



Chair
Legislation, Justice and
Constitution Committee
Senedd Cymru
Cardiff Bay,
Cardiff,
CF99 1SN

Chair
Public Accounts and
Public Administration
Committee
Senedd Cymru
Cardiff Bay,
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25 August 2022

Dear Huw and Mark

Thank you for your letter of 28 July requesting clarification of a number of points regarding the Welsh Government's Legislative Consent Memorandum (the Memorandum) on the Trade (Australia and New Zealand) Bill (the TANZ Bill). I have responded to each of your questions below.

1. What changes would the Welsh Government need to see made to the Bill in order to be able to recommend that the Senedd give its consent to the Bill?

The Welsh Government would like to see equivalent powers included in the TANZ Bill, but at the very least would need concurrent plus powers (i.e., concurrent powers with a statutory requirement for UK Government Ministers to seek consent from Welsh Ministers before they use these powers to legislate in a devolved area) being included in the TANZ Bill before we could recommend the Senedd give its consent to the TANZ Bill.

2. Could you indicate whether you have received a response to your letter to the UK Government of 16 May and, if so, whether a copy or details of the response can be shared with the Committees?

I have not received a response to my letter dated 16 May.

3. Could you clarify whether discussions are ongoing with the UK Government with regard to amendments being tabled to the Bill which address your concerns?

The UK Government have not offered any further discussions with regard to any amendments. Second Reading of the TANZ Bill in the House of Commons is scheduled to take place on 6 September. UK Government have indicated that they are currently considering how to proceed in light of our concerns.

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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.

4. Have you engaged the new intergovernmental relations arrangements to resolve matters of concern?

I repeated my concerns about the TANZ Bill in a bi-lateral meeting with the Minister of State for Trade Policy, Penny Mordaunt MP, on 24 May. I am now awaiting further information from UK Government on how it intends to address our concerns.

5. Could you outline your views in relation to the suitability and necessity of the regulation making powers in clause 1 of the Bill enabling the UK Government to make regulations reflecting the content of the FTAs as they may be amended in the future, meaning that such powers could be used to a currently unknown effect at a later date?

I believe it is helpful to be able to use the power in clause 1 to reflect future amendments to the content of the Free Trade Agreements (FTAs). The power itself is limited to making regulations in connection with the procurement chapters of the FTAs so it is not a power to reflect changes across the entire Agreements. Given the nature and scope of what is covered by procurement chapters in FTAs generally, as well as in these chapters in particular, I believe there is very little prospect that the power could be used in unexpected or wholly unforeseeable ways. In light of this I consider the power is a suitable and useful addition to the TANZ Bill.

6. Under what circumstances would you accept the inclusion of concurrent-plus regulation making powers in the Bill?

The elements of the TANZ Bill that require the Senedd's consent relate to the powers needed to implement the procurement chapters of the UK-Australia and UK-New Zealand FTAs. The scope of these powers is relatively narrow, and the changes needed to implement both agreements were discussed at length between UKG and Welsh Government officials before they were agreed in negotiations. Because of the scope of the powers, and because sufficient engagement regarding the legislative changes needed to implement proposed procurement provisions had taken place during the trade negotiations, I would be willing to accept the inclusion of concurrent-plus regulation making powers in the TANZ Bill if the UKG were to remain unwilling to grant equivalent powers.

7. We are concerned that the approach taken to the use of concurrent powers in this Bill risks setting a precedent for future legislation for future trade agreements. Can you confirm whether any discussions have taken place with the UK Government in this regard?

I share these concerns and am also concerned with the increased use of concurrent powers in UK Bills. My officials have made this clear to UK Government officials at every meeting held with UK Government officials. I have also made this view clear at a Ministerial level. With regard to legislation for future trade agreements, other than the Procurement Bill, there has been no discussion as yet on what approach UK Government might take for any required legislation. However, we have been clear that any future legislation containing concurrent powers would receive a similar response.

8. Can you indicate whether you consider that clause 4 and Schedule 2 paragraph 4 of the Bill require the consent of the Senedd?

To the extent that paragraph 4 of Schedule 2 relates to the other provisions of the TANZ Bill which require Senedd consent I consider that it too requires the consent of the Senedd.

Clause 4 is different. It is a technical provision which does not encode substantive policy choices, it is concerned with how the TANZ Bill works rather than what the law contains and for this reason we do not as a matter of practice generally include these kinds of clauses within Legislative Consent Memoranda.

9. Can you confirm whether there are any indirect financial implications for the Welsh Government, the Senedd or Wales arising from the Bill?

Having considered the TANZ Bill we do not believe that there are any indirect financial implications for the Welsh Government, the Senedd or Wales arising from the TANZ Bill. Although the TANZ Bill is needed to implement the UK's trade deals with Australia and New Zealand, which may more broadly have indirect implications for producers and consumers in Wales, the devolved elements of the TANZ Bill relate to the powers needed to implement the procurement chapters of the deals. We do not believe these specific provisions on procurement will have any financial implications.

10. This legislation is time-critical and you have said that there is insufficient time available to bring forward an equivalent Bill in the Senedd. What were the barriers to introducing an Emergency Bill, which would have overcome the inclusion of concurrent powers in the Bill?

The Department for International Trade initially believed that Second Reading of the TANZ Bill in the House of Commons would take place before summer recess and that the TANZ Bill would need to progress quickly once the UK Houses of Parliament reconvened. This is because the legislation needs to be in place in order for both trade deals to enter into force. Therefore, we did not believe that there was sufficient time available for us to bring forward an Emergency Bill, or that this would be a proportionate approach given the scope of the provisions in the legislation.

A Senedd bill would not of itself overcome the inclusion of concurrent powers in the TANZ Bill. A Senedd bill could give Welsh Ministers powers to implement in Wales, and so there would be no need for the TANZ Bill to do so; but a Senedd bill could not prevent the TANZ Bill giving powers to UK Ministers to implement legislative changes in Wales. If that is what the UK Parliament decided to do, the end result would be concurrent powers, albeit contained in different Acts.

11. Paragraph 10 of the Memorandum states that the Bill is to be repealed by an order under the Procurement Bill but that does not appear to be the case. Please can you therefore clarify the process by which the Bill will be repealed and whether there is any role for the Welsh Government and the Senedd?

Clause 107(1) and paragraph 3 of Schedule 11 to the Procurement Bill as introduced contain provisions to repeal the TANZ Bill. Paragraph 1 of Schedule 11 to the Procurement Bill as introduced contains provision to repeal the changes to the Government of Wales Act 2006 that the TANZ Bill makes. I am not aware of any role for the Welsh Government or the Senedd in the repeal of the TANZ Bill.

Yours sincerely,

A handwritten signature in black ink that reads "Vaughan Gething". The signature is written in a cursive style with a distinct dot over the 'i' in "Gething".

Vaughan Gething AS/MS
Gweinidog yr Economi
Minister for Economy