

Eluned Morgan MS  
Minister for International Relations and the Welsh Language

7 May 2020

Dear Eluned

Trade Bill: Legislative consent

On 17 April 2020, the Business Committee referred the legislative consent memorandum associated with the UK Trade Bill ('the Bill') to our committees for scrutiny.

You will be aware of the previous reports our committees have published in relation to the iteration of the Trade Bill that was introduced to the 2017-19 Parliament.

Building on our previous work, and given a number of shared areas of interest in the Bill, our committees agreed to approach you with a number of questions on a joint basis, though it is our intention to report separately.

Our questions are enclosed with this letter, and we thank you in advance for considering them.

We would be grateful for a response by Friday 22 May 2020, to allow us to consider your response at our meetings during the first week of June.



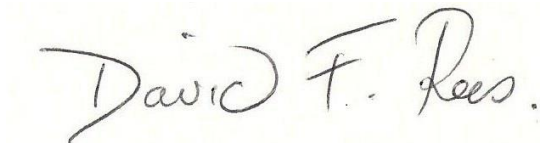
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Yours sincerely

A handwritten signature in black ink that reads "David F. Rees." The signature is written in a cursive style and is set against a light yellow rectangular background.

David Rees MS

Chair of the External Affairs and Additional Legislation Committee

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style and is underlined with a single horizontal stroke.

Mick Antoniw MS

Chair of the Legislation, Justice and Constitution Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



## Questions

### Clause 1 (relating to the Agreement on Government procurement ('the GPA'))

1. Paragraph 27(e) of the Explanatory Notes to the Trade Bill ('the Bill') states that:

The UK anticipates that GPA parties will expect the UK to commit to commence the process for updating the list of central government entities in its Annex 1 shortly after acceding to the GPA as an independent party.

2. Clause 1(1) of the Bill enables UK and Welsh Ministers to make regulations for the implementation of the GPA as they consider "appropriate". Our committees previously expressed concern about the breadth of this power, and the then Cabinet Secretary for Economy and Transport, Ken Skates AM, agreed that the power should be limited to when it was considered 'necessary'.
3. The regulation making powers proposed for delegation to the Welsh Ministers, under clause 1(1)(b)(iv), to update the public bodies listed in Annex 1 to the United Kingdom's Appendix I to the GPA, are subject to the negative procedure.
4. The Legislative Consent Memorandum for the Bill confirms that all regulations made by a Minister of the Crown or the Welsh Ministers acting either jointly or alone under clause 1 are subject to the negative resolution procedure (see paragraph 6 of LCM).
5. Paragraphs 21, 31, 40, 50 and 58 of the Delegated Powers Memorandum prepared by the Department for International Trade to accompany the Bill make reference to the need to make regulations "quickly" when justifying the procedure selected for the regulation-making powers in clause 1.

#### Question 1

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Which Welsh public bodies will the Welsh Government be seeking to include in any revised list in Annex 1 to the to the United Kingdom's Appendix I to the GPA?



## Question 2

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What discussion has the Minister had with the UK Government about the breadth of the regulation-making power in clause 1, specifically as regards ability for UK and Welsh Ministers to make regulations for the implementation of the GPA as they consider “appropriate”?

## Question 3

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In light of the fact that the list of Welsh public bodies appears to be in need of revision, and the reference to the need for an update in the Explanatory Notes, why do you consider the negative procedure to be the appropriate procedure for making these regulations?

## Question 4

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The Delegated Powers Memorandum indicates a need for clause 1 regulations to be able to be made with speed, whether that be, for example, in reaction to the UK’s accession to the GPA as an independent member or in response to a dispute with another GPA party. The DPM suggests the negative resolution procedure provides the opportunity for UK and Welsh Ministers to act with that speed. What consideration was given to applying a made affirmative procedure to the regulations-making powers in clause 1?

## Expectation of UK Ministerial commitments

Paragraph 10 of the Welsh Government’s legislative consent memorandum states:

The UK Government have agreed to restate commitments made during the passage of the 2017-19 Trade Bill, which include:

- That the UK Government will not normally use concurrent powers to legislate in devolved areas without the consent of the Devolved Governments, and never without consulting them.
- That the UK Government will not use the powers to introduce new policies in devolved areas and that administrative efficiency will be the primary driver.



- Engaging with Devolved Governments before extending the period during which clause 2 powers can be used under the Bill.

#### Question 5

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Can you please clarify the basis on which the agreement to restate these commitments has been made? For example, was it confirmed in an exchange of letters between Ministers or was it an oral commitment?

#### Question 6

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What action will you take should these commitments not be restated?

#### Question 7

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The Bill creates new concurrent powers that can be exercised in devolved areas by both the Welsh Government and the UK Government. Has the Welsh Government had discussions with the UK Government about the impact this has on the legislative competence of the Senedd, in particular the test set out in paragraph 11 of Schedule 7B to the Government of Wales Act 2006?

### Extending the period within which clause 2 powers can be used

- 6.** The External Affairs and Additional Legislation Committee previously expressed a view that any extension of the sunset provisions relating to clause 2 should be subject to the Senedd's consent, insofar as they relate to powers delegated to the Welsh Ministers.
- 7.** The length of the sunset provision is five-years in the Bill. In the previous iteration of the Bill it was five-years on introduction, but it was reduced to three-years by amendment.

#### Question 8

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Can you confirm that the Welsh Government is content with a five-year period within which these powers can be used?



## Question 9

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Whilst we note that you are seeking a commitment from UK Ministers to engage with Devolved Governments before extending the period during which clause 2 powers can be used under the Bill, what is your view on the suggestion that any extension of the five-year period should also be subject to the Senedd's consent, insofar as this relates to powers delegated to the Welsh Ministers?

### Clause 2 powers to modify primary legislation that is retained EU law

- 8.** Regulations made by the UK Ministers under clause 2(6)(a) could amend provisions within the Government of Wales 2006 (2006 Act) which are defined, under the European Union (Withdrawal) Act 2018, as retained EU law.
- 9.** Our committees previously expressed concern that the 2006 Act should be permitted to be amended in this way, and concluded that Schedules 7A and 7B to the 2006 Act should be amended via the proper procedure set out in section 109 of that Act.
- 10.** In October 2017, Robin Walker MP, the then Parliamentary Under Secretary of State for Exiting the EU stated that, in respect of UK Ministers using regulation-making powers in the European Union (Withdrawal) Bill to modify the legislative competence of the National Assembly the UK Government was clear that wherever possible it would use existing powers in [the 2006 Act] to, for example, correct any deficiencies in that Act, and it would do so in consultation with the Welsh Government. However, that assurance is not legally binding.

## Question 10

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What is your view on the power in clause 2(6)(a) that enables a UK Minister to amend the Government of Wales Act 2006 by regulations? Why do you consider this to be an appropriate power? Have you made representations to the UK Government about this power?

