



Ein cyf/Our ref MA/EM/0263/19

David Rees AM (Chair)
Chair of External Affairs and Additional Legislation Committee
National Assembly for Wales
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12 March 2019

Dear David,

UK Trade Bill – Supplementary Legislative Consent Memorandum EAAL Report

I would like to thank you, and all the members of the External Affairs and Additional Legislation Committee, for taking the time to consider the Legislative Consent Memorandum for the UK Trade Bill for a second time.

As I am sure you will appreciate the timescales for consent around the Trade Bill LCM have been incredibly tight and therefore I am unable to provide a detailed response to all your recommendations on this occasion. However, the debate on the consent motion for the Bill will be held later today and I hope that this will provide an opportunity to discuss some of your points further.

You have concluded that your concerns about the scope of the power to be granted to Welsh Ministers have not been addressed. Whilst I appreciate these concerns, there are still uncertainties around the UK's exit from the EU and I believe the possible additional flexibility that broader powers provide may be useful in the future. Moreover, if Parliament has not constrained the powers of UK Ministers to act, including within devolved competence, then I would hope you would agree the same should apply to Welsh Ministers.

With regards to your concerns around the lack of a statutory requirement for the UK Government to obtain devolved consent when making regulations in devolved areas, I am satisfied with the non-statutory assurances given by the UK Government. The nature of the assurances given are identical to those received in the context of the EU (Withdrawal) Act which I note were sufficient to persuade the National Assembly to provide legislative consent for that Bill. As I said when I appeared before your Committee on 4 March, if this

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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.

commitment were to be broken Welsh Government would then look again. We have every expectation that such an outcome is unlikely.

I also note your concerns regarding the impact that concurrent powers and a duty to consult might have on the Assembly's legislative competence. I assure you that both issues are under consideration in the context of discussions between Welsh Government and the UK Government about how to resolve any unintended consequences on legislative competence.

With regards to the Clause 1 powers to implement the WTO General Agreement on Procurement being subject to affirmative procedure, this is an issue on which we take different views. The GPA was renegotiated very recently and may not change much in substance for years to come, so the nature of the provision made under clause 1 powers is likely to be minor or technical. Given this, my view is that the negative procedure is adequate.

I note the Committee's view that extending the duration of the Welsh Ministers' clause 2 powers is a matter that should be for the Assembly to scrutinise, rather than UK Parliament. I do not disagree with that position as a matter of principle but at the same time not everything we think sensible or appropriate is necessarily worthy of the resources needed to pursue it. Judgments have to be made about where to dedicate resources and the current circumstances did not meet that threshold.

Lastly, I note your conclusion that the Bill should be amended to protect the Government of Wales Act 2016 from amendment by UK Ministers utilising powers under this Bill. As I think my predecessor may have mentioned previously, we do not believe that the powers in clauses 1 are wide enough to allow amendment of the Government of Wales Act 2006, and so cannot see that an amendment is needed.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan AC/AM

Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
Minister for International Relations and the Welsh Language