

Huw Irranca–Davies MS
Chair of the Legislation, Justice and Constitution Committee

29 January 2024

**Procedures for the scrutiny of legislation relating to the United Kingdom Internal
Market Act 2020 and UK–wide common policy frameworks**

Dear Huw,

Thank you for your recent response regarding the Business Committee’s consideration of procedures for the scrutiny of legislation relating to the United Kingdom Internal Market Act 2020 and UK–wide common policy frameworks.

Business Committee considered your letter at our meeting on 23 January, alongside responses from the Health and Social Care Committee and the Chairs’ Forum. We also considered correspondence from the Counsel General and Minister for the Constitution that sets out the Welsh Government position on these matters.

In light of the responses received, we agreed to share them with those with a close interest in these matters in order to provide an opportunity to provide any further reflections on the matter, before we return to the issue of whether to propose amendments to Standing Orders.

I enclose the correspondence received for your consideration. We intend to publish the correspondence relating to this matter once we have concluded our discussions but have not done so at this stage.

I would be grateful to receive your views by 9 February. Thank you for your attention to this important matter.

Kind regards,

A handwritten signature in blue ink, appearing to read 'Elin Jones', is centered on the page.

The Rt Hon. Elin Jones MS

Y Llywydd and Chair of the Business Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



The Rt Hon. Elin Jones MS
Y Llywydd and Chair, Business Committee

12 December 2023

Dear Elin

Procedures for the scrutiny of legislation relating to the United Kingdom Internal Market Act 2020 and UK-wide common policy frameworks

Thank you for your letter of 22 November 2023, and for the opportunity to comment on the Business Committee's proposals for new Standing Orders that seek to address committee recommendations concerning the potential impact of UKIMA on legislation considered by the Senedd. The Committee discussed your letter and the annexed Business Committee paper at its meeting on 6 December.

Whilst the Committee does not wish to comment specifically on the drafting of the standing orders, based on our recent experience with the Health Service Procurement (Wales) Bill, Members were supportive of the proposals to amend standing orders to ensure that explanatory documents accompanying Welsh Government legislation include an assessment of the potential impact of UKIMA on that legislation.

They were similarly supportive of the proposals to ensure that the Welsh Ministers give notification of the effect of legislation in other parts of the UK which might impact the sale of goods and services in Wales as a result of UKIMA.

I hope this is a helpful contribution to the Business Committee's work in this area.

Yours sincerely

A handwritten signature in black ink that reads "Russell George". The signature is written in a cursive style with a long horizontal stroke underneath.

Russell George MS
Chair, Health and Social Care Committee

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

Business Committee

Via e-mail

8 January 2024

Procedures for the scrutiny of legislation relating to the United Kingdom Internal Market Act 2020 and UK-wide common policy frameworks

Dear Business Committee

The Chairs' Forum considered your letter and proposals for procedural changes that may be required for the scrutiny of legislation relating to the United Kingdom Internal Market Act 2020 (UKIMA) and UK-wide common policy frameworks at its meeting of 11 December.

Chairs were broadly content with the proposals for new Standing Orders to address recommendations made by Senedd committees concerning the potential impact of UKIMA and common policy frameworks on legislation considered by the Senedd and other parliaments within the United Kingdom.

However, Chairs were keen to leave detailed consideration of the proposals to the Health and Social Care Committee and the Legislation, Justice and Constitution Committee who had raised this issue originally with the Business Committee.

Yours sincerely,



Elin Jones MS/AS

Chair

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



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Mick Antoniw AS/MS

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution



Llywodraeth Cymru
Welsh Government

Chair of the Business Committee

Welsh Parliament

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18 January 2024

I am writing further to the Business Committee meeting on 14 November and its exploration of procedural considerations arising from the practical effect of the United Kingdom Internal Market Act 2020 (UKIMA) and UK-wide Common Frameworks on Senedd legislation. My officials also met with Senedd officials in December to understand the issues in more detail. I am writing to address some of the key points raised at Business Committee and to set out the Welsh Government's position.

The paper for the Business Committee considers proposals for amendments to Standing Orders (SOs) to ensure: documentation accompanying Welsh Government Bills and Subordinate Legislation includes an assessment of the impact of the UKIMA; notification of the effect of legislation in other parts of the UK which, by virtue of UKIMA, might impact the sale of goods and services in Wales; and notification of the impact on Senedd legislation of UK-wide Common Frameworks.

Proposed amendments to include an assessment of the impact of UKIMA

I understand from officials the proposals to amend Standing Orders arise from specific concerns from the Senedd about availability of information on how the practical effect of aspects of UKIMA, in particular the market access principles of mutual recognition and non-discrimination, may influence Welsh Government policy and legislation. I also note the Senedd's view that this does not relate to the Welsh Government's position that the Senedd's ability to legislate in devolved areas is not impacted by the provisions of the UKIMA. Instead, I understand the proposals relate solely to the potential impacts from some of the principles and requirements set out

in the UKIMA. To clarify, the Welsh Government's position remains that where the Senedd legislates in non reserved areas, the principles and requirements of the UKIMA will not apply and therefore the potential impacts referred to above will not apply.

The Senedd has noted the UKIMA could conceivably have an impact on the effectiveness of legislation made in Wales and has identified specific examples from the Welsh Government which have been designed to avoid these impacts¹. Information has been provided on these issues during the scrutiny process, and there is an expectation such issues should be included in the Explanatory Memorandum where appropriate.

The Welsh Government believes it is premature (and unnecessary) to amend Standing Orders for this purpose and suggests officials review guidance to ensure it is clear Explanatory Memorandums should include a discussion of any UKIMA implications where appropriate. We consider this to be a more proportionate approach given relevant considerations but recognise the position should be kept under review as more is understood about the implications of the UKIMA. Relevant considerations include:

- The UKIMA remains a contested and in parts ill-defined piece of legislation that has not yet been tested in court.
- Parts of the UKIMA are open to interpretation, creating significant uncertainty about its potential wider impact on implementation of policy and legislation.
- Very few proposals for Welsh legislation to date have substantively involved the UKIMA to warrant a new process.
- Establishing a requirement as a new SO is likely to have unintended consequences, creating additional work and diverting scarce legislative, policy and legal resources to carry out unnecessary assessments.

The Welsh Government proposes a period of monitoring over the next 12 months in line with the uncertainties and considerations above. During this time Welsh Government officials will review guidance to ensure relevant information on UKIMA is included in Explanatory Memorandums where appropriate.

Notification of the effect of legislation in other parts of the UK

I understand the Senedd does not believe there is currently a suitable Standing Order to enable Welsh Government to notify the Senedd where legislation from other UK jurisdictions would, by virtue of UKIMA, have consequences for Wales and Welsh Government policy. The example given was of the Genetic Technology (Precision Breeding) Bill. The LJCC did not agree with the Welsh Government's analysis that the effect of UKIMA on the Bill was a legislative competence issue for the purposes of Standing Order 29.

The Welsh Government's position is that there are already existing processes to notify the Senedd and we disagreed with the LJCC assessment on the use of Standing Order 29 in relation to the Genetic Technology (Precision Breeding) Bill. However, if the proposed Standing Order is redrafted to ensure it is an optional mechanism and does not create new obligations for government we would not be opposed to it being created.

The role of the Office for the Internal Market

The Business Committee paper referred to the potential role of the Office for the Internal Market (OIM) and the implied access Welsh Government has to the capacity and expertise of analysts in OIM. I would like to clarify the OIM is not a Welsh Government resource and, while we are able to request analysis from OIM, it is at their discretion what they decide to carry out. Furthermore, the remit of the OIM is strictly limited to economic effects of policies, and they do not consider wider matters including public health or environmental protection. The OIM cannot advise the Welsh Government of the impact of the UKIMA on our legislation.

Common Frameworks

With respect to Common Frameworks, I do not believe that a change to Standing Orders is required. The relevant Senedd committees should already be notified of new UK legislation falling under a Common Framework, which they have been, without exception, to date. I wrote to the Legislation, Justice and Constitution Committee on 2 March 2022 and accepted their recommendation on this matter.

I understand that this matter will again be discussed by Business Committee. While the matter is under consideration by the Committee, my officials will consider the practicalities of the above and work with you to find the most appropriate solution.

Yours sincerely

A handwritten signature in blue ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw AS/MS

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution