

# 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 7 November 2017. The Bill can be found at:  
[Bill documents — Trade Bill 2017-19 — 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; establishing a Trade Remedies Authority 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 Bill has four main functions:
  - It confers regulation making powers on a Minister of the Crown and devolved authorities to implement the Agreement on Government Procurement in the event that the UK is an independent member of that Agreement after EU-exit;
  - It confers 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;
  - To establish a Trade Remedies Authority to deliver the new UK trade remedies framework;
  - To establish 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:

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

### **Provisions in the Bill for which consent is required**

6. We consider 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 Assembly's legislative competence.
7. **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. The UK is not a party to the GPA in its own right but is bound by and benefits from the GPA by virtue of its membership of the EU. On exit from the EU, the UK will no longer be bound by or benefit from the GPA. The UK's aim is to negotiate its way back into the GPA as a party in its own right and this means that we may need to make regulations 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 subjects within the Assembly's legislative competence. Therefore we consider that consent is required for this provision.
8. **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 Assembly's legislative competence, to include agriculture and fisheries. We therefore believe that consent is required for this provision.
9. **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.

10. As these provisions define how the regulation making powers conferred by clauses 1 and 2 can be exercised by the Welsh Ministers within its devolved competence, these provisions also relate to subjects within the Assembly's competence and consent is therefore required.
11. **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.
12. It is the Welsh Government's view that consent is required for these provisions because they fall within the legislative competence of the National Assembly for Wales in so far as they relate to a range of subjects in Part 1 of Schedule 7 to the Government of Wales Act 2006. These subjects include (but are not limited to)-

Agriculture, horticulture, forestry, fisheries and fishing, animal health and welfare, plant health, plant varieties and seeds, rural development (subject heading 1); promotion of business (subject heading 4); environmental protection, including pollution, nuisances and hazardous substances (subject heading 6); food and food products, food safety (including packaging and other materials which come into contact with food), protection of interests of consumers in relation to food (subject heading 8); promotion of health, prevention, treatment and alleviation of disease, illness, injury, disability and mental disorder (subject heading 9).

### **Powers to create subordinate legislation**

13. Schedule 2 provides for scrutiny by the UK Parliament and the devolved legislatures of regulations made under clauses 1 or 2. Regulations made by a Minister of the Crown or the Welsh Ministers acting either jointly or alone are subject to the negative procedure.

### **Restrictions on powers for Welsh Ministers**

14. So far as exercisable in relation to Wales, the powers are concurrent, i.e. both Welsh Ministers and a Minister of the Crown can make regulations in relation to Wales. There are no requirements for consultation or consent when the Minister of the Crown is making changes to devolved law. As we have already set out in response to the European Union (Withdrawal Bill) it is vital any powers given to UK Government Ministers to make secondary legislation in devolved areas must only be used with the prior consent of Welsh Ministers. The Trade White paper suggested such consent from Devolved Governments would be sought and we believe this should be included on the face of the Bill. Further, as currently drafted, there are a number of restrictions placed on devolved Ministers' use of the powers provided for in the Bill which are not placed on UK Ministers. We believe, as a matter of principle, that devolved Ministers should have the same powers in respect of matters falling within devolved competence as UK Ministers are being given.

15. **Schedule 1** contains restrictions on how devolved authorities can use the powers which largely mirror the kinds of restrictions currently imposed on Welsh Ministers' powers under the European Union (Withdrawal) Bill, e.g. the powers cannot be used-
- (a) to make provision that would be outside the Assembly's competence
  - (b) to modify that part of the EU Acquis which has automatic effect in the UK via section 2(1) of the European Communities Act 1972 and which will be incorporated into domestic law, by the European Union (Withdrawal) Bill.
  - (c) to make provision that is inconsistent with any modifications to that body of law, which are made by the European Union (Withdrawal) Bill or under that Bill or this Bill
  - (d) to do any of the following without Minister of the Crown consent:
    - to bring regulations into force before exit day
    - to make provision about, or inconsistently with, quota arrangements (which concerns the division of responsibility within the UK for compliance with international obligations).

### **Reasons for making these provisions for Wales in the Trade Bill**

16. The Welsh Government agrees that legislation is necessary to provide clarity and certainty for businesses and consumers in relation to trade as we leave the EU. 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 and this should be made clear on the face of the Bill. Further, there should be parity between the regulation making powers given to Ministers of the Crown and, with respect to devolved areas, Welsh Ministers. The additional restrictions placed on the Welsh Ministers in this regard are not appropriate. Whether or not legislative consent should be given for this Bill will need to be considered in the context of the response to amendments put down to address these issues

### **Financial implications**

17. While there are no direct financial implications for the Welsh Government or the Assembly arising from the powers under the Bill, there will be significant financial implications for Wales from our future trade relationships both in its overall economic effect and in areas of funding currently deriving from the EU, as set out in *Securing Wales' Future*.

### **Conclusion**

18. 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, it is considered that legislating via a UK wide Bill is the most effective and proportionate legislative vehicle for creating an independent trade policy for the UK once it has exited from

the EU. Devolved areas may be heavily impacted by future trade agreements therefore it is important Welsh interests are adequately reflected in the Trade Bill.

**Ken Skates AM**  
**Cabinet Secretary for Economy and Transport**  
**December 2017**