

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM

(MEMORANDUM NO 3)

TRADE BILL

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29(iii)(a) prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the Senedd 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 Bill (“the Bill”) was introduced in the House of Commons on 19 March 2020. The current version of the Bill was introduced in the House of Lords on 21 July 2020. The Bill completed Report stage in the House of Lords on 6 January 2021. The Bill can be found at: [Bill documents - Trade Bill 2019-21 - UK Parliament](#)

Policy Objectives

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 with third countries that have pre-existing trade agreements with the EU; implementing the Agreement on Government Procurement (GPA); 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.
5. The version of the Bill that was introduced into the House of Commons contains four main components:
 - It confers regulation making powers on a Minister of the Crown and devolved authorities to implement the Agreement on Government Procurement in the event of the UK being an independent member of that Agreement after the end of the transition period;

- It confers regulation making powers on a Minister of the Crown and devolved authorities to implement international trade agreements with third countries who had pre-existing trade agreements with the EU;
 - It establishes a TRA to deliver the new UK trade remedies framework;
 - It establishes a data sharing gateway between Her Majesty's Revenue and Customs and other public and private bodies.
6. The provisions in the Bill which have previously been identified as being 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 with third countries who have pre-existing trade agreements with the EU).
 - Part 2 – (establishing the TRA) – The Welsh Government does not believe that the provisions in Part 2 of the Bill relating to the TRA are making provision for any purpose within, or which modifies the legislative competence of the Senedd. However, the establishment of a TRA could have an impact on devolved areas such as agriculture and fisheries.
 - Part 3 – (Collection and sharing of trade information).

Provisions in the Bill for which consent is required

7. The Welsh Government laid a legislative consent memorandum on 2 April 2020, based on the Bill as introduced into Parliament on 19 March 2020. That legislative consent memorandum covered Part 1, Clauses 1 to 4 and Schedules 1, 2 and 3 of the Bill. The Welsh Government did not consider that the provisions in Parts 2 or 3 of the Bill as introduced engaged SO29.
8. The Welsh Government laid a supplementary legislative consent memorandum (No. 2) on 4 November 2020 which covered Part 3, Clauses 9 and 10 of the Bill. The memorandum was necessary as amendments were made to Part 3 of the Bill at House of Commons Report Stage which make provision in relation to Wales and contained provision within the Senedd's legislative competence.

Supplementary provisions in the Bill for which consent is required

9. Since the publication of the first memorandum and the supplementary memorandum, the Bill has been amended during House of Lord Report Stage.

10. This supplementary memorandum (memorandum no. 3) sets out the new clauses to the Bill which require the consent of the Senedd. The first and supplementary memoranda laid on 2 April 2020 and 4 November 2020 respectively must be considered together with this memorandum when deciding on consent.
11. Consent is being sought for the relevant amendments to the Bill on the basis that they make provision with regard to devolved matters. The Welsh Government has applied a lower test than that set out in SO 29.1(i) which provides that consent should be sought in circumstances where provision would be within the Senedd's legislative competence (excluding incidental, consequential etc. provision).
12. Clause numbers below relate to the version of the Bill ordered to be printed on 6 January 2021 following amendments made at House of Lords Report stage.

Part 3 – The Trade and Agriculture Commission (clauses 15 to 18 and Schedule 6)

13. These amendments provide for the establishment of the Trade and Agriculture Commission (the "TAC") as a statutory body whose role is to provide independent advice to the Secretary of State on relevant provisions in new free trade agreements. Subject to two minor non-government amendments, the provisions that are now contained in Part 3 were tabled by the government and approved at House of Lords Report stage on 6 January 2021.
14. Clause 15 provides that the Secretary of State may appoint members to the TAC as a statutory committee. The TAC's purpose is to provide advice under section 42 of the Agriculture Act 2020 (the 2020 Act) which contains separate provision on reports relating to free trade agreements (FTAs)). When appointing members to the TAC, clause 15(3)(e) provides that the Secretary of State must have regard to the desirability of appointing members who, between them, have expertise in (a) UK animal and plant health standards, (b) UK animal welfare standards, (c) UK environmental standards as they relate to agricultural products, (d) international trade law and policy, and (e) public health and health inequalities.
15. Clause 15(3)(e) was a non-government amendment. It is possible that this amendment may be overturned when the Bill returns to the Commons for consideration of amendments.
16. Clause 16 makes provision for the TAC's functions. The amendments insert a new subsection (4A) in section 42 of the 2020 Act which requires the Secretary of State to request advice from the TAC on the matters referred to in section 42 of that Act. That is, the extent to which the relevant measures contained in new free trade agreements which are applicable to trade in agricultural products are consistent with the maintenance of UK levels of statutory

protection in relation to human, animal or plant life or health, animal welfare and the environment.

17. The original amendment that was tabled by the government excluded the consideration of UK levels of statutory protection in relation to human health from TAC's remit. However, that provision was included in a non-government amendment that was passed on 6 January 2021. It is possible that the amendment will be overturned when the Bill returns to the Commons for consideration of amendments.
18. Clause 17 makes further provision about the status of the TAC Members which are designed to reflect their independent status. Such Members are not to be regarded as servants or agents of the Crown or enjoying any status, immunity or privilege of the Crown. Clause 17 also introduces Schedule 6 which contains provision applying legislation relating to public bodies to the TAC.
19. Clause 18 enables the Secretary of State to repeal clauses 15 to 17 by regulations which are subject to the affirmative procedure in both Houses of Parliament.
20. As the TAC is being established with the function of providing advice to the Secretary of State on the ratification of the relevant chapters in future free trade agreements, it would not fall within the Senedd's competence to make equivalent provision to that contained in clauses 15 to 18 and Schedule 6 of the Bill for the purposes of the test set out in SO 29.1(i). The UK Government's position is that the central purpose of the TAC relates to the ratification of an international treaty under the processes set out in the Constitutional Reform and Governance Act 2010. The regulation of international trade is a reserved matter under paragraph 10(1) of Schedule 7A to the Government of Wales Act 2006. This view in terms of the UK Government amendments to the Bill is shared by the Scottish Government who have decided not to lay a supplementary Memorandum for these amendments. Although the test in SO 29.1(i) is not satisfied, the Welsh Government has chosen to lay a supplementary memorandum seeking consent for all of the provisions in Part 3 on the basis that it is at least arguable that they make provision with regard to devolved matters in so far that TAC's remit is to provide advice to the Secretary of State on standards that relate to such matters as health, plant and animal health, animal welfare and the environment as those standards apply to Wales.

Reasons for making these provisions for Wales in the UK Trade Bill

21. Although the test in SO 29.1(i) is not satisfied it is arguable that the amendments make provision with regard to devolved matters because TAC's remit is to advise the Secretary of State on standards that relate to such

matters as health, plant and animal health, animal welfare and the environment in so far as those standards apply to Wales.

22. However, as the role of the TAC is limited to advising the Secretary of State on free trade agreements at the treaty ratification stage, this is of itself highly unlikely to have a negative impact on the Senedd's competence. Any potential impact on the Senedd's competence would flow from the outcome of the negotiations themselves and not the advice.
23. There is no intention for TAC to advise the Welsh Government and it does not impede Welsh Ministers from taking separate advice on the potential of future trade negotiations to impact on the Senedd's competence.
24. On this basis, we would recommend that the Senedd grants legislative consent.

Non-Government Amendments

25. In addition to the insertion of a new Part 3 to the Bill, a number of non-government amendments have been passed at House of Lords Report stage which may be overturned when the Bill returns to the House of Commons for consideration of amendments. The following amendments have been included in this supplementary memorandum on the basis that they are making provision with regard to devolved matters. The Welsh Government is content with each of these amendments on the basis that they place safeguards on the ability of the UK Government to enter into future free trade agreements and place further constraints on the exercise of the regulation making power in clause 2.
26. The Welsh Government would prefer the Bill to include these Clauses in its final form but recommends consent to the Bill whether or not they are retained.

Clause 3 (parliamentary approval of trade agreements)

27. This amendment requires the Secretary of State to lay draft negotiating objectives before commencing negotiations towards a free trade agreement. The amendments include provision in clause 3(4)(b) which requires the Secretary of State to produce a sustainability impact assessment including an assessment of the impact of the proposed negotiating objectives on human, animal or plant life or health, animal welfare, environmental protection, human rights and equalities, and environment and labour. Clause 3(5)(b) also prescribes that the sustainability impact assessment must include a plan to maintain the UK levels of statutory protection on the matters set out in clause 3(4)(b).
28. Although these amendments do not satisfy the test in SO 29.1(i), it is the Welsh Government's view that these amendments require consent because it

makes provision with regard to devolved matters in so far as it applies to Wales, including agriculture, the environment and health and animal health.

Clause 6 (International trade agreements: health, care or publicly funded data processing services)

29. Clause 6 contains provision which relates to the regulation making power in clause 2(1) (implementation of international trade agreements) which is exercisable by the Welsh Ministers in devolved areas. The amendments provide that regulations under clause 2(1) may only be made if certain conditions are met. These include the requirements that no provision of the international trade agreement undermines or restricts the ability of an appropriate authority to provide a comprehensive publicly funded public health service free at the point of delivery or to regulate and maintain the quality and safety of health care services.
30. Although it would not fall within the Senedd's competence to make equivalent provision to clause 6 for the purposes of the test in SO 29.1(i), it is the Welsh Government's view that these amendments require consent because they make provision with regard to devolved matters in so far that they apply to Wales. The specified conditions must be taken into account by the Welsh Ministers when exercising the regulation making power in clause 2(1) which may limit the scope of the provision which could be made under that provision. The conditions which are to be taken into account by the Welsh Ministers also relate to health and social care which are devolved matters in so far that they apply to Wales.

Clause 8 – Standards affected by international trade agreements

31. Clause 8(1) requires the Secretary of State to establish a code of practice which sets out how a Minister of the Crown should take steps to maintain standards established by any enactment which contains provision relating to a number of specified matters, including food, animal welfare and the environment. Clause 8(3) also provides that the code may provide that a Minister of the Crown ensures as far as possible that a future trade agreement is consistent with UK levels of statutory protection with regard to a number of specified matters to include human, animal or plant life or health; animal welfare; the environment and food safety.
32. Although these amendments do not satisfy the test in SO 29.1, it is the Welsh Government's view that this amendment requires consent because it makes provision with regard to devolved matters in so far as it applies to Wales, including agriculture, the environment and health and animal health.

Financial implications

32. While there are no direct financial implications for the Welsh Government or the Senedd 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

33. 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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January 2021