



Eich cyf/Your ref
Ein cyf/Our ref

Mick Antoniw AC
Chair
Constitution and Legislative Affairs Committee

6 December 2018

Dear

I am writing in response to the Constitution and Legislative Affairs Committee's report, *Scrutiny of regulations made under the Trade Bill*, published on 8 October. Although the report focuses specifically on the Trade Bill, which relates to my portfolio responsibilities, it raises wider issues relating to Brexit-related legislation. In responding to the report, I set out the Welsh Government's view in relation to these broader points.

Recommendations one to five and seven in the report relate to the committee's view that regulations made under clause 1 of the Trade Bill should be subject to the sifting mechanism included in the European Union (Withdrawal) Act 2018 (the 2018 Act). Our response to these recommendations is addressed below.

The sifting mechanism introduced under the 2018 Act was a solution identified to address a very particular set of circumstances. The Welsh Government has no objection in principle to an enhanced role for legislatures when circumstances warrant it. However, we do not see that clause 1 of the Trade Bill meets the threshold.

The Welsh Government's view is that sifting is appropriate in relation to subordinate legislation flowing from Brexit primary legislation in cases where the power:

- a) is very broad in scope;
- b) can be exercised concurrently or jointly by UK and Welsh Ministers;
- c) can be used to amend primary legislation; and
- d) is subject to the executive's choice of procedure at the point of laying.

In such cases, the Welsh Government is content for Standing Order 27.9B to apply, rather than the requirement placed on UK Ministers by paragraph 3(7) of Schedule 7 to the 2018 Act referred to in recommendation 3, for the reasons outlined in the Business Committee

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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.

report, *Proposed Amendments to Standing Orders 21, 27, 30B and 30C - Implementation of European Union (Withdrawal) Act 2018*, published on 3 October.

In relation to point a, the Welsh Government recognises the power to make regulations under clause 1 of the Trade Bill is wide in the sense that it could be used to implement both major and minor changes to the Agreement on Government Procurement (GPA).

However, we do not consider the clause 1 power, focused on GPA commitments as it is, is sufficiently broad enough to warrant a sifting mechanism. The power can only be used to implement commitments the UK has already signed up to and cannot be used to alter those commitments. The only scope for discretion is in how the commitments are implemented. Given the public procurement focus of the commitments, it is difficult to envisage a circumstance in which the manner of implementation, rather than the commitment itself, would be of major concern.

In relation to point b, the clause 1 power could be exercised concurrently or jointly.

In relation to point c, we see nothing in clause 1 to suggest that the power could be used to amend the Government of Wales Act 2006 or other primary legislation, other than to the extent that retained direct EU legislation can be said to be primary legislation (and therefore the amendments suggested by the committee in recommendation six are not necessary).

And, finally, in relation to point d, the clause 1 power is subject to the negative procedure – there is no choice of procedure for UK or Welsh Ministers.

Therefore, it is our view the clause 1 power does not meet the criteria and a sifting mechanism is not appropriate.

We welcome and support recommendation eight, relating to the application of the Intergovernmental Agreement (IGA) principles to the Trade Bill. Our expectation is that negotiations on all Brexit legislation, including the Trade Bill, should be conducted in line with the principles set out in the IGA.

We also support recommendation nine, which relates to the extension to the Welsh Ministers of the duty to lay reports under clause 5. We are happy to lay such reports before the National Assembly in the same way UK Ministers will lay reports before the UK Parliament.

I thank the committee for its consideration of these matters and its report. I trust the response is helpful to your scrutiny of the Trade Bill and look forward to continuing to work with the committee.

Yours sincerely



Ken Skates AC/AM

Ysgrifennydd y Cabinet dros yr Economi a Thrafnidiaeth
Cabinet Secretary for Economy and Transport