

## **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 National Assembly for Wales in relation to a UK Parliamentary Bill if amendments agreed to in Parliament make relevant provision beyond the limits of any consent previously given.
2. The Trade Bill (the “Bill”) was introduced in the House of Commons on 7<sup>th</sup> November 2017. The Bill moved into the House of Lords on 18<sup>th</sup> July 2018 and completed its 3rd reading in the Lords on the 20<sup>th</sup> March 2019. 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; establishes a Trade Remedies Authority and confers 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 international trade agreements with third countries who have pre-existing trade agreements with the EU;
  - It establishes a Trade Remedies Authority 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. Amendments made to the Bill in the Lords include provision relating to:
- Parliamentary approval of UK Government negotiating mandates for free trade agreements and for post-ratification reports on the impact of any concluded free trade agreements;
  - Requirements in respect of the future trade relationship with the EU and EEA (including compatibility with the Northern Ireland Act 1998); and
  - A requirement to make a statement regarding the impact of any regulations made under clause 2 on equalities legislation.
7. 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).
8. We do not believe that Parts 2 and 3 – (establishing the Trade Remedies Authority; and Collection and sharing of trade information) are making provision for any purpose within, or which modifies the legislative competence of the Assembly.

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

9. 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. The following clauses which require consent were already set out in detail in the first legislative consent memorandum (which is available [here](#)): Part 1, clauses 1 to 4 and schedules 1, 2 & 3.
10. On initial introduction of the Trade Bill the Welsh Government had a number of concerns regarding aspects of the Trade Bill which both fell within and outside the Assembly's legislative competence. These were addressed through amendments or commitments made in Parliament and a further Supplementary Memorandum was laid on 14 February 2019. Following a debate, the National Assembly for Wales voted to give consent to the Trade Bill on [12 March 2019](#).
11. Since the previous Memorandum was laid and the Bill has progressed through the House of Lords some further amendments have been made to the Bill. We consider that one of these amendments is within the competence of the National Assembly and requires further consent, since the previous Legislative Consent Memorandum.

12. This amendment alters the meaning of 'subordinate legislation' so that when that term is used in the Bill it now includes subordinate legislation made under Assembly Acts and Measures. One of the effects of this alteration is to dis-apply the requirement to consult UK Government before making Trade Bill regulations if the same thing could be done by Welsh Ministers in regulations under an Assembly Act or Measure without the need to consult the UK Government (broadly speaking). This effectively widens devolved powers under the Bill. We consider this amendment to be within competence. Because the effect of the amendment is to widen Welsh Ministers' powers we consider that the amendment is not covered by the Assembly's original consent.

13. We believe this amendment represents an improvement to the Bill as it removes the scenario where the Welsh Ministers would be required to consult the UK Government before making regulations under the Trade Bill, but would not be required to do so if they made the same provision under other powers. We therefore consider that consent should be granted.

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

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

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

15. Our original concerns regarding the concurrent powers contained in the Bill i.e. that both Welsh Ministers and a Minister of the Crown can make regulations in relation to Wales and around the restriction of Welsh Ministers powers were addressed by previous amendments made to the Bill, to which the Assembly has already granted its consent.

### **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. In the context of other commitments made by the UK Government with regards to the Bill, we would recommend that the Assembly give legislative consent.

### **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.

**Eluned Morgan AM**  
**Minister for International Relations and Welsh Language**  
**May 2019**