

**Jeremy Miles AS/MS**

Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd  
Counsel General and Minister for European Transition



Llywodraeth Cymru  
Welsh Government

Mick Antoniw MS  
Chair of Legislation, Justice and Constitution Committee  
Senedd Cymru  
Cardiff Bay  
CF99 1SN

13 January 2021

Dear Mick,

Thank you for the work of the Legislation, Justice and Constitution Committee in scrutinising the Trade Bill supplementary LCM which I laid on 4 November.

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

I would be happy to expand on any of my responses at the LCM debate which is scheduled to take place on 12 January.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jeremy Miles', written in a cursive style.

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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.

## Annex A

### Welsh Government Responses to Recommendations from the External Affairs and Additional Legislation Committee on the Legislative Consent Memorandum for the UK Trade Bill

Recommendation	Welsh Government Response
<p><b>Recommendation 1</b></p> <p>The Counsel General should explain, in advance of any vote on a legislative consent motion for the Bill, why the Welsh Government did not pursue the amendment of clause 2(6)(a) with UK Ministers 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>As we have previously said, the Welsh Government recognises that there is a small risk that the UK Government could use clause 2(6)(a) to make regulations that amend the Government of Wales Act 2006 (GoWA). However, in practice, it is extremely unlikely that this would happen, as the clause 2 powers are very limited in scope.</p> <p>We agree entirely with the Senedd that it would be unacceptable for UK Ministers to use secondary powers to amend the core primary legislation underpinning the devolution settlement. However, the question which the Welsh Government faced was what was the most effective way of taking this matter forward. The starting point was the reality that pursuing an amendment to clause 2(6)(a) with UK Ministers was extremely unlikely to result in the legislative change requested. The UK Government has little reason to compromise on this matter as it can point to the fact that clause 2 was accepted by the Senedd when it provided legislative consent to the Trade Bill 2017-19 on 12 March 2019, and subsequently on 21 May 2019 in light of two supplementary LCMs.</p> <p>The Welsh Government therefore decided to pursue this legislative change by writing to the Lord Speaker in the House of Lords. A request was made that an amendment be 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. The Government felt that pursuing this avenue was more likely to result in securing a legislative change. This amendment was however not taken forward in the Lords.</p> <p><b>Financial Implications – None.</b></p>
<p><b>Recommendation 2</b></p> <p>The Counsel General should, in advance of any vote on a legislative consent motion for the Bill, confirm whether clause 2(6)(a) of the Bill has been amended to the effect that it cannot be used by UK Ministers to make regulations that</p>	<p><b>Decision – Accept</b></p> <p>Clause 2(6)(a) has not been amended 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>The Lords chose not to table this amendment, as set out above.</p> <p><b>Financial Implications – None.</b></p>

<p>amend the <i>Government of Wales Act 2006</i>.</p>	
<p><b>Recommendation 3</b></p> <p>The Counsel General should, in advance of any vote on a legislative consent motion for the Bill, confirm whether the UK Government has made the despatch box commitment, that it will engage the Welsh Government in the decision-making process in advance of any decision to use the power in clause 2(7) of the Bill to extend the sunset period.</p>	<p><b>Decision – Accept</b></p> <p>On 8 October 2020, Viscount Younger of Leckie, Lord in Waiting (Government Whip) explicitly restated despatch box commitments relating to clause 2 as requested by the then Minister for International Relations and Trade in a letter dated 11 September. The specific commitment relating to clause 2(7) is in bold type. He said:</p> <p><i>“We understand that those powers should be used appropriately, which is why the Government have committed that we will not normally use the concurrent powers to legislate within devolved areas without the consent of the relevant devolved Administration, and never without consulting them first, as the noble and learned Lord, Lord Hope, said. <b>We have also put in place a five-year sunset provision on the concurrent powers in Clause 2, which can be extended for further periods only with the agreement of both Houses of Parliament. We recognise that this would also extend the devolved Administrations’ and the UK Government’s ability to use the powers in devolved areas, and have therefore committed to the devolved Administrations that we will consult them before extending the sunset.</b>”</i></p> <p><b>Financial Implications – None.</b></p>