

Eluned Morgan AM
Minister for International Relations and the Welsh
Language

6 June 2019

Dear Eluned

Trade Bill - Supplementary Legislative Consent Memorandum (Memorandum No 3)

I am writing to seek clarification on a point which was raised during the 21 May 2019 plenary debate on the Supplementary Legislative Consent Memorandum (Memorandum No 3) on the Trade Bill.

In that debate you stated that the most recent amendments to the Bill (which necessitated the supplementary LCM) effectively widen devolved powers under the Bill. During an exchange with Dai Lloyd AM, you appear to suggest that it is only the legislative powers of the National Assembly that have been expanded, and not also the powers of the Welsh Ministers. Our understanding of the position is set out below.

Under Schedule 7B of the Government of Wales Act 2006 (the 2006 Act), the National Assembly cannot remove or modify “qualified devolved functions” without UK Government consent. Some subordinate legislative powers of the Welsh Ministers that were in the Trade Bill before it was amended amounted to qualified devolved functions.

Following the amendment to the Bill, there are fewer qualified devolved functions, meaning more powers for the Assembly. At the same time, the requirement for the Welsh Ministers to consult the UK Government has been removed in those cases where the same thing could be achieved by regulations under an Assembly Act or a Measure without the need to consult.

In our view, therefore, the amendment to the Bill appears to both increase the power of the Assembly (in that there are fewer qualified devolved functions



restricting it) and gives the Welsh Ministers greater freedom to make subordinate legislation under the Trade Bill.

We note that paragraph 12 of Memorandum No 3 states:

"[The] amendment alters the meaning of 'subordinate legislation' so that when that term is used in the Bill it now includes subordinate legislation made under Assembly Acts and Measures. One of the effects of this alteration is to dis-apply the requirement to consult UK Government before making Trade Bill regulations if the same thing could be done by Welsh Ministers in regulations under an Assembly Act or Measure without the need to consult the UK Government (broadly speaking). This effectively widens devolved powers under the Bill. We consider this amendment to be within competence. Because the effect of the amendment is to widen Welsh Ministers' powers we consider that the amendment is not covered by the Assembly's original consent."

I would be grateful if you would provide clarity on this matter, and I would welcome a response from you at your earliest convenience.

Yours sincerely



Mick Antoniw AM

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

