

Written Response by the Welsh Government to the report of the External Affairs and Additional Legislation Committee entitled UK international agreements after Brexit: A role for the Assembly.

Welsh Government welcomes the report. Detailed responses to the report's recommendations are set out below:

Recommendation 1. To enable this scrutiny to take place, we recommend that the Welsh Government lays a UK Outline Approach²⁴ at the same time as the Outline Approach is laid before the UK Parliament. The Outline Approach should be accompanied by an additional memorandum that explains the Welsh Government's position and the effect of implementing the eventual agreement on the Assembly's legislative competence and/or the Welsh Ministers' functions.

²⁴As referred to in the UK Government's Command Paper

Response: Accept in principle

It is important that the Senedd has sufficient time and information to scrutinise the Welsh Government's approach to influencing trade negotiations carried out by the UK Government. As trade negotiations will cover areas that both directly and indirectly relate to devolved areas of competence we have been calling for close involvement of the Welsh Government in related areas. In these areas we are calling for engagement of Welsh Government at the same time as UK Government Departments to ensure decisions are made by the UKG are at least fully informed by, if not collectively agreed with, DAs. We will need to carry out these discussions in confidence and respect any agreements we reach on what we can share and when.

We believe the Devolved Legislatures should be afforded the same opportunities for scrutiny as the UK Parliament in areas of devolved competence. I agree with the Committee that when documents are laid in the UK Parliament they should also be laid before the Senedd.

I agree that the Welsh Government should also agree to lay an additional memorandum that sets out our position and any clear implications for devolved legislative or executive competence where it is possible to do so. However, I cannot currently accept the recommendation that this should be at the same time as the UKG outline approach is laid. In order to agree to this recommendation we would need to have assurance from UKG that we will have access to the information to be included in the UK outline approach in advance to allow time for a Welsh specific memorandum to be developed. It should be noted, as set out in the Command Paper, that the UK Outline Approach is unlikely to set out in detail the shape of a final agreement. It is therefore possible, and possibly likely, that the Welsh Government would not be able to meaningfully identify the implications associated with the implementation of any final agreement, including any impact on devolved legislative or executive competence. I therefore cannot accept the recommendation that the memorandum must include the implications for devolved legislative or executive competence, as these may not be discernible from the UK Outline Approach. However, I commit to provide any information on these matters that is reasonably clear from the UK Outline Approach.

Financial Implications: There will be some limited additional costs associated with preparing memoranda, including associated legal advice. This is being factored into costs associated with the ongoing development of a new trade policy function across Welsh Government.

Recommendation 2. We recommend that, in circumstances where the Welsh Government is seeking to reach an agreement that would constrain the future legislative competence of the Assembly once implemented, then the Welsh Government should seek the Assembly's consent before making such representations to the UK Government.

Response: Accept in principle

Should we secure the role we are seeking in negotiations we may be involved in lengthy discussions in a range of complex areas. Should it become clear an agreement is likely to constrain the exercise of the legislative competence of the Senedd, and should the Welsh Government be asked to agree to this, we will make clear any provisional agreement we may reach in the context of confidential negotiations would be subject to scrutiny by the Senedd. We will explore with the UK Government potential mechanisms to engage with the Senedd during or between negotiating rounds to mirror any arrangements being put in place for the UK Parliament.

Domestic legislation is likely to be needed to implement such agreements. And the Senedd will play a key role in this, either by scrutinising and passing legislation to implement any obligations in relation to Wales, or giving consent to a UK Bill which implements the international agreement for the entire of the UK, where the Bill contains provisions within the legislative competence of the Senedd or modifies the legislative competence of the Senedd.

Recommendation 3. We recommend that the Welsh Government continues to engage with the UK Government to ensure that negotiation documents laid in Parliament can be laid in the Assembly at the same time. Additionally, where the UK Parliament is offered enhanced access to negotiation documents, we recommend that the Welsh Government ensures equivalent access is granted for Assembly Members insofar as the documents relate to devolved areas and areas that might affect devolved competence.

Response: Accept

We will continue to press for the Senedd to have equivalence with the UK Parliament in these areas. It is a pragmatic and reasonable request we hope the UK Government will agree to.

Financial Implications: None – already part of ongoing work

Recommendation 4. In these circumstances, we recommend that any proposals for a revised process of UK Parliamentary scrutiny incorporates the need to consider the views of the Assembly before the ratification of an agreement. We hope that both the UK and Welsh Governments will undertake to support this.

Response: Accept in Principle

The Welsh Government is happy to endorse and support the principle of the Senedd being consulted as part of UK Parliamentary scrutiny process and any convention between

legislatures. But it is not yet clear what any revised process of UK Parliamentary scrutiny might be proposed and this recommendation is ultimately outside of the control of the Welsh Government.

The Welsh Government has consistently argued against a statutory role for the Senedd in the ratification process. As a result I welcome the acknowledgement in the report that UK Parliament does not currently have an absolute veto over international agreements and with that in mind the report does not go as far as to suggest veto powers for the Senedd.

Financial Implications: None for Welsh Government

Recommendation 5. We recommend that the Welsh Government pursues differential implementation of international agreements as a means of ensuring devolved interests are observed without causing impediment to the progress of a UK agreement.

Response: Accept in principle

There are numerous examples of differential implementation enabled within free trade agreements, which is often necessary to recognise a range of complex issues and governance arrangements in different sovereign nations. The US for example often excludes state-level provisions from its trade agreements, and EU recognises different arrangements in different Member States.

We will explore relevant exclusions and annexes, ideally based on precedent, where there are areas relating to devolved competence in which agreement cannot be reached between the UK and Devolved Governments. This approach may be necessary to reflect the realities of the Northern Ireland protocol should divergence take place between the EU and UK (and by extension the UK and GB) in related areas. We will similarly make the case for Wales where appropriate, considering the risks and benefits, including any potential impact on the UK Internal Market.

Financial Implications: There are no direct implications from the recommendation itself. The reality of specific positions may raise significant financial implications (for example monitoring and enforcement of different standards in Wales and England) and these will need to be considered on a case-by-case basis.

Recommendation 6. We recommend that the Welsh Government seeks a commitment from the UK Government to notify Welsh Ministers and the Assembly if it intends to give provisional effect to an international agreement (in part or in full).

Response: Accept

We would expect this to form a normal part of the process for agreeing an international agreement.

Financial Implications: No additional costs associated with the recommendation, though implementation of international agreements will have associated costs dependent on the nature of any changes required to legislation or other arrangements.