



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Amendments to the UK's Trade Bill proposed by the Scottish and Welsh Governments.**

DATE **18 January 2018**

BY **Ken Skates AM, Cabinet Secretary for Economy and Transport**

The Welsh Government recognises the need for legislation that builds a future trade policy for the UK if we are to leave the EU. We agree that the provisions in the Trade Bill designed to maintain continuity in trading relationships, and ensure continued access to government procurement markets are necessary to provide clarity and certainty for businesses and consumers going forward.

In an approach analogous to the approach taken in the EU (Withdrawal) Bill, the Trade Bill places restrictions on the executive competence it gives to Scottish and Welsh Ministers, while placing no similar restrictions on the executive competence given to UK Ministers; and it gives UK Ministers concurrent powers in devolved areas which are exercisable without any requirement for Scottish or Welsh Ministers' consent. This is unacceptable. Moreover, in our view the Trade Remedies Authority, as an independent body, should have input from the devolved nations as well as the Secretary of State.

Hence the Scottish and Welsh Governments cannot recommend that our respective legislatures give their legislative consent to the Bill as it is currently drafted. In an effort to make the Bill acceptable in its approach to devolution, we have developed joint amendments with the Scottish Government, which we hope will be tabled in the House of Commons. These are attached along with the explanatory notes. As we stated in the Trade Bill Legislative Consent Memorandum that was laid on 7 December our view is that the question of whether legislative consent should be given should be considered in the light of the UK Government's response to these amendments.

1

Clause 1, page 1, line 15 at end insert—

- 5 “() No regulations may be made under subsection (1) by a Minister of the Crown, so far as they contain provision which would be within the devolved competence of the Scottish Ministers (within the meaning given in paragraph 7 of Schedule 1), unless the Scottish Ministers consent.
- 10 () No regulations may be made under subsection (1) by a Minister of the Crown, so far as they contain provision which would be within the devolved competence of the Welsh Ministers (within the meaning given in paragraph 8 of Schedule 1), unless the Welsh Ministers consent.”

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15 **Clause 2, page 2, line 40 at end insert—**

- 20 “() No regulations may be made under subsection (1) by a Minister of the Crown, so far as they contain provision which would be within the devolved competence of the Scottish Ministers (within the meaning given in paragraph 7 of Schedule 1), unless the Scottish Ministers consent.
- 25 () No regulations may be made under subsection (1) by a Minister of the Crown, so far as they contain provision which would be within the devolved competence of the Welsh Ministers (within the meaning given in paragraph 8 of Schedule 1), unless the Welsh Ministers consent.”

3

Clause 2, page 3, line 3 at end insert—

- 30 “(10) No regulations may be made under subsection (8)(b) unless the Secretary of State has consulted with the Scottish Ministers and the Welsh Ministers.”

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Schedule 1, page 7, line 24 at end insert—

- 35 “(4) This paragraph does not apply to regulations made under section 1(1) or 2(1) by the Scottish Ministers or the Welsh Ministers.”

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Schedule 1, page 8, line 5, at end insert—

- 40 “(4) This paragraph does not apply to regulations made under section 1(1) or 2(1) by the Scottish Ministers or the Welsh Ministers.

Requirement for consultation in certain circumstances

- [] (1) No regulations may be made by the Scottish Ministers or the Welsh Ministers acting alone under section 1(1) or 2(1) so far as the regulations are to come into force before exit day unless the regulations are, to that extent, made after consulting with a Minister of the Crown.
- (2) No regulations may be made by the Scottish Ministers or the Welsh Ministers acting alone under section 2(1) so far as the regulations make provision about any quota arrangements or are incompatible with any such arrangements unless the regulations are, to that extent, made after consulting with a Minister of the Crown.
- (3) In sub-paragraph (2) “quota arrangements” has the same meaning as in paragraph 3.”

6

15 **Schedule 4, page 14, line 34, at end insert –**

- “(aa) a non-executive member appointed by the Secretary of State with the consent of the Scottish Ministers,
- (ab) a non-executive member appointed by the Secretary of State with the consent of the Welsh Ministers,”

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Trade Bill Amendments Explanatory Notes

A. UK Government powers to implement the Agreement on Government Procurement and certain other international agreements: requirement for consent of Scottish or Welsh Ministers if making provision within devolved competence

As currently drafted, UK Ministers' powers to make regulations under clauses 1 and 2 of the Bill could be used to make provision in policy areas which are the responsibility of Scottish or Welsh Ministers. The Scottish Government and Welsh Government acknowledge that there may be circumstances justifying amendments to laws in devolved areas being made on a UK-wide basis, but they consider that this should only be possible with the consent of the devolved administrations

Proposed amendments 1 and 2 would mean that UK Ministers would be required to secure the consent of the Scottish Ministers or the Welsh Ministers, before making provision which would be within devolved competence. Devolved Ministers would then be accountable to their legislatures for any decision to consent to the UK Ministers legislating on such a basis.

B. UK Government power to decide the duration of the power to implement international trade agreements: requirement for consultation with Scottish and Welsh Ministers before exercising the power

The Bill allows the Secretary of State to decide how long the power to implement international agreements is to last. These decisions will determine how long devolved Ministers have to use their implementing powers, and for how long the Secretary of State can use the implementing power in devolved areas (as well as in non-devolved areas). The Scottish and Welsh Governments consequently believe that the views of the devolved administrations should have to be taken into account in decisions about the duration of the implementing powers.

Proposed amendment 3 would mean that the Secretary of State would be required to consult the Scottish Ministers and the Welsh Ministers before deciding whether and how to adjust the time period during which the implementing powers can be used.

C. Scottish Ministers' and Welsh Ministers' implementation powers: removal of restrictions

The Bill places a number of restrictions on devolved Ministers' use of the implementation powers in Part 1 of the Bill which are not placed on UK Ministers. We believe as a matter of principle that devolved Ministers should have the same powers as UK Ministers in respect of matters falling within devolved areas.

Proposed amendment 4 would remove the restrictions prohibiting the Scottish and Welsh Ministers' from (a) modifying directly applicable EU law which the Withdrawal Bill incorporates into UK law; and (b) from making provision that is inconsistent with certain kinds of modifications made to that body of law by the UK Parliament or the UK Government. This would bring Scottish and Welsh Ministers' powers into line with the powers being given to UK Ministers in devolved areas.

Proposed amendment 5 would remove the requirement for Scottish and Welsh Ministers to obtain the consent of a UK Minister before using the implementing power

to make regulations that would come into force before exit day, or that would involve quota arrangements. This amendment would require devolved Ministers to consult UK Ministers instead.

D. Trade Remedies Authority: requirement for Scottish and Welsh Ministers' consent to appointment of a non-executive member

The Bill establishes a new Trade Remedies Authority that will ultimately be tasked with investigating claims of dumping or subsidy in the UK, and imposing and enforcing trade remedy measures; in doing so, it will act in the interests of the UK as a whole. Scottish and Welsh Ministers believe that its credence and independence will be demonstrably enhanced by giving devolved administrations an appropriate role in relation to the Authority.

Proposed amendment 6 would require the Secretary of State to obtain Scottish Ministers' and Welsh Ministers' consent to the appointment of a non-executive member to the Board of the Authority.