

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 2)

TRADE BILL

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the National Assembly.
2. The Trade Bill (the “Bill”) was introduced in the House of Commons on 7th November 2017. The Bill moved into the House of Lords on 18th July 2018. The Bill can be found at:
[Bill documents — Trade Bill 2017-19 — 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; establishes a Trade Remedies Authority and confers 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. No significant changes to the focus of the Bill have been made since introduction. 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 EU-exit;
 - 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 Trade Remedies Authority 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:

- Clause 1 – (implementation of the Agreement on Government Procurement).
- Clause 2 – (implementation of international trade agreements).

We do not believe that Parts 2 and 3 – (establishing the Trade Remedies Authority; and Collection and sharing of trade information). are making provision for any purpose within, or which modifies the legislative competence of the Assembly.

Provisions in the Bill for which consent is required

7. We consider that Part 1 of the Bill and its associated Schedules require consent on the basis that they are making provision for a purpose that is within the Assembly's legislative competence. The following clauses which require consent were already set out in detail in the first legislative consent memorandum (which is available [here](#)): Part 1, clauses 1 to 4 and schedules 1, 2 & 3.

8. On initial introduction of the Trade Bill the Welsh Government had a number of concerns regarding aspects of the Trade Bill which both fell within and outside the Assembly's legislative competence. These have now been addressed through amendments or commitments made in Parliament. These are set out below:

- **Concurrent powers in clauses 1 and 2**– we were concerned that the Bill as drafted, could see UK Ministers exercise concurrent powers in devolved areas without the consent of Welsh Ministers. We were also concerned that the sunset provision for clause 2 could be extended without any engagement with Welsh Ministers. We have now obtained commitments in the UK Parliament including:
 - UK Government Ministers will not normally use the powers in devolved areas without Welsh Ministers' consent. This is in line with the approach taken in the EU (Withdrawal) Act.
 - UK Government will not use the powers to introduce new policy in devolved areas and that administrative efficiency will be the primary driver¹.
 - Engaging with devolved administrations before extending the period during which clause 2 powers can be used under the Bill.
- **Restrictions on devolved Ministers' use of the implementation powers in Part 1 of the Bill** - We had concerns that under the

¹ UKG has committed in the Intergovernmental Agreement to adhering to this principle in the use of its concurrent Withdrawal Act powers.

previous version of the Bill, devolved Ministers did not have same powers as UK Ministers in respect of matters falling within devolved areas. Amendments have since been made to the Bill that:

- remove the blanket restrictions prohibiting the Scottish and Welsh Ministers' from (a) modifying directly applicable EU law which the 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..
 - 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. The amendment requires devolved Ministers to consult UK Ministers instead.
- **Trade Remedies Authority**– We take the view that the TRA provisions are not within competence and include this information here for the sake of completeness only. An amendment tabled in the House of Lords which was supported by the Welsh Government sought to establish the Devolved Governments as 'interested parties' for the purpose of us being informed of investigations, being afforded an adequate opportunity to submit information to investigations and being notified of decisions. We have now obtained non legislative commitments in the UK Parliament with the same purpose which has in places gone further than the 'interested parties' ask. These include:
 - DIT will advise the devolved administrations when an investigation is opened by the TRA, which will alert them to the need to take a decision on whether or not to register their interest in the case.
 - A devolved administration will be able to register their interest with the TRA and then become a contributor.
 - As a contributor, the devolved administration will be invited by the TRA to submit relevant information which it will be obliged to take into account in the investigation as appropriate.
 - Contributors will also be notified by the TRA of any actions it has taken.
 - The Secretary of State will notify the DAs of the TRA's recommendations at the same time as consulting government departments so that they can feed in their views before they make a final decision as to accept or not.
 - The TRA's annual report will be shared with the devolved administrations once it has been received by the DIT Secretary of State and the administrations will be enabled to lay it before their legislatures at the same time as the Secretary of State lays it in Parliament.
 - The Secretary of State will seek DAs suggestions on the optimal way of recruiting TRA non-executive members with regional knowledge skills and experience.

9. Some further amendments have also been made to the Bill that require consent, since the previous Legislative Consent Memorandum. These are set out below:

- **Amendments to Clause 1 (implementing the GPA)**– these amendments creates powers to deal with cases where changes are made to the UK’s list of central government authorities in the GPA, which we see no difficulty with recommending consent for.
- **Amendments to Clause 2 (implementing international trade agreements)** – these amendments change the procedure for Clause 2 from the negative to the affirmative, extend the power so that it can be used to modify retained direct EU legislation, ensure that clause 2 powers cannot be used to confer a power to make subordinate legislation and reduce the duration in which the clause 2 powers can be used from five to 3 years (unless extended). To the extent that these changes apply to regulations within devolved competence they too are within devolved competence. We see no difficulty with recommending consent to these amendments.
- **Amendments to paragraph 2, Schedule 1.** This paragraph contained restrictions on Devolved Administration’s powers to make regulations under the Bill in similar terms to the restrictions on DAs’ powers in the Withdrawal Bill (as it was then). The amendments to this paragraph change the restrictions to mirror those in the EU (Withdrawal) Act, which in turn were changed following the agreement reached between the UK and Welsh Governments in the Intergovernmental Agreement and associated provisions of the EU (Withdrawal) Act. We are content with these amendments given that the National Assembly agreed to them in the context of the EU (Withdrawal) Act and are happy to recommend consent
- **Addition of Clause 6 (UK participation in the European medicines regulatory network)** - The clause was an opposition amendment which passed in the Commons. We have approached this clause as being within competence to the extent that it requires Welsh Ministers either to implement any international trade agreement of the kind described, or to take whatever steps are necessary within devolved competence, to enable the UK Government to conclude an international agreement of the kind described. We believe the UK should continue to participate in the Europeans medicines regulatory network and therefore we recommend consent.

Powers to create subordinate legislation

10. Schedule 2 provides for scrutiny by the UK Parliament and the devolved legislatures of regulations made under clauses 1 or 2. Regulations made under clause 1(1) by a Minister of the Crown or the Welsh Ministers

acting either jointly or alone are subject to the negative procedure; for regulations made under clause 2(1) the procedure is affirmative.

Restrictions on powers for Welsh Ministers

11. As described above, in the first Legislative Consent Memorandum we noted our concerns regarding the concurrent powers contained in the Bill i.e. that both Welsh Ministers and a Minister of the Crown can make regulations in relation to Wales and around the restriction of Welsh Ministers powers. However we believe the amendments made since to the Bill, and the non-legislative commitments made by the UK Government in Parliament, have addressed these concerns adequately.

Reasons for making these provisions for Wales in the Trade Bill

12. The Welsh Government agrees that legislation is necessary to provide clarity and certainty for businesses and consumers in relation to trade as we leave the EU. We accept there may be instances when it makes sense for the UK Parliament to legislate on devolved areas, but this should only be with the consent of the Devolved Governments. In the context of other commitments made by the UK Government with regards to the Bill, we would recommend that the Assembly give legislative consent.

Financial implications

13. While there are no direct financial implications for the Welsh Government or the Assembly arising from the powers under the Bill, there will be significant financial implications for Wales from our future trade relationships both in its overall economic effect and in areas of funding currently deriving from the EU, as set out in *Securing Wales' Future*.

Conclusion

14. 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, it is considered that legislating via a UK wide Bill is the most effective and proportionate legislative vehicle for creating an independent trade policy for the UK once it has exited from the EU.

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