

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

13 February 2024

Dear Llywydd

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 29 January 2024 enclosing responses to your original correspondence on proposed changes to Standing Orders to deal with the impact of the *United Kingdom Internal Market Act 2020* (the 2020 Act) and UK-wide common policy frameworks.

We note the correspondence from the Health and Social Care Committee, the Chairs' Forum, and the Counsel General and Minister for Constitution, and welcome the opportunity to provide our further observations.

In particular we would like to comment on the Counsel General's views about the impact of the 2020 Act. In his letter the Counsel General said:

"I also note the ... 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. 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." [our emphasis]



We accept that Parts 1 to 3 of the 2020 Act cannot limit the Senedd's competence to legislate on matters that are devolved and within its legislative competence i.e. the Senedd's *ability* to legislate. However, the concern we have expressed to the Welsh Government on a number of occasions is that once law is made by the Senedd, the 2020 Act can impact on how effective that law is because of the market access principles and requirements it introduces across the UK.

We do not therefore share the Welsh Government's interpretation of the 2020 Act (highlighted in bold in the quote above). In our view, the Counsel General's suggestions later in his letter would appear to align more closely with the Committee's interpretation; proposing to review guidance to ensure Welsh Government Explanatory Memoranda "include a discussion of any UKIMA implications where appropriate" and undertaking a 12-month monitoring programme would appear to concede that there are potential impacts arising from the 2020 Act, once law is made.

However, we are not persuaded by the Welsh Government's way forward of relying on changing guidance for Welsh Government officials only and undertaking its own 12-month monitoring programme. For example, points we would make include:

- if very few legislative proposals to date could be considered to engage the 2020 Act, we are unclear how additional work would be created and scarce legislative, policy and legal resources diverted, particularly when such matters would be expected to occur anyway as part of the policy development process for any piece of legislation;
- if there are concerns around the level of work and resources involved, we are unclear how and on what basis the monitoring programme will be undertaken;
- if very few legislative proposals to date could be considered to engage the 2020 Act, there is a possibility that the next 12 months may not be a useful guide if the Welsh Government's forthcoming legislative programme does not cover matters that would be expected to engage the 2020 Act because of the subject matter;
- it is not clear to us what steps the Welsh Government would envisage to happen after the 12-month monitoring period, how an assessment of that period would be made and who would be involved in undertaking that assessment;
- we are not convinced that the new Standing Order proposed would be as onerous on the Welsh Government as the Counsel General suggests.

Given the Counsel General's response, we remain of the view that the proposed inclusion of a new Standing Order 26.6(xiii), namely to "set out the potential impact (if any) of the 2020 Act on the effectiveness of the Bill's provisions, should it be enacted", would be beneficial in assisting committees

in their scrutiny of a Bill introduced by the Welsh Government and ultimately could lead to more effective law.

In the event that a legislative proposal is considered not to engage the 2020 Act, then that could be stated in the Explanatory Memorandum.

If a legislative proposal were to engage the 2020 Act, any information provided would assist in the scrutiny of the Bill and a committee could, for example, ask for further explanation or information on these matters, as it can do currently in relation to other information included in an Explanatory Memorandum as a consequence of the requirements of Standing Order 26.6.

I am copying this letter to the Health and Social Care Committee, the Chairs' Forum and the Counsel General.

Yours sincerely,

Huw Irranca-Davies

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Chair