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**Llywodraeth Cymru
Welsh Government**

The Rt Hon Michael Gove MP
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The Rt Hon Alok Sharma MP
Secretary of State for Business, Energy and Industrial Strategy
Secretary.State@beis.gov.uk

7 July 2020

Dear Michael, Alok,

I am writing to set out the Welsh Government's position on the UK Internal Market.

As you are aware, Welsh Government and Northern Ireland Executive officials have worked closely together in good faith, over a number of years, with their UK Government counterparts on a joint project, informed by a range of academic work, to examine the implications of EU Exit for the UK Internal Market. This work was designed to complement the joint, and in our view extremely high priority, efforts between all four governments to agree the Common Frameworks programme. One of the aims of the Frameworks programme is to provide certainty for business that differences in terms of the regulatory environment do not result in detrimental distortions to the market, while at the same time protecting each government's right to regulate in accordance with the devolution settlements. The Frameworks programme is in turn underpinned by the Intergovernmental Agreement between the UK Government and the Welsh Government.

Unfortunately, while work continues on the Common Frameworks programme, UK Government officials appear to have disengaged from the joint work on the UK Internal Market and promises to share a draft of a Green Paper with us as long ago as March have not been fulfilled. I would therefore like to set out our emerging thinking on a potential approach to this issue. This would be based on:

- A strong and single minded focus on completing the Common Frameworks programme to ensure that operable Frameworks are in place (albeit not fully scrutinised by legislatures) by December of this year. This would include the areas where all four Governments have agreed that such Frameworks are needed to give certainty to businesses and other stakeholders, and that differences in regulation will not cause difficulties in areas where divergence was constrained, but permitted, by European legislation (list at Annex A);

- Recognition – explicit in the programme of work around Frameworks – that the collaborative development might need to be underpinned by legislation relating to these specific policy areas. Such legislation might – like the EU regulatory system – set minimum, maximum or unitary standards across the UK on the basis of agreement between the four Governments. In some cases, e.g. the Fisheries Bill before Parliament, this is already happening;
- Continuing to monitor and consider on an inter-governmental basis any other areas of retained EU law which need to be amended or developed after the end of transition and where excessive divergence might result in uncertainty or disruption for business and other stakeholders: where this is the case, new Frameworks should be considered as the default;
- For all other areas of policy not included within the Frameworks programme, all four Governments should make a commitment to use the regulatory impact assessment model to identify at an early stage of policy development any potential distortive impacts on the UK Internal Market which might result from regulatory reform which is being considered by that administration (or which might flow from potential new trade agreements);
- Such assessments should be shared at an early stage with the other Governments and ideally also put in the public domain, in order that conclusions could be challenged where they were not shared;
- Renewed efforts via the Intergovernmental Relations Review to agree reformed machinery and dispute avoidance and resolution mechanisms by the Autumn (without prejudice to later consideration of further improvements of the kind we outlined in *'Reforming our Union: Shared Governance in the UK'*);
- Ministerial quadrilaterals under the reformed inter-governmental machinery would both monitor the implementation of Common Frameworks and review and update them where necessary, as well as considering the regulatory impact assessments with regard to the Internal Market;
- Any irreconcilable disagreements between administrations on the likely impact of measures on the Internal Market could be dealt with through the reformed dispute avoidance and resolution mechanisms, though ultimately it would be the responsibility of the Government and legislature in question to decide whether or not to proceed in the light of the assessment of the impact;
- An inter-governmental regulatory policy group should be established to support these processes and also to be a first point of contact for identifying and responding to any concerns from business or other stakeholders about the distortive effects of measures after they have been put in place. This group might also consider the case for an expert advisor network if this is found to be needed.

My understanding is that you intend to publish a Green Paper shortly, and that the Green Paper is likely to reflect a growing view within the UK Government that embedding an enhanced mutual recognition principle in primary legislation – a legal right for any good or service produced in one part of the UK to the standards which apply there to be put on the market across all parts of the Union – is the only way of achieving these aims. Regrettably

my officials have not been able to confirm this formally – let alone discuss the joint work – because your officials no longer appear authorised to discuss this with us. As it was agreed that this would be a joint piece of work, it is wholly unacceptable that we now seem to be faced with a solely UK Government generated proposal coming forward, and this is a missed opportunity to show we can work collaboratively.

I have serious concerns that the mutual recognition model would undermine the Welsh and wider UK economy, our work on Common Frameworks, inter-governmental relations and the devolution settlements.

We acknowledge that mutual recognition would not directly create a legal constraint on governments and legislatures in one part of the UK from setting appropriate and distinctive standards for goods and services produced within their territory, as they do now. It may not affect the strong position of certain Welsh products (such as mineral water) for which differential quality can be a market advantage. However we are very concerned that a mutual recognition regime without underpinning standards agreed by all the governments of the UK would effectively result in the actions of one UK nation, by adopting lower standards, leading to another having to choose between its legitimate policy objectives and the competitiveness of businesses producing in its territory, at least for goods and services whose market does not support differential quality.

While the EU – and therefore the UK – currently operates within a model of mutual recognition, EU law sets out minimum (or in some cases, maximum, and in others, unitary) standards which bring clarity and certainty for business and trade.

The learning we take from this is that divergence is not inherently a problem for businesses. Agreed standards (minimum, maximum, or unitary) provide a clear and fair basis on which to make choices and to trade, whilst providing the opportunity for innovation.

The capacity for policy innovation in one part of the UK within the EU regulatory system has, we would argue, been an important benefit of devolution for the whole of the UK. Charging for single use plastic bags, minimum unit alcohol pricing, an opt-out system for organ donation are all innovative policy ideas which have been tested out in one nation and subsequently – having been proved to be effective – have been replicated in other parts of the UK.

We need to learn from the experience of the EU Single Market – where, of course, the approach to legislating for standards and mutual recognition is based on a process which treats Member States as equals.

The EU Single Market ecosystem is highly interconnected, and we would argue that a replacement approach should similarly recognise the differing objectives and challenges in different policy and regulatory areas, rather than adopt an all-encompassing legislative instrument which could adversely impact areas outside the Frameworks programme, where divergence which has never previously been challenged (e.g. differential approaches to tuition fees in Higher Education).

A headlong dash for primary legislation to put in place a general principle of mutual recognition would be seen as an attack on devolved legislative competence over the effective regulation of areas such as environmental standards. Even if the legislation were to contain a system of exclusions and exemptions, any constraints on the ability of devolved administrations to secure such an exclusion or exemption would undermine devolved competence. Such a Bill would in practice be highly unlikely to receive legislative consent from the Senedd.

The Welsh Government has no interest – because it is not in Wales' interests – in disrupting the operation of the UK Internal Market. But we have seen no evidence of any specific risks

which require an immediate or heavy-handed legislative response or one which does not respect devolved competence. Instead, full consideration must be given to an alternative collaborative and consensus-based approach to setting standards, which recognises the needs of different businesses across the UK, including those which operate across more than one part of the UK. Our alternative approach offers many advantages and deserves a full airing within the Green Paper.

I urge you, in the strongest possible terms, to give serious consideration to these proposals for a proportionate and evidence-based Internal Market mechanism and instruct your officials to re-engage with us in order to develop it further. I firmly believe that this will deliver an appropriate solution for businesses across the UK while respecting our constitutional arrangements.

I am copying this letter to Scottish Government and Northern Ireland Executive Ministers and to the Secretary of State for Wales.

Yours sincerely,



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Cc.

Arlene Foster MLA, First Minister of Northern Ireland

Michelle O'Neill MLA, deputy First Minister of Northern Ireland

Diane Dodds MLA, Economy Minister

Mike Russell MSP, Cabinet Secretary for the Constitution, Europe and External Affairs

The Rt Hon Simon Hart MP, Secretary of State for Wales