

## SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM

### (MEMORANDUM NO 2)

#### TRADE BILL

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29(iii)(a) prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the Senedd if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Trade Bill (“the Bill”) was introduced in the House of Commons on 19 March 2020. The Bill completed Committee stage in the House of Lords on 15 October 2020. The Bill can be found at: [Bill documents - Trade Bill 2019-21 - UK Parliament](#)

#### Policy Objectives

3. The UK Government’s stated policy objectives are to provide continuity for businesses, workers and consumers across the UK and establish the UK as an independent global trading nation. To support this the Bill makes provision about the implementation of international trade agreements with third countries that have pre-existing trade agreements with the EU; establishing a Trade Remedies Authority (TRA) and conferring functions on it; and makes provision about the collection and disclosure of information relating to trade.

#### Summary of the Bill

4. The Bill is sponsored by the Department for International Trade.
5. The Bill has four main functions:
  - It confers regulation making powers on a Minister of the Crown and devolved authorities to implement the Agreement on Government Procurement in the event that the UK is an independent member of that Agreement after the end of the transition period;
  - It confers regulation making powers on a Minister of the Crown and devolved authorities to implement international trade agreements with third countries who have pre-existing trade agreements with the EU;
  - It establishes a TRA to deliver the new UK trade remedies framework;
  - It establishes a data sharing gateway between Her Majesty’s Revenue and Customs and other public and private bodies.

6. The provisions in the Bill of particular relevance to Wales are:
- Part 1, Clause 1 – (implementation of the Agreement on Government Procurement).
  - Part 1, Clause 2 – (implementation of international trade agreements with third countries who have pre-existing trade agreements with the EU).
  - Part 2 – (establishing the TRA) – The Welsh Government does not believe that the provisions in Part 2 of the Bill relating to the TRA are making provision for any purpose within, or which modifies the legislative competence of the Senedd. However, the establishment of a TRA could have an impact on devolved areas such as agriculture and fisheries.
  - Part 3 – (Collection and sharing of trade information).

### **Provisions in the Bill for which consent is required**

7. The Welsh Government laid a legislative consent memorandum on 2 April 2020, based on the Bill as introduced into Parliament on 19 March 2020. That legislative consent memorandum covered Part 1, Clauses 1 to 4 and Schedules 1, 2 and 3 of the Bill. The Welsh Government did not consider that the provisions in Parts 2 or 3 of the Bill as introduced engaged SO29.

### **Changes to the Bill since the publication of the first Legislative Consent Memorandum for which consent is required**

8. The following amendments, which make provision in relation to Wales and contain provision within the Senedd's legislative competence, were made to Part 3 of the Bill at House of Commons Report Stage.
9. **Part 3, Clause 9** – Clause 9(1) confers a power on specified public authorities to disclose information to a Minister of the Crown for the purposes of facilitating the exercise of a Minister of the Crown's functions relating to trade. The specified public authorities in clause 9(3) that may disclose information to a Minister of the Crown are a Secretary of State, the Minister for the Cabinet Office, a strategic highways company appointed under section 1 of the Infrastructure Act 2015 and a port health authority constituted under section 2 of the Public Health (Control of Disease) Act 1984. Most of the specified authorities falling within this data-sharing gateway are reserved authorities. However, the definition of a port health authority captures Welsh port health authorities that exercise functions in relation to Wales and is broad enough to enable such authorities to disclose information relating to non-reserved matters to a Minister of the Crown.
10. Clause 9(9) also confers a regulation making power on a Minister of the Crown which enables the list of specified authorities in clause 9(3) to be amended. That power is capable of being exercised to add or remove devolved Welsh authorities from the list.

11. **Part 3, Clause 10** – A new clause has been included which would make it a criminal offence for a person to disclose identifiable personal information in breach of the requirements in clause 9 in certain specified situations. Such an offence is punishable by a fine and/or a term of imprisonment of up to a period of two years on indictment or up to 12 months on summary conviction. As this provision needs to be considered alongside clause 9, we consider that consent is also required for this provision.

### **Reasons for making these provisions for Wales in the UK Trade Bill**

12. The UK Government requires a legal mechanism to enable it to request access to, and share information held by a wide range of public authorities. Gaining access to a wider range of devolved and reserved data could improve the UK Government's capability to respond to border issues, design traffic management initiatives and enhance trade flows.
13. The Welsh Government is supportive of the rationale for the amendments. However, to ensure benefits can be accrued in Wales, we have sought assurances that;
  - a) The UK Government will share any analysis relevant to the delivery of devolved responsibilities with the Welsh Ministers. Clause 9(5) is relevant in this context because it makes provision for the onward disclosure of data by a Minister of the Crown, with the consent of the public authority from which that data had been obtained. This could enable a Minister of the Crown to disclose data to the Welsh Ministers in circumstances where the data is relevant to the Welsh Ministers' devolved functions relating to trade, such as traffic management around key ports;
  - b) The UK Government will consult with the Welsh Ministers before adding or removing any Welsh public authorities from the data sharing gateway in clause 9.
14. The Welsh Government considers that it has received sufficient assurances from the UK Government in response to these requests.
15. In addition, two despatch box commitments were made at House of Lords Committee stage on 15 October:

‘First, the data shared under Clause 9 will be used by the border impact centre and the Cabinet Office to develop strategic insights. They are committed to sharing strategic analysis related to flow of trade, where it will support the more effective management of flow through the border.

I understand that Cabinet Office officials have been working closely with counterparts in the devolved Administrations to ensure that relevant analysis and information relating to trade and management of the border can be shared to support devolved functions. Examples of the types of information that the border impact centre intends to share with relevant parties in the devolved nations are flow patterns through ports.

The Cabinet Office will continue to work with the devolved Administrations to ensure that the border impact centre provides strategic benefit to management of flow through key ports.

Secondly, the UK Government commit to consulting the devolved administrations before any devolved authorities are added to, or removed from, the list of specified authorities that can share data under Clause 9.'

16. We believe the assurances provided are sufficient to ensure that the Welsh Ministers will be able to access more detailed information to increase border management capabilities and enhance trade flow data, benefitting Wales.
17. On this basis, we would recommend that the Senedd grants legislative consent.

### **Financial implications**

18. While there are no direct financial implications for the Welsh Government or the Senedd arising from the powers under the Bill, there will be significant financial implications for Wales from our future trade relationships in its overall economic effect.

### **Conclusion**

19. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as the Bill covers both devolved and non-devolved matters. In terms of coherence, the Welsh Government considers that legislating via a UK-wide Bill is the most effective and proportionate legislative vehicle for creating an independent trade policy for the UK following the transition period. Devolved areas may be heavily impacted by future trade agreements therefore it is important Welsh interests are adequately reflected in the Trade Bill.

**Jeremy Miles MS**

**Counsel General and Minister for European Transition**

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