joint Review of Intergovernmental Relations to 'Provide oversight of the Common Frameworks programme and its governance arrangements'.

The expectation is that reports on Frameworks will be public documents once they are signed off by portfolio Ministers and will be made available to the relevant committees in the four nations as well as relevant stakeholders.

In addition there is a commitment to inform the Senedd:

- of disputes raised through the Frameworks
- when disputes are escalated to Ministers
- and stakeholders of upcoming review points and consider recommendations by the Senedd and stakeholders as part of the same review process
- of any new legislation affecting the Frameworks
- of any applications for an exclusion under UKIMA.

Yours sincerely,



**Rebecca Evans AS/MS**

Y Gweinidog Cyllid a Llywodraeth Leol  
Minister for Finance and Local Government