



Mick Antoniw MS  
Chair of Legislation, Justice and Constitution Committee

11 September 2020

Dear Mick,

**Legislation, Justice and Constitution Committee Report on the Welsh Government's  
Legislative Consent Memorandum on the Trade Bill**

Thank you for providing a copy of the Legislation, Justice and Constitution Committee's report and recommendations on the legislative consent memorandum (LCM) for the Trade Bill.

Please find the Welsh Government's response to the report's recommendations at Annex A.

I would like to thank the Committee for its scrutiny of the Trade Bill LCM. I share your concerns about the potential impact of new trade deals on Wales however, as you are aware, the scope of this Bill relates only to rolling over existing trade agreements rather than new trade deals.

I acknowledge your concerns about securing concessions on the face of this Bill but I would emphasise that doing so in the context of a UK Government with a large majority in the House of Commons is very challenging. Whilst there is much in the Bill which I would prefer was amended, I would also point out that previous efforts to amend the Bill in the last parliamentary session resulted in intergovernmental agreements being reached with the UK Government on key areas of concern. This position was accepted by the Senedd at a time when the then Government had more reason to compromise.

This is why my approach has been to work with UK Ministers to secure concessions via intergovernmental agreements, a technique frequently used by Ministers across the devolved administrations to hold the UK Government to account.

As you will know, the Bill has completed its passage through the Commons. The first reading in the House of Lords took place on 21 July and the second reading is scheduled for 8 September. The UK Government's aim is to obtain Royal Assent for the Bill by the end of the transition period.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The forthcoming House of Lords stages will provide a further opportunity for legislative amendments to be debated and potentially secured. With this in mind, and in order to partly address several of your recommendations I will:

- Write to the Speaker of the House of Lords requesting an amendment is tabled to clause 2 which would have the effect of preventing the regulation making powers from being exercised by UK Ministers to make amendments to the Government of Wales Act 2006.
- Write to the Minister of State for Trade Policy requesting that a despatch box commitment is restated in the House of Lords by UK Ministers that the UK Government will engage with the devolved administrations in advance of any decision to use the clause 2(7) powers to extend the sunset provision.

I can assure you that protecting Wales' interests in international matters is one of my key priorities. I will continue to make representations to the UK Government on all trade policy matters via the Ministerial Forum for Trade where I am able to influence discussions and make Wales' voice heard.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

**Eluned Morgan MS/AS**

Minister for International Relations and the Welsh Language  
Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol

## Annex A

### Welsh Government Responses to Recommendations from the Legislation, Justice and Constitution Committee on the Legislative Consent Memorandum for the UK Trade Bill

<b>Recommendation</b>	<b>Welsh Government Response</b>
<p data-bbox="199 510 539 831"><b>Recommendation 1</b></p> <p data-bbox="199 577 539 831">The Minister should make representations to the UK Government seeking a review of the procedure to be applied to regulations made under clause 1.</p>	<p data-bbox="561 510 831 539"><b>Decision – Reject</b></p> <p data-bbox="561 577 1477 757">The Welsh Government has not previously raised objections to regulations made under clause 1 being subject to the negative procedure and this was the basis on which it recommended that the Senedd provided legislative consent to the Trade Bill 2017-19.</p> <p data-bbox="561 801 1477 1196">In coming to this position, the Welsh Government has taken into account the fact that this power would be exercised to make largely technical changes to existing domestic legislation in order to implement the GPA once the UK is an independent member. For example, this could include amendments to the Procurement Contract Regulations 2015 to ensure that the list of central government contracting authorities covered by those regulations is consistent with the UK’s obligations under the GPA. It could also include amendments to domestic legislation in response to another party joining the GPA or in response to a current member leaving the GPA.</p> <p data-bbox="561 1240 1477 1458">As the extent of discretion that could be exercised by either UK Ministers or the Welsh Ministers is very limited in practice, and accepting that the UK parliament has already had the opportunity to scrutinise the UK’s membership of the GPA, the Welsh Government reached a view where it was comfortable with the provision being subject to the negative procedure.</p> <p data-bbox="561 1503 1477 1720">The Senedd accepted this position when it agreed a legislative consent motion (LCM) on 12 March 2019, and subsequently on 21 May 2019 in light of two supplementary LCMs. It was accepted there was very little chance of successfully securing an amendment from the UK Government to change the proposed procedure from negative to affirmative at that time.</p> <p data-bbox="561 1765 1477 2004">The current UK Government is in a strengthened position, having won a significant majority in parliament, and has made it clear that it has no intention of changing the procedure to be applied to regulations made under clause 1. It is therefore extremely unlikely that any representations we should make to the UK Government on this matter would receive serious consideration.</p> <p data-bbox="561 2049 1023 2078"><b>Financial Implications – None.</b></p>

<p><b>Recommendation 2</b></p> <p>The Minister should write to the Committee notifying us of the outcome of the representations made to the UK Government as a result of recommendation 1.</p>	<p><b>Decision – Reject</b></p> <p>Due to the reasons outlined in recommendation 1, it is not considered appropriate for the Minister to make representations to the UK Government on this matter.</p> <p><b>Financial Implications – None.</b></p>
<p><b>Recommendation 3</b></p> <p>The Minister should seek an amendment to the Bill so that the regulation-making power in clause 1 can be exercised when Ministers consider it ‘necessary’, rather than where Ministers consider it ‘appropriate’.</p>	<p><b>Decision – Accept in Principle</b></p> <p>We agree with the Committee that the choice between ‘necessary’ or ‘appropriate’ is important and must be carefully considered in relation to each specific Bill and its circumstances. In this particular situation, we are mindful of the time-limited nature of this legislation, in that the Bill only relates to implementing international agreements that were already in place before the UK exited the EU, and the already very limited scope of the powers in practice.</p> <p>The Welsh Government agrees that the term ‘necessary’ would be preferable in the context where changes should only be made where they are necessary to ensure that international obligations are complied with. However, since any amendment to the Bill would require the same standard to be applied to the regulation making powers conferred on UK Ministers, it is highly unlikely that such an amendment can be carried – and again, in considering the 2017-19 Trade Bill the Senedd did not consider this an issue which should impede the granting of legislative consent.</p> <p>We do not therefore believe it appropriate for us to proactively seek an amendment which would restrict these powers, although we would not oppose efforts in the House of Lords to bring forward such an amendment.</p> <p><b>Financial Implications – None.</b></p>
<p><b>Recommendation 4</b></p> <p>The Minister should seek an amendment to clause 2(6)(a) of the Bill to the effect that it cannot be used by UK Ministers to make regulations that amend the <i>Government of Wales Act 2006</i>.</p>	<p><b>Decision – Accept</b></p> <p>Whilst it is technically possible that the UK Government could use clause 2(6)(a) to make regulations that amend the Government of Wales Act 2006 (GoWA), in practice, it is extremely unlikely that this would happen, as the clause 2 powers are very limited in scope.</p> <p>To mitigate the risk of clause 2 being used by UK Ministers in this way, the Welsh Government has worked to secure commitments from the UK Government, albeit intergovernmental, non-legislative and non-binding, that clause</p>

	<p>2 powers will not be used in areas of devolved competence. As such, on 23 June 2020, at the Trade Bill Committee meeting in the House of Commons, the Minister of State for Trade Policy restated assurances made by predecessors during the passage of the Trade Bill 2017-19 that the UK Government would not normally legislate within devolved areas without the consent of the relevant devolved administrations and never without consultation first. In addition, and further to representations from the Minister for International Relations, the Minister for Trade Policy also made a new commitment that his department will work closely with the devolved administrations at all stages of trade negotiations.</p> <p>However, whilst the UK Government has previously indicated that it is not minded to exercise the clause 2 powers to make amendments to GoWA and has made commitments at the despatch box that it will not normally do so, and we do not envisage a situation when this action would ever be required, we do recognise that there is a small risk that UK Ministers could utilise these powers. We agree with the Senedd that it is not acceptable for UK Ministers to use secondary powers to amend the core primary legislation underpinning the devolution settlement.</p> <p>The Welsh Government will therefore write to the Speaker of the House of Lords requesting an amendment is tabled to clause 2 which would have the effect of preventing the regulation making powers from being exercised by UK Ministers to make amendments to GoWA.</p> <p><b>Financial Implications</b> – None.</p>
<p><b>Recommendation 5</b></p> <p>The Minister should seek an amendment to the Bill so that the regulation-making power in clause 2 can be exercised when Ministers consider it ‘necessary’, rather than where ministers consider it ‘appropriate’.</p>	<p><b>Decision – Accept in Principle</b></p> <p>Please see the response provided to Recommendation 3 which also addresses Recommendation 5.</p> <p><b>Financial Implications</b> – None</p>
<p><b>Recommendation 6</b></p> <p>The Minister should seek an amendment to the Bill to secure a requirement on the UK Government to obtain the Welsh Ministers’ consent before it</p>	<p><b>Decision – Reject</b></p> <p>The Welsh Government previously tabled amendments to the 2017-19 Bill along with the Scottish Government that would have required UK Ministers to obtain the consent of the Welsh and Scottish Ministers before making regulations under clauses 1 and 2 that made provision within devolved competence.</p>

<p>makes regulations under clauses 1(1) and 2(1).</p>	<p>These amendments were rejected, but concessions were secured from the UK Government, in the form of non-legislative commitments made at the despatch box, that it would not normally legislate in areas of devolved competence without consultation. These commitments have been restated by the Minister for Trade Policy in relation to the 2019-21 Bill as detailed in the response to Recommendation 4.</p> <p>The Welsh Government reached a position on the previous Bill where it accepted that a requirement for the UK Government to obtain consent on the face of the Bill would lead to devolved administrations effectively having a veto over international agreements negotiated by the UK Government. The Welsh Government decided that securing non-legislative commitments at the despatch box rather than pushing for a veto was consistent with its objectives set out in its published trade policy document, 'Trade Policy: the issues for Wales'. In addition, it was accepted that this compromise was the only way to move the Trade Bill forward to achieve continuity for Welsh businesses and citizens at the end of the transition period. The Senedd was previously content to provide legislative consent on this basis.</p> <p>The Committee states in the report that other UK Bills such as the Environment Bill include concurrent plus powers, requiring the consent of the Welsh Ministers before UK Ministers may make regulations in devolved areas. The Welsh Government accepts that both the Environment Bill and the Fisheries Bill include concurrent plus powers, but in these cases the core subject matter of the Bills is clearly devolved. The Trade Bill differs from the Environment and Fisheries Bills in that only limited parts of the Bill make provision in devolved areas. Other UK Bills relating to international agreements needed as a result of the UK leaving the EU, such as the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019, have passed through parliament with despatch box commitments being accepted as a legitimate, although not ideal device which devolved governments can use to hold the UK Government to account.</p> <p><b>Financial Implications</b> – None.</p>
<p><b>Recommendation 7.</b></p> <p>The Minister should seek an amendment to the Bill to secure a requirement on the UK Government to obtain the Senedd's consent before it makes regulations under clause 2(7).</p>	<p><b>Decision – Reject</b></p> <p>The Welsh Government previously reached a position where it was content to recommend legislative consent to clause 2(7) on the basis of the non-legislative commitments secured from the UK Government during the passage of the Trade Bill 2017-19, which included a despatch box commitment to engage with devolved administrations before extending the period during which clause 2 powers can be used under the Bill. The Senedd accepted this position and provided legislative consent on this basis.</p>

	<p>As detailed in the response to Recommendation 6, despatch box commitments have been accepted as a legitimate, although not ideal device that devolved governments can use to hold the UK Government to account in relation to UK Bills. It would therefore be consistent with the approach taken to other legislation to rely on a despatch box commitment in this instance.</p> <p>It is noted however, that this commitment was made on 17 July 2018 and has not been explicitly restated by the Minister for State for Trade Policy in relation to extending the sunset period. The Welsh Government will therefore write to the UK Government requesting that this commitment is explicitly restated by Ministers at the despatch box during the House of Lords stages.</p> <p><b>Financial Implications</b> – None.</p>
<p><b>Recommendation 8</b></p> <p>The Minister should seek urgent discussions with the UK Government regarding the commitments made on the operation of the TRA, specifically as regards consulting the Welsh Government on the TRA’s recommendations, and seek changes to the agreed commitments so that they properly reflect the Welsh Government’s status as the Government in Wales, and not as a department of the UK Government.</p>	<p><b>Decision – Reject</b></p> <p>Matters relating to the Trade Remedies Authority (TRA) are not within the competence of the Senedd although this is an area where Welsh businesses and citizens clearly have an interest. The Welsh Government has recommended supporting the proposed measures for establishing a new independent body, the TRA, to investigate trade disputes on the basis that Welsh Government is involved in the investigatory process but that the UK Government will act on behalf of the UK in its entirety.</p> <p>It is important to note that it will be a legal obligation for the UK to have an authority in place to manage and deliver trade remedies once the UK accedes to the World Trade Organisation (WTO). As Wales is not a member of the WTO in its own right, the legal obligation lies with the UK Government and not the Welsh Government.</p> <p>The Welsh Government’s position is that we would not expect to be involved in the operational activities of the TRA, as it is an independent body. The Welsh Government believes that being able to act as a contributor in any case being investigated by the TRA, and at the same time as other UK Government departments, ensures that our views are fed into the process at the most appropriate time, when recommendations are being considered and developed. If we are consulted on the recommendations at the stage when they are made to the Secretary of State, rather than being involved in the process at an early stage of an investigation, this would present a risk that the UK Government could come to an established, collective view without our involvement. In practice, this would provide us with a very limited chance of influencing the outcome or reopening discussions, should we wish to do so. Involvement at an earlier stage of the process, at a point when different competing interests within the UK Government will be being exposed and resolved will be more beneficial as this will enable</p>

	<p>greater leverage. This process is already working in practice as officials have received several invitations to contribute to investigations from the Trade Remedies Investigations Directorate (TRID) within the UK Government, which is managing investigations during the transition period.</p> <p>The Welsh Government previously secured non-legislative commitments from the UK Government on the ways in which we will be able to interact with the Authority and maintain a level of involvement in the investigation process on 4 February 2019. A Written Statement providing more detail about the commitments made by the UK Government was published on 30 April 2019.</p> <p>The view of Welsh Government is that these commitments, alongside the detailed information about how the UK Government will involve the Welsh Government in proceedings provided in the Written Statement, provide satisfactory assurance that we will be involved in the investigatory process at the most appropriate time, in the most appropriate way. The evidence to date is that the assurances are being implemented in practice.</p> <p><b>Financial Implications – None</b></p>
<p><b>Recommendation 9</b></p> <p>The Minister should seek urgent discussions with the UK Government regarding the commitments made on the operation of the TRA, specifically as regards a duty on the TRA to provide advice to the Welsh Ministers, and seek changes to the agreed commitments so that they properly reflect the Welsh Government's role in implementing international trade agreements.</p>	<p><b>Decision – Reject</b></p> <p>Please see the response provide to Recommendation 8 which also addresses Recommendation 9.</p> <p><b>Financial Implications – None</b></p>