

LEGISLATIVE CONSENT MEMORANDUM

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 19 March 2020. The Bill can be found at:

<https://services.parliament.uk/Bills/2019-21/trade.html>

Policy Objective(s)

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; establishing a Trade Remedies Authority (TRA) and conferring 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 (DIT).
5. The Bill makes provision for:
 - Conferring regulation making powers on a Minister of the Crown and devolved authorities to implement the World Trade Organisation Agreement on Government Procurement, which the UK intends to join as an independent member after the transition period;
 - Conferring regulation making powers on a Minister of the Crown and devolved authorities to implement certain kinds of existing EU/third country trade agreements, such as the existing Free Trade Agreements signed by the EU on behalf of the UK (the ‘trade continuity agreements’);
 - The establishment of a TRA to deliver the new UK trade remedies framework; and
 - The establishment of a data-sharing gateway between Her Majesty’s Revenue and Customs and other public and private bodies.

The provisions in the Bill of particular relevance to Wales are:

- Part 1, Clause 1 – (implementation of the Agreement on Government Procurement).
- Part 1, Clause 2 – (implementation of international trade agreements).
- Parts 2 and 3 – (establishing the TRA; and Collection and sharing of trade information). The Welsh Government does not believe that these parts are making provision for any purpose within, or which modifies the legislative competence of the National Assembly for Wales. However, the establishment of a TRA could have an impact on devolved areas such as agriculture and fisheries.

Provisions in the Bill for which consent is required

6. The Welsh Government considers 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 legislative competence of the National Assembly for Wales:

- **Part 1, Clause 1**- this provision confers powers on the Welsh Ministers to implement the Agreement on Government Procurement (GPA). This is a plurilateral (non-mandatory) agreement within the World Trade Organisation framework, which opens up government procurement markets. Once the transition period with the EU ends the UK will no longer be a party to the GPA and therefore cannot be bound by or benefit from the GPA. Following the transition period, the UK intends to join the GPA as a party in its own right and this means that regulations may need to be made in relation to Wales in order to implement the GPA in relation to Wales.

The powers conferred by clause 1 are concurrent, in so far as they are exercisable in relation to Wales. This means that both a Minister of the Crown and the Welsh Ministers are able to exercise those powers in relation to matters within the legislative competence of the National Assembly for Wales. Therefore, the Welsh Government considers that consent is required for this provision. Regulations made by a Minister of the Crown or the Welsh Ministers acting either jointly or alone under section 1 are subject to the negative resolution procedure (see Part 2 of Schedule 2).

- **Part 1, Clause 2** – this confers powers on the Welsh Ministers to implement international trade agreements with third countries corresponding to certain kinds of existing EU/third country agreements. As in the case of clause 1, the powers can also be exercised by a Minister of the Crown in relation to Wales.

The international trade agreements potentially covered by this provision will encompass a wide range of policy areas falling within the legislative

competence of the National Assembly for Wales, to include agriculture and fisheries. The Welsh Government therefore considers that consent is required for this provision. Regulations made by a Minister of the Crown or the Welsh Ministers acting either jointly or alone under section 2 are subject to the affirmative resolution procedure (see Part 3 of Schedule 2).

- **Part 1, Clause 3 and Schedules 1, 2 and 3** – Clause 3 provides for different types of provision that could be made in regulations made under clauses 1 and 2. Clause 3 also gives effect to Schedules 1-3. Schedule 1 places restrictions on the exercise of the Welsh Ministers powers. Schedule 2 makes provision for the procedure which is to apply to regulations made under clauses 1 and 2. Schedule 3 contains exceptions to restrictions in the devolution settlement.

As these provisions define how the regulation making powers conferred by clauses 1 and 2 can be exercised by the Welsh Ministers, these provisions also relate to subjects within the legislative competence of the National Assembly for Wales and consent is therefore required.

- **Part 1, Clause 4** – this provision outlines how certain terms within Part 1 of the Bill should be interpreted. As this provision needs to be considered alongside clauses 1, 2 and 3, we consider that consent is required for this provision.
7. Consent is required for these provisions because they fall within the legislative competence of the National Assembly for Wales in so far as the powers conferred concern the implementation of aspects of international agreements which relate to non-reserved matters.
 8. The Bill's main components are the same as the Trade Bill 2017-19. A legislative consent memorandum and two supplementary legislative consent memorandums were laid in relation to the Trade Bill 2017-19.

Reasons for making these provisions for Wales in the Trade Bill

9. The Welsh Government agrees that legislation is necessary to provide clarity and certainty for businesses and consumers in relation to trade now the UK has left the EU.
10. 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. The UK Government have agreed to restate commitments made during the passage of the 2017-19 Trade Bill, which include:
 - That the UK Government will not normally use concurrent powers to legislate in devolved areas without the consent of the Devolved Governments, and never without consulting them.

- That the UK Government will not use the powers to introduce new policies in devolved areas and that administrative efficiency will be the primary driver.
- Engaging with Devolved Governments before extending the period during which clause 2 powers can be used under the Bill.

11. The provisions in the Bill relating to the Trade Remedies Authority (TRA) do not engage SO29 and therefore consent of the National Assembly for Wales is not being sought for them. However, for the sake of completeness, commitments we expected to be restated in relation to the TRA are set out below:

- The DIT will advise the Devolved Governments 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 Government will be able to register their interest with the TRA and then become a contributor.
- As a contributor, the Devolved Government 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 Devolved Governments of the TRA's recommendations at the same time as consulting UK 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 Governments once it has been received by the Secretary of State and the Devolved Governments will be able to lay it before their respective legislatures at the same time as the Secretary lays it before the UK Parliament.
- The Secretary of State will seek suggestions of the Devolved Governments as to the optimal way of recruiting TRA non-executive members with regional knowledge, skills and experience.

12. On this basis, the Welsh Government would recommend that the National Assembly for Wales give legislative consent.

Financial implications

13. While there are no direct financial implications for the Welsh Government or the National Assembly for Wales arising from the powers under the Bill,

there will be significant financial implications for Wales from our future trade relationships in its overall economic effect.

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, the Welsh Government considers that legislating via a UK wide Bill is the most effective and proportionate legislative vehicle for creating an independent trade policy for the UK following the transition period. Devolved areas may be heavily impacted by future trade agreements therefore it is important Welsh interests are adequately reflected in the Trade Bill.

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