

Jeremy Miles AS/MS

**Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition**



**Llywodraeth Cymru
Welsh Government**

Eich cyf/Your ref
Ein cyf/Our ref

David Rees MS
Chair of the External Affairs and Additional Legislation Committee
Senedd Cymru
Cardiff Bay
CF99 1NA

3 November 2020

Dear David,

Thank you for your letter of 30 September and a copy of your report which were sent to Eluned Morgan MS, the then Minister for International Relations and the Welsh Language. Following recent changes to Ministerial portfolios, I am responding as I am now leading trade policy matters on behalf of the First Minister.

I would like to thank the Committee for its scrutiny of the Trade Bill LCM. Please find the Welsh Government's response to the report's recommendation at Annex A. In addition, two concerns were raised within the report which are not associated with any recommendations and I have addressed these below:

The Welsh Government's reliance on Ministerial commitments as a basis for recommending the granting of legislative consent

The Committee has recognised the efforts made by my predecessor to secure concessions to this Bill in difficult circumstances where the UK Government has little motivation to compromise. Whilst I agree that non-legislative agreements are far from ideal, this recognised and accepted method does at least exert some pressure on the UK Government to adhere to its promises. I fully understand your concerns about holding the UK Government to account, and I can assure you that this is a priority for me too.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

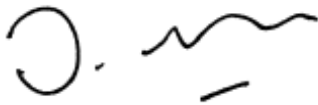
Extending the period within which clause 2 powers can be used

The Welsh Government previously reached a position where it was content to recommend legislative consent to clause 2(7) on the basis of the non-legislative commitments secured from the UK Government during the passage of the Trade Bill 2017-19. These included a despatch box commitment to engage with devolved administrations before extending the period during which clause 2 powers can be used under the Bill. The Senedd accepted this position and provided legislative consent on this basis. In addition, and as noted in your report, the Minister for International Relations wrote to her counterpart on 11 September requesting a further restatement of the commitment relating to the sunset provision clause. An explicit restatement of the commitment was made at committee stage in the Lords on 8 October.

As I have said, I agree that relying on despatch box commitments is not ideal, but they have been accepted including by the Senedd to date as a legitimate device that devolved governments can use to hold the UK Government to account in relation to UK Bills, in the absence of other protections. It would therefore be consistent with the approach taken in other legislation to rely on a despatch box commitment in this instance.

I would be happy to expand on any of my responses at the next EAAL scrutiny session meeting on 5 November.

Yours sincerely,

A handwritten signature in black ink, consisting of a circular mark followed by a wavy line and a short horizontal stroke.

Jeremy Miles AS/MS

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Annex A

Welsh Government Responses to Recommendations from the External Affairs and Additional Legislation Committee on the Legislative Consent Memorandum for the UK Trade Bill

Recommendation	Welsh Government Response
<p data-bbox="199 398 502 430">Recommendation 1</p> <p data-bbox="199 465 534 757">We again recommend that an affirmative procedure be applied to the making of regulations to update the list of public bodies in Wales that will be subject to the GPA.</p>	<p data-bbox="561 398 837 430">Decision – Reject</p> <p data-bbox="561 465 1476 645">The Welsh Government has not previously raised objections to regulations made under clause 1 being subject to the negative procedure and this was the basis on which it recommended that the Senedd provided legislative consent to the Trade Bill 2017-19.</p> <p data-bbox="561 689 1484 1093">In coming to this position, the Welsh Government has taken into account the fact that this power would be exercised to make largely technical changes to existing domestic legislation in order to implement the GPA once the UK is an independent member. For example, this could include amendments to the Procurement Contract Regulations 2015 to ensure that the list of central government contracting authorities covered by those regulations is consistent with the UK’s obligations under the GPA. It could also include amendments to domestic legislation in response to another party joining the GPA or in response to a current member leaving the GPA.</p> <p data-bbox="561 1137 1428 1205">The extent of discretion that could be exercised by either UK Ministers or the Welsh Ministers is very limited in practice.</p> <p data-bbox="561 1249 1484 1496">The Senedd accepted this position when it agreed a legislative consent motion on 12 March 2019, and subsequently on 21 May 2019 in light of two supplementary legislative consent memoranda. It was accepted there was very little chance of successfully securing an amendment from the UK Government to change the proposed procedure from negative to affirmative at that time.</p> <p data-bbox="561 1541 1484 1863">Since that time, the prospect of an alternative stance resulting in practical change is also worth noting, simply for completeness. The current UK Government is in a strengthened position, having won a significant majority in parliament, and given that its position is that it isn’t open to changing the procedure to be applied to regulations made under clause 1, it is worth simply noting that it is practically speaking extremely unlikely that any representations we should make to the UK Government on this matter would receive serious consideration.</p> <p data-bbox="561 1908 1029 1939">Financial Implications – None.</p>