

LEGISLATIVE CONSENT MEMORANDUM

TRADE (AUSTRALIA AND NEW ZEALAND) 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 Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Trade (Australia and New Zealand) Bill (‘the Bill’) was introduced to the House of Commons on 11 May 2022. A link to the Bill is available [here](#)

Policy Objectives

3. The UK Government’s stated policy objective for the Bill is to provide the necessary measures to implement the free trade agreements (FTAs) which the UK has agreed with Australia and New Zealand (together referred to as “the Agreements”). To support this, the Bill makes provisions to enable the government procurement obligations set out in the Agreements to be implemented in domestic law. It also enables other matters arising out of, or related to, the procurement Chapters of the Agreements to be dealt with, including making the implementation changes apply generally in order for domestic procurement law to apply consistently and coherently.

Summary of the Bill

4. The Bill is sponsored by the Department for International Trade (DIT).
5. The Bill is a “single-issue” Bill and is required to enable the implementation of the government procurement obligations set out in Chapter 16 of the Agreements. The Bill must be in force before formal entry into force of the Agreements to ensure that the UK is not in breach of any obligations set out in the Agreements.
6. The Bill provides the UK Government, as well as the Welsh Ministers, with the power to make changes to domestic legislation stemming from the UK’s government procurement obligations under the Agreements.
7. My officials were involved in the development of the policy requiring the Bill – namely the government procurement chapters of the FTA agreements with Australia and New Zealand. Officials have regular meetings with both DITs negotiation teams and the DIT procurement policy team. The changes needed as a result of the government procurement chapters were discussed with officials, before they were agreed finally as part of the negotiations.
8. However, my officials were not involved in the development of the Bill itself. Officials were party to discussions with DIT procurement policy officials when the prospect of a bill being brought to the UK Parliament was first raised in February 2022. Throughout these discussions Welsh Government officials met with UK Government officials from DIT and Cabinet Office and made clear at these meetings that a bill which granted concurrent powers would not be acceptable to the Welsh Government. Although DIT officials have initially provided timing and efficiency as a reason and justification for the inclusion of concurrent powers, it is unclear why DIT believe the

Bill should contain concurrent powers only. My officials were given first sight of the draft Bill on 6 May.

9. This Bill interacts with the UK-Australia Free Trade Agreement and the UK-New Zealand Free Trade Agreement. The Bill must be passed and receive Royal Assent before formal entry into force of the Agreements to ensure that the UK is not in breach of its obligations under the Agreements when they enter into force. The UK Government has indicated it is seeking to gain Royal Assent by late 2022/early 2023.
10. The Bill also interacts with the Procurement Bill, also introduced into the UK Parliament (House of Lords) on 11 May 2022, which is being sponsored by the Cabinet Office and is available [here](#). Royal Assent for the Procurement Bill is being sought by late Spring 2023. The Bill is to be repealed by an order made under the Procurement Bill, as will the amendments to the Government of Wales Act 2006 (GOWA) made by the Bill. The Procurement Bill also requires the legislative consent of the Senedd, therefore a Legislative Consent Memorandum on that bill will also be laid before the Senedd in accordance with SO29.

Provisions in the Bill for which consent is required

11. Clause 1 is central to the Bill and gives powers to all four governments in the UK. To the extent that the power is given to Welsh Ministers, the Bill is within the Senedd's competence and comprises a devolved matter within the meaning of section 107(6) of the Government of Wales Act (GOWA) 2006. All other provisions within the Bill follow from the powers set out in Clause 1, as such almost all provisions of the Bill require consent.
12. Paragraph 9 of Schedule 1 modifies the Senedd's competence. It disapplies the requirement in para 8(1)(c) to obtain Minister of the Crown consent before removing the requirement under this Bill to consult UK Ministers or to obtain their consent before making clause 1 regulations. It also disapplies the requirement in paragraph 11(1)(a) to obtain Minister of the Crown consent before removing UK Ministers' concurrent power under clause 1.

Clause 1

13. Clause 1 creates regulation-making powers for an appropriate authority to make provisions which the authority considers appropriate to implement the government procurement Chapters of the UK-Australia and UK-New Zealand Agreements, or to deal with matters arising out of, or related to, those Chapters.

Clause 2

14. Clause 2 sets out some of the things that the clause 1 power can do, for example, making different provision for different cases.

Clause 3

15. Clause 3 introduces Schedules 1 and 2. Schedule 1 contains restrictions on the exercise of the clause 1 power by devolved governments as well as exclusions from restrictions on the Senedd's competence. Schedule 2 contains provisions about the making of clause 1 regulations, for example the parliamentary procedures that apply.

Schedule 1 paragraphs 1 and 6

16. Paragraph 1 prohibits devolved governments making provision in clause 1 regulations that is outside devolved competence; *devolved competence* is defined in paragraph 6.

Schedule 1, paragraph 2

17. This paragraph requires Welsh Ministers to obtain Minister of the Crown consent when exercising clause 1 powers in certain cases and disapplies that requirement in others.

Schedule 1 – paragraph 3

18. This paragraph prevents Welsh Ministers making provision in Clause 1 regulations in certain cases unless that provision is made jointly with a Minister of the Crown, it disapplies that restriction in other cases.

Schedule 1 – paragraph 4

19. This paragraph prevents Welsh Ministers making provision in Clause 1 regulations without consulting a Minister of the Crown in certain cases and disapplies that requirement in others.

Schedule 1 – paragraph 9

20. This provision modifies para 9(9) of Schedule 7B GOWA so that the Senedd will be able to remove the requirement under this Bill to obtain Minister of the Crown consent before exercising clause 1 powers. This provision also modifies para 11(6) of Schedule 7B so that the Senedd will be able to remove the concurrent function of Ministers of the Crown under Clause 1.

Schedule 2 – paragraph 1(b)

21. This paragraph sets out that regulations made by Welsh Ministers under Clause 1 must be made by statutory instrument.

Schedule 2 – paragraph 2(3)

22. Paragraph 2 sets out the parliamentary procedure applicable to regulations made under clause 1 by any of the Governments acting alone. Para 2(3) makes Clause 1 regulations made by WMs subject to the negative procedure

Schedule 2 – Clause 3

23. This paragraph sets out the parliamentary procedure applicable to regulations made under clause 1 by any of the devolved Governments acting jointly with a Minister of the Crown.

UK Government view on the need for consent

24. The UK Government agree that the consent of the Senedd is required for the Bill and the Minister for Trade Policy wrote to the Minister for Economy on 11 May outlining the Bill and seeking a Legislative Consent Motion.

25. The Bill includes concurrent powers (in Clause 1) contrary to the Welsh Government's principles for UK bills. DIT, at official level, has indicated it is not minded to include concurrent plus or equivalent powers in the Bill for reasons of expedience and convenience to allow the Bill to be passed as soon as possible and to reduce the risk that the FTA agreements cannot be implemented.

26. I wrote to the UK Government on 16 May to ask the Minister for Trade Policy to re-consider the current draft of the the Bill and instead include either equivalent or concurrent plus powers in the Bill.

Reasons for making these provisions for Wales in Trade (Australia and New Zealand) Bill

27. The Welsh Government agrees that there is a need to amend the procurement legislation in Wales to meet the requirements of the government procurement chapters in the UK-Australia and UK-New Zealand Free Trade Agreement. The powers given in this Bill would ensure that procurement law in Wales does not cause the UK to be in breach of the Agreements as soon as the Agreements come into force.
28. There is insufficient time available to bring forward an equivalent bill in the Senedd and so in principle I consider it appropriate for the UK Parliament to legislate for Wales in this case. The changes proposed are also narrow in scope and have been subject to discussion between Welsh Government and UK Government officials.
29. I cannot however recommend that the Senedd gives consent because although the Bill gives Welsh Ministers powers to make regulations in devolved areas, it also gives those powers to UK Ministers without any requirement to obtain Welsh Ministers' consent.
30. There have been no amendments made to the Bill at this current time.

Financial implications

31. There are no direct financial implications for the Welsh Government of the Senedd arising from the powers under the Bill.

Conclusion

32. The Bill contains concurrent powers at clause 1. The UK Government has indicated it is unwilling to grant equivalent or concurrent plus powers which covers an area of devolved competence. In my view the justification given for doing this is not satisfactory therefore, I recommend that the Senedd rejects the Bill in its current form and withholds its consent.

Vaughan Gething MS
Minister for Economy
25 May 2022