



Mark Isherwood MS
Chair
Public Accounts and Public Administrations Committee
Welsh Parliament

SeneddPAPA@senedd.wales

25 February 2022

Dear Mark,

Thank you for your letter of 10 February in relation to the Late Payment Provisional Common Framework.

I set out my response to your questions below:

General

1. Why is a framework needed for late payment law and how will it link up with the framework on public procurement?

A framework for late payments will avoid business operating across multiple administrations in the UK being directly affected by divergent regulations between the administrations. For example, if each of the four administrations chose to implement different regulatory timescales for repayment or introduce different statutory interest rates on late payments, there may not be clear cut criteria to ascertain which regulations apply to businesses operating across the different regions of the UK. It could also result in some businesses with a competitive advantage or disadvantage. A common UK approach has been maintained to date with recognition of the importance of maintaining a level playing field across the existing body of late payment legislation, providing consistency and a uniform approach to the benefit of businesses across the UK. The Late Payments Framework will ensure this approach is maintained.

There is no link between this framework and the procurement framework. Procurement is the act of obtaining goods and services whereas late payments is to ensure payments are made in a timely manner or otherwise a business is able to claim interest and debt recovery costs.

Making decisions

2. The framework states that governments will 'seek to maintain a level playing field across the existing body of late payment legislation'. Do you consider that the framework gives

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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.

the Welsh Government and the Senedd appropriate scope to make law and policy for Wales?

The Framework does not in any way constrain the powers of the Senedd.

3. Will the framework have any impact on any existing or planned Welsh legislation or policy?

At this stage, there are no specific areas of divergence in contemplation. However it is important to retain the ability to diverge from other parts of the UK if deemed appropriate in the future, even if the circumstances of that divergence are as yet unforeseen.

4. The UK Government has set out plans for changes to procurement law relating to late payment in response to its Transforming Public Procurement consultation. Will these changes be considered through this framework?

The Minister for Finance and Local Government announced, in August 2021, that provision for Contracting Authorities in Wales is to be made within the UK Government's Public Procurement Bill. To ensure the legislation fully reflects the Welsh Ministers' policy priorities for public procurement, Welsh officials are working closely with the UK's Procurement Reform Bill team to develop the Bill.

The Procurement Common Framework's Working Group meetings are used as the forum to update a wider community of policy officials from the four Administrations and to discuss any issues which arise with the policy areas it covers; such issues may include late payment.

5. Does the Welsh Government intend these changes to be applied to devolved procurement in Wales?

The procurement framework falls outside the scope of this Framework.

6. The UK Government has announced plans to enable retained EU law to be amended and repealed more quickly. Would any such changes to retained EU law on late payment be considered through the framework, and (if so) how?

It is too early to say without more detail on the process the UK Government intend to use.

International obligations

7. What international obligations are relevant to this framework and how does the framework take international obligations into account?

International obligations are not considered under this Framework.

8. If the framework needs to be amended in future to reflect a new international obligation, what revision process will be engaged?

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.

The Framework will be reviewed one year after final sign off, and every three years thereafter, to ensure it is working effectively, or if any amendments should be made.

A review point would also be triggered by a planned change to the Framework, such as to reflect a new international obligation. 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.

UK Internal Market Act

9. UK Government analysis suggests that this framework interacts with the UK Internal Market Act. Can you outline what the impact of the Act on the framework would be and does the Welsh Government intend to seek an exclusion from the Act in this framework area?

A process for considering and agreeing such exclusions in areas of policy divergence within a Common Framework has been developed by the UK Government and the Devolved Governments and has been shared with the Senedd. The Common Frameworks programme is largely about the management of divergence across the nations of the UK and the exclusions process is central to this.

Governance and dispute resolution

10. Do you consider the dispute resolution mechanism to be robust enough for its intended purpose?

Yes, I believe the mechanisms are robust and proportionate. These have been jointly developed and agreed by the four UK nations.

11. The framework provides for actions under dispute to be paused while the dispute resolution process is ongoing. Do you consider that this poses any risk for the exercise of devolved competence?

The pausing of any actions under dispute is an agreed part of the frameworks dispute handling system and we see this as a sensible approach to preserve the integrity of the frameworks system.

Transparency and accountability

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

A summary of the Framework was provided to a variety of stakeholders across all four nations.

Review points are scheduled into each Framework. It is expected that these will give both stakeholders additional opportunities to engage in the development and evolution of Frameworks. Officials will monitor the operation of the specific frameworks relevant to their policy areas and seek input from stakeholders as appropriate.

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

There is a commitment to consistent reporting on Frameworks post-finalisation. The details are currently being worked through at an official level. 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.

14. The framework states that it 'will be reviewed annually', then that it will be reviewed 'one year after final sign off, and every three years thereafter' (page 12). Which of these is correct?

The framework will be reviewed one year after sign off and every three years thereafter.

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

As question 13.

Yours sincerely,



Vaughan Gething AS/MS

Gweinidog yr Economi

Minister for Economy