

# Agenda – External Affairs and Additional Legislation Committee

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Meeting Venue:	For further information contact:
Committee Room 2 – Senedd	Alun Davidson
Meeting date: 20 May 2019	Committee Clerk
Meeting time: 14.00	0300 200 6565
	<a href="mailto:SeneddEAAL@assembly.wales">SeneddEAAL@assembly.wales</a>

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- 1 Introductions, apologies, substitutions and declarations of interest**  
(14.00)
- 2 Motion under Standing Order 17.42(vi) to resolve to exclude the public from the remainder of the meeting**  
(14.00)
- 3 Private briefing on common frameworks**  
(14.00 – 14.45) (Pages 1 – 46)  
Georgina Haarhoff, Welsh Government  
Paul Harrington, Welsh Government

**Following item 3, the Committee will recommence for public business**

- 4 Follow-up work on Brexit preparedness – evidence session 1**  
(14.45 – 15.30) (Pages 47 – 78)  
Dr Tim Peppin, Welsh Local Government Association  
Councillor Rob Stewart, Welsh Local Government Association
- 5 Follow-up work on Brexit preparedness – evidence session 2**  
(15.30 – 16.15)  
Professor Colin Riordan, Universities Wales  
Mairwen Harris, Universities Wales  
Nesta Lloyd-Jones, Welsh NHS Confederation



## **6 Papers to note**

(16.15 – 16.20)

### **6.1 Paper to note 1: Supplementary Legislative Consent Memorandum**

**(Memorandum no 3): Trade Bill**

(Pages 79 – 82)

### **6.2 Paper to note 2: Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland concerning the Common Travel Area and associated reciprocal rights and privileges**

(Pages 83 – 86)

## **7 Motion under Standing Order 17.42(vi) to resolve to exclude the public from the remainder of the meeting**

(16.20)

## **8 Follow-up work on Brexit preparedness – consideration of evidence**

(16.20 – 16.35)

## **9 Scrutiny of international agreements**

(16.35 – 16.50)

(Pages 87 – 103)

## **10 Discussion on the proposed visit to north Wales**

(16.50 – 16.55)

(Pages 104 – 109)

## **11 Discussion on the European Union Withdrawal Agreement Bill**

(16.55 – 17.05)

(Pages 110 – 117)

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## **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**

# Agenda Item 6.2

## **Memorandum of Understanding**

**between**

**the Government of the United Kingdom of Great Britain and Northern Ireland**

**and**

**the Government of Ireland**

**concerning the Common Travel Area and associated reciprocal rights and privileges**

### **Introduction**

1. This Memorandum of Understanding (“MOU”) reaffirms the arrangement between on the one hand the Government of the United Kingdom of Great Britain and Northern Ireland and on the other the Government of Ireland (hereinafter referred to as “the Participants”) in relation to the Common Travel Area (“CTA”) and the associated reciprocal rights and privileges enjoyed by British and Irish citizens in each other’s state.

### **Purpose and aims**

2. In recognition of their shared commitment to the protection of the CTA and associated reciprocal rights and privileges as a legitimate and fundamental public policy, the Participants have agreed to reinforce the excellent and highly valued cooperation that already exists. This MOU is concerned with the rights of British and Irish citizens, and has as its purpose:
  - a) to reaffirm the status that British and Irish citizens enjoy in each other’s state;
  - b) to reaffirm the associated reciprocal rights and privileges enjoyed by British and Irish citizens in each other’s state;
  - c) to confirm the Participants’ intention to provide further certainty and clarity to British and Irish citizens, and to those responsible for delivering relevant services, about those associated reciprocal rights and privileges;
  - d) to confirm that, where necessary, steps will be taken now and in the future by the Participants to ensure that these associated reciprocal rights and privileges continue to be appropriately reflected in their respective legal systems; and
  - e) to confirm the Participants’ commitment to ongoing joint work to maintain and enhance the frameworks for cooperation on matters relating to the CTA and the associated reciprocal rights and privileges whilst protecting the longstanding principles on which this cooperation is based.

## **The Common Travel Area**

3. The CTA is a long-standing arrangement involving the United Kingdom (“UK”), the Channel Islands and the Isle of Man, and Ireland that facilitates the ability of our citizens to move freely within the CTA. In addition, associated reciprocal rights and privileges have been enjoyed by British citizens in Ireland, and Irish citizens in the UK, since Ireland’s independence.
4. These arrangements reflect the historically close links and cooperation between the UK and Ireland, the many social and economic connections, as well as how the two countries have approached together the movement of people across national borders over time. These links have given rise to, and facilitated the reciprocal enjoyment of, certain rights and entitlements to public services by British and Irish citizens when in each other’s state. The arrangements hold a special significance in people’s daily lives and are of immense importance to the UK and Ireland. The detail of these arrangements has developed over time and will continue to do so.
5. The CTA and associated reciprocal rights and privileges existed long before either the UK or Ireland were members of the European Union (“EU”). The CTA and the associated reciprocal rights and privileges which British and Irish citizens enjoy are separate from, and therefore not dependent on, EU citizenship or EU membership. In the context of the UK’s withdrawal from the EU, and recognising the strong and enduring people to people ties, and long tradition of migration between the UK and Ireland, the Participants consider it desirable to provide a contemporary articulation of these longstanding CTA arrangements, and to reaffirm that such arrangements are to continue.

## **Movement of British and Irish citizens**

6. The CTA allows British and Irish citizens to move freely between the UK and Ireland. The Participants are to continue to ensure that their national laws facilitate such movement.

## **The right to reside**

7. The CTA permits British citizens to take up residence in Ireland and Irish citizens to take up residence in the UK. The Participants are to continue to ensure that their national laws provide for such a right to reside.

## **The right to work**

8. The CTA affords British citizens in Ireland and Irish citizens in the UK the right to work, including on a self-employed basis, without any requirement to obtain permission. The Participants are to continue to ensure that their national laws provide for such a right to work. It is acknowledged that the recognition of qualifications, including professional qualifications, is an essential facilitator of the right to work associated with the CTA. The Participants are committed to ensuring that within their respective jurisdictions, comprehensive measures continue to be in place to allow for the recognition of such qualifications, covering all relevant professions, in accordance with their national laws.

### **Health care**

9. The CTA affords British citizens residing in Ireland and Irish citizens residing in the UK the right to access emergency, routine and planned publicly funded health services in each other's state, on the same basis as citizens of that state.

### **Social protection**

10. The CTA affords British citizens residing or working in Ireland and Irish citizens residing or working in the UK, social security rights in each other's state. They are entitled, when in the other state, to the same social security rights, and are subject to the same obligations, as citizens of that state.

### **Social housing**

11. The CTA affords British citizens residing in Ireland, and Irish citizens residing in the UK, the right to access social housing, including supported housing and homeless assistance, in each other's state, on the same basis as citizens of that state.

### **Education**

12. The CTA affords British and Irish citizens the right to access all levels of education and training, and associated student support, in each other's state, on terms no less favourable than those for the citizens of that state.

### **Voting**

13. British citizens residing in Ireland, and Irish citizens residing in the UK, are entitled to register to vote with the relevant authorities for local and national parliamentary elections in each other's state, on the same basis as citizens of that state. Upon reaching voting age, these citizens are entitled to vote in those elections on the same basis as citizens in that state.

### **Further arrangements and implementation measures**

14. The Participants are committed to ensuring that any necessary steps are taken to give effect to the associated reciprocal rights and privileges outlined above at paragraphs six to thirteen. This includes any necessary legislative steps and further, more detailed, bilateral agreements that may be entered into now or in the future to give effect to specific aspects of the CTA arrangements.
15. The Participants will take the necessary steps to provide certainty and clarity about each of the associated reciprocal rights and privileges set out above to British and Irish citizens and those responsible for the delivery of relevant services.

## **Oversight**

16. The Participants will establish a group of senior officials from both jurisdictions under this MOU which will meet at least once a year. The group will operate in coordination with structured intergovernmental arrangements between the Participants. It will be complementary to the existing CTA Forum on Immigration matters.

## **Final provisions**

17. The foregoing record represents the common understanding of the Participants upon the matters referred to therein. It is not of itself intended to create legally binding obligations. The longstanding durability of the CTA has benefited from a degree of flexibility and the detail of the foregoing arrangements may continue to evolve.
18. Signed in duplicate at London on 8 May 2019.

For the Government of the United Kingdom of  
Great Britain and Northern Ireland

For the Government of Ireland

Rt. Hon. David Lidington CBE MP  
Chancellor of the Duchy of Lancaster and  
Minister for the Cabinet Office

Simon Coveney TD  
Tánaiste and  
Minister for Foreign Affairs and Trade

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# Agenda Item 10

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# Agenda Item 11

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