Written evidence submitted by Jeremy Miles MS, Counsel General and Minister for European Transition, Welsh Government (SPF0007)

I am writing to welcome this inquiry into the UK Shared Prosperity Fund and the opportunity to present the Welsh Government's response, which is set out in the attached paper.

Please let me know if I can be of further assistance.

Annex: Written evidence submitted by Jeremy Miles MS, Counsel General and Minister for European Transition, Welsh Government

Thank you for the opportunity to respond to your call for evidence with regards to the implications of the financial assistance powers in the Internal Market Act and the announcements made by the UK Government in the 2020 Spending Review for the delivery of the Shared Prosperity Fund in Scotland.

The financial and constitutional implications of the Internal Market Act for Scotland are similar to those of Wales.

My conclusion is that it is clear that the purpose of the Internal Market Act is not the strengthening of the union or the provision of additional funding to Wales (or indeed Scotland), but a centralised power-grab with the goal of bypassing the devolved institutions and thus undermining the devolution settlement.

Introduction

For twenty years, the Welsh Government, in line with its devolved responsibilities for regional economic development, has delivered European Structural and Investment (ESI) funding programmes in partnership to create significant benefits for communities, individuals and businesses across Wales.

ESI funding in Wales has been invested effectively in line with the parameters and guidance set principally by the European Commission which has nevertheless given the Welsh Government a high degree of flexibility as to prioritisation within the overall objectives of EU regional policy. The investment has helped Wales to reduce some of the key structural barriers to inclusive growth and partially mitigated the impacts of austerity in Wales. Funding has provided jobs and skills training, supported research and innovation, and connected parts of Wales through opportunities for businesses as contractors to public sector-led investment. It has also provided extensive support to business, including advice, guidance and funding, namely through Business Wales and the Development Bank of Wales.

Since 2007, this investment has led to the creation of over 53,300 new jobs and 14,560 new businesses, funding or support for 28,800 businesses, 94,800 people helped into work and the achievement of over 320,400 new qualifications. This has meant that West Wales and the Valleys has not diverged further from the rest of the UK. Meanwhile, according to projections from the Conference of Peripheral Maritime Regions (CPMR), if the UK had remained within the EU, the number of regions classified as 'Less Developed Regions' would have been expanded to include South Yorkshire, Tees Valley, and Durham and Lincolnshire.

Outside of the EU, sustained investment is vital to build on the progress made and continue to reduce the inequalities within the UK that persist. This is why we have repeatedly made the case to the UK Government for 'not a penny less, not a power lost' as a result of leaving the EU – asking only that promises made to the people of Wales during the 2016 referendum to be honoured and ensuring that devolution, voted for twice by the people of Wales, is respected. Our case for doing so was set out in our written evidence to the Welsh Affairs Committee, available here. The primary driver of inequality across the nations and regions of the UK is, rather than differences in European regional investment programmes, the failure of the UK Government to fairly and effectively allocate funding on reserved matters and to pursue a macro-economic policy which is designed to minimise inequalities.

Future of Devolution

Significant reform is required in order for the union of the United Kingdom to properly reflect the needs of people across the UK. While we and the Scottish Government have different constitutional objectives, we share the view that the current settlement is fundamentally broken.

The constitutional arrangements for a Union of four nations must respect the identity and aspirations of each while preserving the collective interest of the whole. The governance of such a Union must reflect the reality that it is in practice a voluntary association of four parts working together for mutual benefit.

This is at odds with the unilateral approach adopted by the UK Government in forcing through the Internal Market Act, passed despite the Senedd and Scottish Parliament's refusal of consent. Regulation-making powers in the Act open the Government of Wales Act 2006 (GoWA) to very wide substantive future amendment, and the powers of the Senedd and Welsh Government to serious diminution, at the hands of the UK Government.

The provisions in the Act are so wide and deep in operation that their use in Wales would constrain the legislative space for the Senedd in areas which are devolved.

We therefore formally notified (16 December) the UK Government of potential grounds to challenge the Act and published a Written Statement to this effect. On the 19th January I issued formal proceedings in the Administrative Court seeking permission for a judicial review, included in the attached PDF and available here:

In that review, I am arguing that the Act impermissibly, impliedly repeals parts of the Government of Wales Act 2006 in a way that diminishes the Senedd's legislative competence and that the Act confers power on the UK Government, by way of wide Henry VIII powers, which could be used by UK Ministers to substantively amend the Government of Wales Act in a way that cuts down the devolution settlement.

I have proposed a timetable to the Court which would result in this case being heard in the final week of March 2021. I would be happy to write to this committee to provide regular updates of progress made.

UK Government Failure to Fulfil EU Funding Commitments

The UK Government's General Election manifesto in 2019 saw commitments to replace EU funding in full for farming, fisheries, and structural funds in every year of the Parliament.

Promises of replacing the 'overly bureaucratic' EU funds, and matching funds in each nation, have instead been replaced with a stripping of devolved competencies, and a settlement far less generous than those received from the EU. By 'netting off' receipts due from the EU in respect of the 2014 – 2020 Programmes from the allocation of new resources, the Treasury has taken a path which is wholly at odds with what would have happened had we remained within the EU and the result of which is that the resources available across the UK will be a fraction of those which would have been available.

In terms of the development of policy, our requests throughout the transition year for clarity and engagement on plans for replacement funding were met with silence. Businesses and communities across Wales were expecting the UK Government to make good on its promises in terms of providing clarity on the way forward, and have been understandably disappointed.

Whilst the Conservative Manifesto had promised a strengthening of Wales' devolution settlement, and spoke of the benefits of four nations working together, the UK Government actions with regard to replacement EU funding have failed to realise or even recognise that. There has been no genuine engagement on the part of UK Government with Wales and the other devolved governments on the future Shared Prosperity Fund which we now understand will be delivered by use of the new powers provided by the UK Internal Market Act.

UK Shared Prosperity Fund as replacement to EU Structural Funds

Since the EU referendum in 2016, we have been working with organisations across Wales to develop a new regional investment policy post-EU funding. This work was based on the repeated public commitment that Wales' EU funds would be replaced in full and leaving the EU would mean no loss of devolved powers.

We have engaged with our partners and stakeholders –organisations across public, private, third and educational sectors – to arrive, working collaboratively, at a Framework for Regional Investment in Wales, published in November 2020. The Framework has also been informed by a public consultation last year and a two-year project with the OECD to build in international best practice. In contrast, the UK Government has been both to deliver on its repeated promises of consultation and engagement, not just with the Welsh Ministers but with the public and with civic society in Wales.

The Spending Review on 25 November 2020 confirmed a commitment of just £220m UK-wide for Shared Prosperity Fund pilot projects during 2021-22, with an ambition to 'ramp up' towards full replacement in future years.

This is a massive cut to the £375m a year Wales would have benefited from within the EU. It will deny us the opportunity to make new commitments this year that would have been possible had we remained in the EU, or had the UK Government kept its word. We are unequivocally worse off.

It has serious implications for our businesses, communities and people across Wales who are already struggling from the impact of the Covid-19 pandemic and undermines the credibility of the UK Government's levelling up agenda.

The UK Government's argument about the scale of the funding made available for 2021-22 is that they are 'netting off' payments which will come from the EU this year in respect of commitments made under the 2014-2020 EU programmes. This intentionally ignores the fact that, had we remained in the EU, we would have had a full year's financial allocation from January 2021 for new programmes in addition to the payments due from the current programmes which are beginning to tail off. For example, we committed just over £1.1bn to organisations during the first two years of the ERDF and ESF programmes 2014-2020. Arguments that new EU programmes do not begin to spend money on investment in the first few months also fail to recognise that, in the continued absence of any certainty or information flowing from the UK Government on future funding, stakeholders and beneficiaries have been unable to make the plans and mobilise the resources and expertise which are a vital part of creating and delivering successful investment projects.

Promises to respect the devolution settlement in Wales have also been broken. The UK Government proposals for the Shared Prosperity Fund rely on the new financial assistance powers in the Internal Market Act, and the pre-action correspondence from the UK Government did nothing to address the concerns we raised with them. That is why the Welsh Government has issued formal proceedings in the Administrative Court seeking permission for a judicial review. We welcome the Scottish Government's earlier statement (17 December) of support for our challenge.

Our consultation on our Framework for Regional Investment demonstrated wide support for governance and control of future Welsh investment by stakeholders in Wales. The position that the Welsh Government should manage funds in line with devolved competences, working with partners across Wales has been supported by the Welsh Local Government Association (WLGA), Universities Wales, the Federation of Small Businesses Wales (FSB), the Confederation of British Industry Wales (CBI), Wales Council for Voluntary Action (WCVA) and think-tanks such as the Joseph Rowntree Foundation. It has also received cross-party support from the Senedd, the Welsh Affairs Select Committee and the All-Party Parliamentary Group on Post-Brexit Funding for Regions, Nations and Local Areas.

The UK Government has promised further details on the Shared Prosperity Fund – a prospectus on the additional funding which will pilot SPF approaches being made available early in the New Year and full details on the UK-wide framework in the Spring. However, the Ministry for Housing, Communities and Local Government has since indicated that a prospectus for the pilot year will be published in March 2021, with no advance engagement with devolved governments, and that a UK-level Framework will then be published in the Summer. No communication has been made to set out how Wales will be involved, alongside other devolved governments, in the Shared Prosperity Fund and, despite repeated requests, there has not been a meeting with UK Government Ministers to discuss future funding.

Replacement Farm Funding

The UK Spending Round announced Wales's settlement of £242 million in replacement funding for the Common Agricultural Policy. This was £137 million less than we had expected to receive In the Welsh Government's draft Budget, £238m from the Spending Review will be allocated to support farmers, but the funding shortfall leaves us little scope to be able to plan new rural development activity and will have significant impacts for Wales' rural communities .

We completely disagree with the UK Government's suggestion that they have met their obligations to provide replacement funding for farmers and rural development through a combination of replacement funding from the Spending Review and Wales' remaining EU funding of £95m, and £42m Pillar Transfer.

By their own admission, the UK Government is relying on Wales' existing EU funding to fulfil their manifesto commitment. We have already committed this funding to key priorities for Welsh farmers and rural communities.

The settlement does not provide full replacement funding and it disproportionately impacts on Wales. Far from 'levelling up', as the UK Government have claimed they are committed to, Wales faces proportionately greater cuts than any other part of the UK – we are more than twice as badly impacted as any other administration, and consequently our rural communities will be significantly disadvantaged.

My colleague, the Minister for Finance and Trefnydd wrote to the Chancellor ahead of the UK Spending Round outlining our priorities for EU Funding, and reiterated specific concerns on the UK Government's for proposals for replacement farm funding in a joint letter with the Minister for Environment, Energy, and Rural Affairs to the Chief Secretary to the Treasury.

Late last year, we took the decision to make a 15% pillar transfer for rural development, on the basis that the UK Government would provide full replacement funding and that the transfer, amounting to £42m, would be available to us in 2021-22 to fund rural development. This amount was unexpectedly and wrongly withheld from our allocation in the Spending Review.

We have asked the UK Government to reconsider their view that the 2020 inter-pillar transfer is to be treated as an EU receipt, and provide a domestic rural development budget alongside the settlement. We have received an indication from Her Majesty's Treasury officials that the Chief Secretary to the Treasury has rejected this request.

Conclusion

If the UK Government were serious about levelling up regions across the UK, they could have done so without undermining the devolution settlement, and the UK Government's primary concern would be to increase the certainty of funding coming to Wales. We have seen no evidence that is their intent. The determination of the UK Government to ignore the legitimate and established role of the Welsh Government and Senedd in respect of economic development in a further centralisation of regional development policy is apparent.

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