

Agenda – External Affairs and Additional Legislation Committee

Meeting Venue:	For further information contact:
Committee Room 4 – Tŷ Hywel	Alun Davidson
Meeting date: 22 January 2018	Committee Clerk
Meeting time: 14.00	0300 200 6565
	SeneddEAAL@assembly.wales

- 1 Introductions, Apologies, Substitutions and Declarations of Interest**
(14.00)
- 2 Paper(s) to note**
(14.00–14.05)
 - 2.1 Paper to note 1 – Legislative Consent Memorandum: Trade Bill**
(Pages 1 – 5)
 - 2.2 Paper to note 2 – Letter from Secretary of State for Wales to the Llywydd regarding the European Union (Withdrawal) Bill**
(Pages 6 – 10)
- 3 Motion under Standing Order 17.42(vi) to resolve to exclude the public from the remainder of the meeting**
(14.05)
- 4 EU Commission Work Programme 2018**
(14.05–15.05)
David Hughes, Head of the European Commission Office in Wales
- 5 Monitoring the EU Negotiations**
(15:05–15:35) (Pages 11 – 33)



6 Resilience and preparedness: the Welsh Government's administrative and financial response to Brexit – consideration of draft report

(15.35–15.55)

(Pages 34 – 60)

LEGISLATIVE CONSENT MEMORANDUM

TRADE BILL

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the National Assembly.
2. The Trade Bill (the “Bill”) was introduced in the House of Commons on 7 November 2017. The Bill can be found at:
[Bill documents — Trade Bill 2017-19 — UK Parliament](#)

Policy Objectives

3. The UK Government’s stated policy objectives are to provide continuity for businesses, workers and consumers across the UK and establish the UK as an independent global trading nation. To support this the Bill makes provision about the implementation of international trade agreements; establishing a Trade Remedies Authority and conferring functions on it; and makes provision about the collection and disclosure of information relating to trade.

Summary of the Bill

4. The Bill is sponsored by the Department for International Trade.
5. The Bill has four main functions:
 - It confers regulation making powers on a Minister of the Crown and devolved authorities to implement the Agreement on Government Procurement in the event that the UK is an independent member of that Agreement after EU-exit;
 - It confers regulation making powers on a Minister of the Crown and devolved authorities to implement certain kinds of existing EU/third country trade agreements, such as the existing Free Trade Agreements signed by the EU on behalf of the UK;
 - To establish a Trade Remedies Authority to deliver the new UK trade remedies framework;
 - To establish a data sharing gateway between Her Majesty’s Revenue and Customs and other public and private bodies.

The provisions in the Bill of particular relevance to Wales are:

- Clause 1 – (implementation of the Agreement on Government Procurement);
- Clause 2 – (implementation of international trade agreements);
- Parts 2 and 3 – (establishing the Trade Remedies Authority; and Collection and sharing of trade information). We do not believe that these parts are making provision for any purpose within, or which modifies the legislative competence of the Assembly. However the establishment of a Trade Remedies Authority could have an impact on devolved areas such as agriculture and fisheries.

Provisions in the Bill for which consent is required

6. We consider that Part 1 of the Bill and its associated Schedules require consent on the basis that they are making provision for a purpose that is within the Assembly's legislative competence.
7. **Part 1, Clause 1** – this provision confers powers on the Welsh Ministers to implement the Agreement on Government Procurement (GPA). This is a plurilateral (non-mandatory) agreement within the World Trade Organisation framework which opens up government procurement markets. The UK is not a party to the GPA in its own right but is bound by and benefits from the GPA by virtue of its membership of the EU. On exit from the EU, the UK will no longer be bound by or benefit from the GPA. The UK's aim is to negotiate its way back into the GPA as a party in its own right and this means that we may need to make regulations in order to implement the GPA in relation to Wales. The powers conferred by clause 1 are concurrent, in so far as they are exercisable in relation to Wales. This means that both a Minister of the Crown and the Welsh Ministers are able to exercise those powers in relation to subjects within the Assembly's legislative competence. Therefore we consider that consent is required for this provision.
8. **Part 1, Clause 2** – this confers powers on the Welsh Ministers to implement international trade agreements with third countries corresponding to certain kinds of existing EU/third country agreements. As in the case of clause 1, the powers can also be exercised by a Minister of the Crown in relation to Wales. The international trade agreements potentially covered by this provision will encompass a wide range of policy areas falling within the Assembly's legislative competence, to include agriculture and fisheries. We therefore believe that consent is required for this provision.
9. **Part 1, Clause 3 and Schedules 1, 2 and -3** – Clause 3 provides for different types of provision that could be made in regulations made under clauses 1 and 2. Clause 3 also gives effect to Schedules 1-3. Schedule 1 places restrictions on the exercise of the Welsh Ministers powers. Schedule 2 makes provision for the procedure which is to apply to regulations made under clauses 1 and 2. Schedule 3 contains exceptions to restrictions in the devolution settlement.

10. As these provisions define how the regulation making powers conferred by clauses 1 and 2 can be exercised by the Welsh Ministers within its devolved competence, these provisions also relate to subjects within the Assembly's competence and consent is therefore required.
11. **Part 1, Clause 4** – this provision outlines how certain terms within Part 1 of the Bill should be interpreted. As this provision needs to be considered alongside clauses 1, 2 and 3, we consider that consent is required for this provision.
12. It is the Welsh Government's view that consent is required for these provisions because they fall within the legislative competence of the National Assembly for Wales in so far as they relate to a range of subjects in Part 1 of Schedule 7 to the Government of Wales Act 2006. These subjects include (but are not limited to)-

Agriculture, horticulture, forestry, fisheries and fishing, animal health and welfare, plant health, plant varieties and seeds, rural development (subject heading 1); promotion of business (subject heading 4); environmental protection, including pollution, nuisances and hazardous substances (subject heading 6); food and food products, food safety (including packaging and other materials which come into contact with food), protection of interests of consumers in relation to food (subject heading 8); promotion of health, prevention, treatment and alleviation of disease, illness, injury, disability and mental disorder (subject heading 9).

Powers to create subordinate legislation

13. Schedule 2 provides for scrutiny by the UK Parliament and the devolved legislatures of regulations made under clauses 1 or 2. Regulations made by a Minister of the Crown or the Welsh Ministers acting either jointly or alone are subject to the negative procedure.

Restrictions on powers for Welsh Ministers

14. So far as exercisable in relation to Wales, the powers are concurrent, i.e. both Welsh Ministers and a Minister of the Crown can make regulations in relation to Wales. There are no requirements for consultation or consent when the Minister of the Crown is making changes to devolved law. As we have already set out in response to the European Union (Withdrawal Bill) it is vital any powers given to UK Government Ministers to make secondary legislation in devolved areas must only be used with the prior consent of Welsh Ministers. The Trade White paper suggested such consent from Devolved Governments would be sought and we believe this should be included on the face of the Bill. Further, as currently drafted, there are a number of restrictions placed on devolved Ministers' use of the powers provided for in the Bill which are not placed on UK Ministers. We believe, as a matter of principle, that devolved Ministers should have the same powers in respect of matters falling within devolved competence as UK Ministers are being given.

15. **Schedule 1** contains restrictions on how devolved authorities can use the powers which largely mirror the kinds of restrictions currently imposed on Welsh Ministers' powers under the European Union (Withdrawal) Bill, e.g. the powers cannot be used-
- (a) to make provision that would be outside the Assembly's competence
 - (b) to modify that part of the EU Acquis which has automatic effect in the UK via section 2(1) of the European Communities Act 1972 and which will be incorporated into domestic law, by the European Union (Withdrawal) Bill.
 - (c) to make provision that is inconsistent with any modifications to that body of law, which are made by the European Union (Withdrawal) Bill or under that Bill or this Bill
 - (d) to do any of the following without Minister of the Crown consent:
 - to bring regulations into force before exit day
 - to make provision about, or inconsistently with, quota arrangements (which concerns the division of responsibility within the UK for compliance with international obligations).

Reasons for making these provisions for Wales in the Trade Bill

16. The Welsh Government agrees that legislation is necessary to provide clarity and certainty for businesses and consumers in relation to trade as we leave the EU. We accept there may be instances when it makes sense for the UK Parliament to legislate on devolved areas, but this should only be with the consent of the Devolved Governments and this should be made clear on the face of the Bill. Further, there should be parity between the regulation making powers given to Ministers of the Crown and, with respect to devolved areas, Welsh Ministers. The additional restrictions placed on the Welsh Ministers in this regard are not appropriate. Whether or not legislative consent should be given for this Bill will need to be considered in the context of the response to amendments put down to address these issues

Financial implications

17. While there are no direct financial implications for the Welsh Government or the Assembly arising from the powers under the Bill, there will be significant financial implications for Wales from our future trade relationships both in its overall economic effect and in areas of funding currently deriving from the EU, as set out in *Securing Wales' Future*.

Conclusion

18. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as the Bill covers both devolved and non-devolved matters. In terms of coherence, it is considered that legislating via a UK wide Bill is the most effective and proportionate legislative vehicle for creating an independent trade policy for the UK once it has exited from

the EU. Devolved areas may be heavily impacted by future trade agreements therefore it is important Welsh interests are adequately reflected in the Trade Bill.

Ken Skates AM
Cabinet Secretary for Economy and Transport
December 2017

Agenda Item 2.2



Rt Hon Alun Cairns MP
Secretary of State for Wales
Ysgrifennydd Gwladol Cymru

T: 020 7270 0575
E: Correspondence@walesoffice.gsi.gov.uk

Elin Jones AM
Presiding Officer
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

16 January 2018

EUROPEAN UNION (WITHDRAWAL) BILL

Ahead of Commons Report stage for the European Union (Withdrawal) Bill today and tomorrow, I am writing to provide you with an update on amendments made to the Bill at Committee and to highlight amendments that the Government has tabled for Report stage consideration.

You will be aware of our continuing commitment to improve clause 11 of the Bill; whilst it has not been possible to bring forward an amendment at Commons Report, we have reaffirmed our commitment to amend this provision in the House of Lords and discussions continue between the UK Government and the devolved administrations to enable us to do so.

Committee stage amendments

As I noted in my letter of 10 December, amendments at Committee stage modified the scrutiny procedures for SIs made using powers in the Bill. The first of these amendments concerned the explanatory memoranda produced to accompany regulations made using powers under the Bill. It places requirements on UK Government Ministers to include information in those memoranda.

The second amendment modified Schedule 7 to require Ministers of the Crown to lay Statutory Instruments (which they are proposing to make under the negative procedure using the three principal powers in the Bill) before the Commons for consideration by a committee. You will also wish to note that the Government has tabled consequential amendments relating to these matters ahead of Report stage of the Bill.

These amendments do not place requirements on the Welsh Ministers and do not apply to the Assembly. Nonetheless I have asked my officials to discuss these provisions with yours to ascertain the Welsh Government's and the Assembly Commission's views on these and I understand that these conversations are

progressing well. I am interested in your views on whether these provisions should apply to Assembly scrutiny of Welsh Ministers' use of powers in the Bill. I attach a detailed list of questions that we have asked the Welsh Government at Annex A and would also welcome any views you may have.

Clause 10 amendments

We have listened to the arguments put forward by the Welsh Government and the Scottish Government on the powers in Clause 10 and have brought forward two amendments for Report stage.

The first amendment would change the requirement for the devolved administrations to seek the consent of the UK Government in exercising the deficiencies power to a consult requirement. This is in line with the amendment published by the Welsh and Scottish Governments. The second Government amendment would provide that, where a framework is not required in a given area, the devolved administrations should be able to use the powers in the Bill to correct deficiencies in direct retained EU law in that area.

We recognise the importance of working with the devolved administrations to ensure the Bill works for all parts of the UK and these amendments demonstrate our willingness to make improvements to it. We are also continuing discussions with the devolved administrations on how we can best manage the task of preparing the statute book for exit day. My colleagues and I continue to be grateful for the constructive engagement of the Welsh Government on these issues.

Clause 7 amendments

We have tabled amendments to Clause 7 to make absolutely clear the scope of the power in this clause given speculation on the ways it could be used. These amendments ensure the correcting power can still make all the changes required to deliver a functioning statute book.

We have tabled amendments which restrict the scope of the power to correct deficiencies in retained EU law by making the list of deficiencies in clause 7(2) exhaustive rather than illustrative. This means that the correcting power can be used only if deficiencies arise in the circumstances listed.

To ensure the scope of the power matches the range of deficiencies identified there are two further amendments:

- Firstly, a 'sweeper' provision to enable deficiencies similar to those listed to be treated in the same way as those listed.. For example, where 'Member States' public authorities' are referred to the 'sweeper' provision will mean that EEA-EFTA public authorities could also be included.
- Secondly, providing a power for UK Ministers to add to the deficiencies list through an SI requiring the approval of both Houses of Parliament.

These amendments do not place requirements on Welsh Ministers. However, they will apply to corrections made by Welsh Ministers using the powers conferred by Clause 10 and Schedule 2. I have asked my officials to discuss these provisions with yours.

This list of deficiencies applies across the UK. The UK Government believes it is important that there is consistency between jurisdictions in the UK, so any additional types of deficiencies would also apply to devolved ministers' powers. We would expect to consult with colleagues in the devolved administrations where we identify additional deficiencies before adding new types of deficiency as this would affect devolved ministers' powers.

The UK Government would consider closely any suggestions for additional categories of deficiencies from the devolved administrations. We would expect to accept any proposals the devolved administrations make to ensure devolved ministers are able to make the appropriate changes to prepare their laws for exit day.

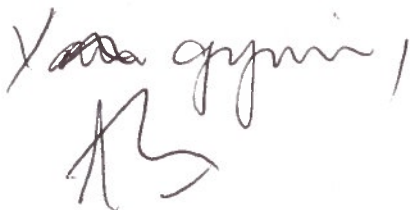
Rights of challenge based on the general principles of EU law

Throughout Committee Stage we listened carefully to the views of MPs across the House, including those who called for greater legal certainty as we leave the EU.

Therefore, we have brought forward amendments to clarify the position regarding rights of challenge under the general principles of EU law. These amendments will, in some cases, allow a legal challenge to be brought for up to three months after exit day on the basis of incompatibility with the general principles of EU law.

Any challenge must relate to a cause of action that occurred before exit day and may be made against either administrative action or domestic legislation other than Acts of Parliament. The effect of this amendment will allow courts, tribunals and other public authorities to disapply or quash the offending enactment or conduct.

I am writing in similar terms to the Presiding Officer and I am copying this letter to the Chair of the Assembly's External Affairs and Additional Legislation Committee, the Chair of the Assembly's Constitutional and Legislative Affairs Committee and to the Chair of the Welsh Affairs Committee in Parliament.



Rt Hon Alun Cairns MP
Secretary of State for Wales
Ysgrifennydd Gwladol Cymru

Annex A

The amendments described in the attached letter do not, largely, have any effects on the devolved administrations. If the devolved administrations would like similar provisions to be made for them in the Bill, this would be possible and the UK Government would expect to make these changes at committee stage in the House of Lords. We would therefore need your decisions in principle by Second Reading in the House of Lords to allow time to work up mutually acceptable drafting.

We expect the Bill to enter the House of Lords this week and Lords Second Reading is scheduled for 30 and 31 January, with committee stage likely to commence in mid-late February. This annex therefore sets out a list of questions that we believe need to be answered quickly in order to proceed with any amendments to bring the devolved administrations and devolved legislatures within the scope of the provisions. Officials in DExEU will be happy to further discuss any of these with your officials if that would be helpful to your decision making process.

Explanatory Material

- Would you like devolved authorities to be statutorily bound to produce explanatory material alongside SIs made under the relevant powers in schedule 2 of the Bill?

If so:

- Should this explanatory material relate to the changes being made by the SI?
- Should this explanatory material relate to the relevant equalities duties?
- Should this requirement only apply to SIs made under the powers in Schedule 2 parallel to those in clauses 7(1), 8 and 9?

Sifting

- Would you like devolved authorities to be required to submit negative SIs for a committee of the relevant legislature to consider the appropriateness of the negative procedure?

If so:

- Should this only apply to the SIs made under the powers in schedule 2 parallel to those in clauses 7(1), 8 and 9?
- Should the other provisions of relating to a sifting committee (e.g. timing, non-binding, remedies) parallel those applying in the UK House of Commons?

Joint procedure

- Currently the sifting procedure and the requirement to produce explanatory material do not apply to SIs made via the joint procedure - do you have any views on this approach?

Other outstanding technical matters

The “made affirmative” procedure

In the Bill as introduced we included a “made affirmative procedure” which could be used by UK ministers in certain urgent cases where there was not sufficient time to go through the normal draft affirmative procedure before the instrument needed to be in force (see paragraphs 4 and 13 of Schedule 7 to the Bill). This procedure would involve making an instrument which will cease to have effect one month after the instrument is made unless the instrument is debated and approved within one month of being made.

As this was an unusual legislative procedure we did not apply it to the powers conferred on any of the devolved administrations on introduction, but instead sought views from each administration on whether they thought the procedure would be useful and appropriate in the context of their legislature.

- Would you like the “made affirmative” procedure to be available for powers exercised by Scottish Ministers?

Defined terms and the Interpretation and Legislative Reform (Scotland) Act 2010:

In the Bill as introduced the only amendments we made to the defined terms in the Interpretation and Legislative Reform (Scotland) Act 2010 were to preserve the defined terms from the European Communities Act. However in the Interpretation Act 1978 we introduced several new defined terms related to withdrawal that the UK Government thought would be useful in relation to its future legislation - these include the following new terms added by para 11(e) of Schedule 8 of the EU (Withdrawal Bill):

- “retained EU law”
- “retained direct EU legislation”
- “retained EU obligation”
- “exit day”.

The Interpretation Act was also amended to alter the definition of “enactment” so that going forward its meaning would include retained direct EU legislation.

We did not include these in ILRA on introduction as we thought it was a matter for the Scottish Government as to whether these new definitions should be included and we wrote to offer to include any of these new definitions in ILRA if you thought it would be suitable to include them

- Would you like any of these new defined terms (or the new meaning of “enactment”) to be included in the amendments to ILRA?
- Are there any other issues relating to EU-exit and interpretation legislation that you think it would be useful to address in the European Union (Withdrawal) Bill?

Document is Restricted

Agenda Item 6

By virtue of paragraph(s) vi of Standing Order 17.42

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