



02 March 2022

Dear Huw,

Thank you for your letter of 16 February in relation to the Common Frameworks programme. I set out my response to your questions below, accompanied by extracts from your letter, in italics, as required in order to provide context.

- 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?**

Officials continue to work to advance these outstanding Frameworks to the position that they may be published for scrutiny. This remains a challenging deadline, however, particularly for the ETS and Resources and Waste frameworks.

#### **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?**

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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.

I confirm that the Welsh Ministers will abide by these commitments to notify the Senedd and that the relevant Committees will be notified by letter on such occasions. The exact format of the annual reporting mechanism is currently being worked through at an official level.

*'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?**

A [Constitutional Affairs and Intergovernmental Relations](#) webpage exists on the Welsh Government website. The current plan is to add Common Frameworks to this website when the majority have been finalised. Officials are currently working to establish a timescale for adding the current links to the frameworks to the website in the interim. I commit to updating the Committee when this has taken place.

#### ***Making decisions and resolving disputes***

*'We discussed how the four governments will make decisions and resolve disputes through common frameworks. Common frameworks do not generally provide for stakeholders to be routinely involved in intergovernmental decision-making processes.'*

- 4. Could you explain the reasons for this approach? How you will keep stakeholders routinely informed of intergovernmental discussions through common frameworks?**

Stakeholders will continue to be consulted on developments in policy in the usual way. The Welsh Government commits to notifying stakeholders of the upcoming review points of Common Frameworks and of any recommendations by the Senedd.

- 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?**

We regard this as being a sensible position given the benefits of a four government approach in considering and potentially implementing policy in these areas.

- 6. Have any Welsh Government policies or initiatives been delayed because of the common frameworks process?**

I am not aware of any delay and would be surprised if it had occurred as the processes of the Common Frameworks are now an intrinsic part of how policy is developed in the areas where they apply.

#### **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?**

No exclusions have yet been sought by the Welsh Government but all exclusions would have to follow the process as published in December.

### **8. Does the Welsh Government support the Scottish Government's request for an exclusion from the Act for single use plastics legislation?**

Yes, the Welsh Government supports the Scottish Government in the 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?**

Exclusions would be developed through the Common Frameworks process with the party or parties seeking an exclusion providing an evidence base for group members, usually according to the criteria relating to policy development in these areas.

### **10. Would the Welsh Government be likely to seek broad exclusions of whole policy areas, or exclusions of specific items of legislation?**

It is too early on comment on this. The approach taken will be specific to each framework.

### **11. At what point in policy development or the legislative process would the Welsh Government seek an exclusion?**

This will vary from framework to framework.

### **12. Is the Welsh Government content to notify the Senedd and stakeholders when it seeks an exclusion?**

I would expect portfolio Ministers to inform committees, and stakeholders as appropriate, of exclusions in the same way they would of any significant policy development.

### **13. Do you consider that finalised frameworks should make reference to the exclusions process?**

It is not the current intention that the frameworks should reference 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?**

One of the key concerns the Welsh Government has raised in relation to the Subsidy Control Bill is the lack of clarity and detail on the face of the Bill. Many of the provisions are subject to change through the use of secondary legislation and much of the main detail of how the Bill will work in practice will be contained within secondary legislation and guidance.

It is therefore difficult at this stage to have a clear idea of what possible impact the Bill will have 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?**

We are working to establish the impact, if any, of the Professional Qualifications Bill on the Mutual Recognition of Professional Qualifications Common Framework.

### **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?**

In terms of any of new international obligations that arise from the implementation of the Free Trade Agreements being negotiated by the UK Government, Welsh Government officials are not aware of any difficulties arising from the deals signed to date. However, as new negotiations take place over time it is possible that we will need to implement obligations which do not necessarily align with our domestic policy ambitions. Officials are engaging with the UK Government to ensure that our views on negotiations are clear and to try and avoid a situation where a trade deal places an obligation on us which we cannot, or do not wish to, implement.

#### **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?**

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.

#### **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?**

We would expect Common Frameworks policy teams in the Welsh Government to promote Welsh interests in these areas through the frameworks groups. The development of frameworks has increased the scope for interaction between the relevant policy teams of the four governments.

## **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?**

Common Frameworks were not intended to provide enhanced engagement on matters relating to the Trade and Cooperation Agreement, and the governance structures within it. That is not their purpose. However, engagement with the UK Government in relation to the Specialised Committees which are established by the TCA, is generally good. That said, the fact that Common Frameworks are supporting improved intergovernmental relations should help to embed the generally good engagement we have seen on TCA governance matters so far.

Policy teams and Welsh Government representatives work closely together in the preparation for specialised committees and working groups. This will include liaison on suggested agenda items, and input into the positions the UK Government proposes to take on the issues being covered at the meetings. Where policy teams wish to attend the meetings, we work with the UK Government to facilitate this. In some cases, it is expected to be Welsh Government representatives who attend the committees – so, for example, representatives from Welsh Government's fisheries policy team, in line with the Fisheries Framework, should expect to attend the committee on fisheries, where an item concerns implementation in an area of devolved competence. In the case of fisheries, it is largely devolved across the UK.

### **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?**

We would look at individual cases and make a judgement closer to the time, working closely with our partners in England and Scotland.

### **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?**

The frameworks are drafted and agreed on a four-nation basis with sensitivity to the issues affecting Northern Ireland. No framework can be published without clearance from NIE Ministers. In the case of final frameworks, clearance must be obtained from both the NIE First Minister and deputy First Minister.

## **Changes to the status of retained EU law**

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

In the absence of more detail as to what retained EU law remains on the statute book and the detail of what the UK Government is proposing it is difficult to assess the impact on devolved competence. We would anticipate the review of retained EU law being relevant in a number of devolved areas, most notably environment and rural affairs.

However, we are mindful that there is a general restriction within paragraph 5 of schedule 7B of the Government of Wales Act 2006. This prevents a provision of an Act of the Senedd from making modifications to the European Union (Withdrawal) Act 2018, which incorporated EU law as it stood on 31 December 2020 into UK law as retained EU law and sets out its current status.

**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?**

While it is acknowledged that the current status of retained EU law is complicated as are some of the distinctions as set out within the European Union (Withdrawal) Act 2018, in the absence of more detail as to what the UK Government is proposing it is difficult to assess any potential impact of the status review and the approach that we might wish to adopt. However, how the UK Government proposes to treat or categorise retained EU law and the implications for Wales will be of significant interest. We will continue to closely monitor the situation and provide the Senedd with regular updates on any new information.

**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?**

Where there is any proposed change to a piece of retained EU law, and the subject of that retained EU law is covered by a framework, we would expect the common framework process to apply.

**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?**

In areas covered by Common Frameworks and through involvement in negotiations with the EU under the Trade and Cooperation Agreement, Welsh Government officials work closely with their counterparts in the other Governments of the UK and share information, including on relevant developments in EU law and the implications of the Northern Ireland Protocol.

**26. What assessment have you made of the risks of involuntary or ‘passive’ divergence developing between EU law and Welsh law?**

We are still at an early stage of this process of potential divergence and information is being developed along the lines of the previous answer.

**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?**

This will vary from framework to framework.

**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?**

A bespoke approach will be required depending on the context and priorities of each framework area.

**29. Do you think there are any risks that making decisions jointly through common frameworks could impede Welsh Government ambitions to improve upon standards?**

Please see the answer to question five.

Yours sincerely,

A handwritten signature in blue ink, reading "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