

LEGISLATIVE CONSENT MEMORANDUM
TRADE (DISCLOSURE OF INFORMATION) 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 (Disclosure of Information) Bill (“the Bill”) was introduced in the House of Commons on 15 December 2020. The Bill can be found at: <https://publications.parliament.uk/pa/bills/cbill/58-01/0232/200232.pdf>.

Policy Objectives

3. The Bill makes provision about the disclosure of information relating to trade. The provisions within the Senedd’s legislative competence were originally included in the Trade Bill (see the supplementary Legislative Consent Memorandum on that Bill: <https://senedd.wales/laid%20documents/lcm-ld13677/lcm-ld13677-e.pdf>).

Summary of the Bill

4. The Bill is sponsored by the Department for International Trade.
5. The Bill “provides key data sharing measures that are required as the UK Government prepares for its new relationship with the European Union”. These measures include:
 - a. A power for HMRC to share data with public or private bodies in order that they can fulfil their public functions relating to trade. This power will enable HMRC to share data with a Minister of the Crown, devolved authorities and international organisations or any other body, in order that they can fulfil their public functions relating to trade.
 - b. A power for specified public authorities (Secretaries of State, the Minister for the Cabinet Office, Highways England and Port Health Authorities) to share data in order to facilitate the exercise by a Minister of the Crown of the Minister’s functions relating to trade.
 - c. The creation of an offence where a person discloses information in contravention of clause 2 which relates to a person whose identity is specified in the disclosure, or can be deduced from it.

- d. A provision which provides the Secretary of State with a regulation making power which will apply if, in the same session in which this Act is passed, an Act resulting from the Trade Bill is passed which contains provisions that the Secretary of State is of the opinion have a similar effect to sections 1-3 of this Bill.

Provisions in the Bill for which consent is required

6. Clause 2(1) confers a power on specified public authorities to disclose information to a Minister of the Crown for the purposes of facilitating the exercise of a Minister of the Crown's functions relating to trade. The specified public authorities in clause 2(3) that may disclose information to a Minister of the Crown are a Secretary of State, the Minister for the Cabinet Office, a strategic highways company appointed under section 1 of the Infrastructure Act 2015 and a port health authority constituted under section 2 of the Public Health (Control of Disease) Act 1984. Most of the specified authorities falling within this data-sharing gateway are reserved authorities. However, the definition of a port health authority captures Welsh port health authorities that exercise functions in relation to Wales and is broad enough to enable such authorities to disclose information relating to non-reserved matters to a Minister of the Crown.
7. Clause 2(9) also confers a regulation making power on a Minister of the Crown which enables the list of specified authorities in clause 2(3) to be amended. That power is capable of being exercised to add or remove devolved Welsh authorities from the list.
8. Clause 3 creates an offence relating to disclosure under clause 2. This is a criminal offence for a person to disclose identifiable personal information in breach of the requirements in clause 2 in certain specified situations. Such an offence is punishable by a fine and/or a term of imprisonment of up to a period of two years on indictment or up to 12 months on summary conviction. As this provision needs to be considered alongside clause 2, we consider that consent is also required for this provision.

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

9. The UK Government requires a legal mechanism to enable it to request access to, and share information held by a wide range of public authorities. Gaining access to a wider range of devolved and reserved data could improve the UK Government's capability to respond to border issues, design traffic management initiatives and enhance trade flows.
10. The Welsh Government is supportive of the rationale for the Bill. To ensure benefits can be accrued in Wales, we sought assurances from the UK Government regarding the equivalent provisions in the Trade Bill:

- a) The UK Government will share any analysis relevant to the delivery of devolved responsibilities with the Welsh Ministers. The Bill makes provision for the onward disclosure of data by a Minister of the Crown, with the consent of the public authority from which that data had been obtained. This could enable a Minister of the Crown to disclose data to the Welsh Ministers in circumstances where the data is relevant to the Welsh Ministers' devolved functions relating to trade, such as traffic management around key ports.
 - b) The UK Government will consult with the Welsh Ministers before adding or removing any Welsh public authorities from the data sharing gateway in clause 2.
11. The Welsh Government considers that it has previously received sufficient assurances from the UK Government in response to these requests and that they will apply to this Bill as they did to the Trade Bill. To confirm this, the commitments will be restated, either in the Houses of Parliament or within a Ministerial letter.
 12. Two despatch box commitments were made in relation to the Trade Bill clauses at House of Lords Committee stage on 15 October:

'First, the data shared under Clause 9 will be used by the border impact centre and the Cabinet Office to develop strategic insights. They are committed to sharing strategic analysis related to flow of trade, where it will support the more effective management of flow through the border.

I understand that Cabinet Office officials have been working closely with counterparts in the devolved Administrations to ensure that relevant analysis and information relating to trade and management of the border can be shared to support devolved functions. Examples of the types of information that the border impact centre intends to share with relevant parties in the devolved nations are flow patterns through ports.

The Cabinet Office will continue to work with the devolved Administrations to ensure that the border impact centre provides strategic benefit to management of flow through key ports.

Secondly, the UK Government commit to consulting the devolved administrations before any devolved authorities are added to, or removed from, the list of specified authorities that can share data under Clause 9.'

13. We believe the assurances previously provided are sufficient, once they have been restated, to ensure that the Welsh Ministers will be able to access more detailed information to increase border management capabilities and enhance trade flow data, benefitting Wales.

14. There is also a sunset clause which would mean these provisions would expire if or when corresponding data sharing provisions contained in the Trade Bill come into force.
15. On this basis, we would recommend that the Senedd grants legislative consent.

Financial implications

16. 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

17. 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 data sharing arrangements in relation to trade.

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