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**Llywodraeth Cymru
Welsh Government**

David Rees MS
Chair of External Affairs and Additional Legislation Committee

Mick Antoniw MS
Chair of the Legislation, Justice and Constitution Committee

Senedd Cymru
Cardiff Bay
CF99 1SN

10 February 2021

Dear David and Mick,

I am writing to inform you that the House of Commons moved a UK Government amendment to the Trade Bill on 9 February which makes provision with regard to devolved matters. The amendment will be considered by the House of Lords in due course.

The Statutory Protections Amendment

The amendment, which has been proposed in lieu of Lords amendment 6B, places restrictions on how the new concurrent powers conferred on a Minister of the Crown and the devolved authorities under clause 2 of the Bill can be exercised to implement certain provisions of FTAs concluded between the UK and other countries in circumstances where there was an existing agreement between that partner country and the EU as of 31 January 2020 (often referred to as 'continuity trade agreements').

It is important to note that clause 2 of the Bill does not confer a general power to implement new FTAs and so this amendment will not place any restrictions on the UK Government's or the Devolved Governments' powers to implement provisions within new FTAs where there was no agreement with the partner country and the EU as of 31 January 2020.

The amendment will mean that any regulations made under clause 2 will need to be consistent with maintaining UK levels of statutory protections in a number of specified areas including animal welfare and environmental protection. The definition of "UK levels of statutory protection" includes legislation made by the Welsh Ministers or passed by the Senedd in the specified areas. The amendment also specifies that provisions on healthcare services must be consistent with maintaining UK publicly-funded clinical healthcare services provided in the UK, or in the part of the UK in which the regulations have effect.

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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 amendment is considered to meet the threshold for laying a Legislative Consent Memorandum (LCM) for the following reasons:

- The amendment makes provision with regard to devolved matters because it alters the executive competence of the Welsh Ministers. It limits the scope of the Welsh Ministers' regulation making powers by setting out conditions which need to be complied with in order to make any regulations under clause 2(1).
- Clause 2 fell within scope of the original LCM that was laid on 2 April 2020 on the basis that it was making provision that was within the Senedd's legislative competence for the purposes of the test in SO 29.1(i). This was because the provisions that could be implemented by regulations encompassed a wide range of policy areas falling within the Senedd's competence, to include such matters as agriculture and fisheries. As the amendment alters the scope of the regulation making powers, those arguments are also considered to be of relevance to the amendment. The standards that Welsh Ministers would need to take into account before exercising that power also relates to a number of matters that are within the Senedd's legislative competence, such as agriculture, the environment and health and animal health.

This amendment would ordinarily have required an LCM but due to the very late stage at which it has been tabled during the rapidly-moving Consideration of Amendments stage, there is insufficient time to lay a supplementary memorandum and to schedule a debate in the Senedd in a way which can be taken into account in the Parliamentary process. It is frustrating that last minute changes of this nature mean that the consent process cannot be adhered to in the way we would wish. However, I consider that in this instance, the amendment is an improvement to the Bill on the basis that it sets out safeguards that apply to the scope of the regulation making power in clause 2, by ensuring that it cannot be exercised in a way that would be inconsistent with the existing standards that apply in such areas as human, animal or plant health and environmental protection.

I will continue to keep you informed of any amendments made during the final stages of the Bill in Parliament which I consider engage devolved competence.

I am copying this letter to all Members of the Senedd for information.

Yours sincerely,



Jeremy Miles AS/MS

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