



Our ref: EM/0263/19

Mr Mick Antoniw AM
Chair of Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

SeneddCLA@assembly.wales

25 April 2019

Dear Mick,

UK Trade Bill – Supplementary Legislative Consent Memorandum CLAC Report

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

I have now had time to consider your report. I responded to a number of your concerns during the debate on the Legislative Consent Memorandum, however there are a few points I'd like to follow up on.

You said that you would welcome a commitment to either publish a document setting out the commitments from the UK Government in full or for us to secure an amendment to the existing Intergovernmental Agreement. Attached to this document is a list of the despatch box commitments that have been secured. These are in addition to Ministerial Correspondence laying out the commitments I have previously described with regards to the Trade Remedies Authority.

You have also recommended that Standing Order 30C should be amended to apply to the Trade Bill, once enacted. Whilst I understand the rationale for this, in the light of the experience of the correcting SIs programme I think it would be helpful to consider a review SO30C more generally. I have asked my officials to give further consideration to 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.

I would also like to use this opportunity to make you aware of some further developments around the UK Trade Bill. I'm sure you'll be aware that the Trade Bill has now undergone its final reading in the House of Lords. Several amendments have been made to the Bill, a number of which I would like to draw your particular attention to. These are the amendments I believe are within the Assembly's competence and are identified in the Annex.

Amendments 1, 4, 5 and 15 do not alter anything legally but simply make clear what was implied in the clauses as originally drafted, or move provisions from one place to another. For this reason, I believe that the Assembly's consent to the original clauses covers these changes.

Amendments 2, 3, 11 and 13 either limit or remove powers which were identified in the original Legislative Consent Memorandum and do not make relevant provision for the first time. As a result I do not consider that these amendments require a supplementary LCM.

One of the effects of amendment 14 is to widen devolved powers under the Bill and as a result I do not think this change is covered by the Assembly's original consent. Ordinarily I would lay an LCM for an amendment of this kind but realistically I do not see that there would be time for the LCM procedures to be complied with. For this reason I do not intend to do so.

Amendment 16 adds a new clause into the Bill so that Parts 1 to 3 can only come into force if the House of Commons approves a withdrawal agreement and framework for future relationship under s. 13 of the Withdrawal Act, or approves withdrawal without an agreement and framework. This is an opposition amendment and therefore the UK Government may seek to overturn it when it returns to the House of Commons. I will continue to keep members up to date on this amendment.

Finally, during the debate I confirmed that I would be happy to issue a written statement on the role of the Trade Remedies Authority. I will be issuing this statement shortly.

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



Annex 1 – House of Lords amendments at Report considered to be within competence

No.	Explanation	Comments
1	Changes the clause 1 powers so that they can be used to modify retained direct principal EU legislation, rather than retained direct EU legislation.	This change does not alter anything legally, it just makes clear what was implied in the original drafting.
2	Requires clause 1 regulations to adhere to the standards requirement (see amendment 3).	See below.
3	Requires clause 1 regulations containing provision in various areas to be consistent with statutory protections in those areas, e.g. animal welfare.	Narrows the scope of the clause 1 power so that only provision that adheres to this new condition can be made.
4	Changes the clause 2 powers so that they can be used to modify retained direct principal EU legislation, rather than retained direct EU legislation.	This change does not alter anything legally, it just makes clear what was implied in the original drafting.
5	Makes express that clause 2 powers can only be used to make provision for civil penalties.	This change does not alter anything legally, it just makes clear what the position would have been under the original drafting.
11	Removes clause 6 (UK participation in the European medicines regulatory network).	Removes a power which was set out in the original memoranda. Not making relevant provision for the first time.

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	Adds a substitute clause.	
13	Removes authority for regulations under clauses 1 and 2 to be made before exit day if they modify certain kinds of retained EU law, as long as they come into force after exit day.	Removes a power which was set out in the original memoranda. Not making relevant provision for the first time.
14	This changes the definition of 'subordinate legislation' used in the Bill so that it includes subordinate legislation made under an Assembly Act or Measure.	<p>The principal effect is to dis-apply some of the restrictions on Welsh Ministers' powers if they have a power under an Assembly Act or Measure to do the same thing free from those restrictions (broadly speaking).</p> <p>On balance it seems likely that the Assembly has competence to require Welsh Ministers to consult UKG before making regulations, but not to require UKG consent as a prerequisite to making regulations or to require joint exercise of the powers with UKG. This is on the basis that consent and joint exercise are likely to involve imposing a function on UK Ministers, whereas consultation feels less likely to involve that. Given this, the amendment is arguably within competence to the extent that it dis-applies the requirement to consult UKG before making Trade Bill regulations if the same thing could be done by Welsh Ministers in regulations under an Assembly Act or Measure.</p> <p>This widens Welsh Ministers' powers under the Bill and so is not covered by the previous memoranda.</p>
15	Moves the definition of domestic law from the Schedule dealing with devolved powers to the main interpretation section of the Bill.	This change does not alter anything legally.
16	Adds a new clause so that Parts 1 to 3 can only come into force if the HoC approves a withdrawal agreement and framework for future relationship under s. 13 of the Withdrawal Act, or approves withdrawal without an agreement and framework.	Not a UK Government amendment. Monitor during ping pong.