



Department for  
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12 April 2023

Dear Lord Howell,

### **Legislative consent and the Trade (Australia and New Zealand) Act 2023**

I wanted to take the opportunity to write following the Third Reading of the Trade (Australia and New Zealand) Bill in March to set out some more detail in relation to the important points raised about Legislative Consent Motions. As Third Reading can often be a short debate, I wanted to ensure I fully reflected the importance I place on seeking legislative consent from the devolved legislatures.

As mentioned in the debate, international relations are a reserved matter as listed in the Scotland Act 1998, the Government of Wales Act 2006 and an excepted matter in the Northern Ireland Act 1998. The negotiation and ratification of international treaties are undertaken by the UK Government under the Royal Prerogative. I believe the ability to speak on behalf of all parts of the UK gives us the strongest hand possible in negotiations. As trade agreements of this nature sit under the international relations reservation, we do not seek the consent of any devolved legislature for the agreements themselves. The scrutiny of the agreements is a matter for the UK Parliament.

As you will know through your careful consideration of the Bill, the power in clause 1 is required to make implementing legislation giving effect to procurement obligations in both the UK-Australia and UK-New Zealand Free Trade Agreements (FTAs). Whilst the negotiation of international treaties is a matter for the UK Government, the devolved administrations (DAs) are responsible for implementing international obligations as far as they relate to a matter of devolved competence. As procurement is a partially devolved matter, it is right we confer these powers on devolved authorities. This enables those authorities to make secondary legislation in keeping with their responsibility for implementing international obligations.

The power in clause 1 is concurrent, enabling a UK Minister to legislate on behalf of Wales, Scotland or Northern Ireland when it makes practical sense to do so. Whilst the Welsh and Scottish Governments were content with the inclusion of concurrent powers in the Trade Act 2021, they have adopted a principled opposition to powers of this nature in the Bill. Both Governments insisted upon an amendment to the Bill requiring their approval to any secondary legislation. This would have been out of keeping with our constitutional arrangements, giving both Governments the option of declining agreement to secondary

legislation required to bring the two FTAs into force. It would have amounted to an effective veto over the two trade agreements in question.

I regret there was no route to address concerns through other means despite the efforts of Ministers and officials. Whilst this is a disappointing outcome, I believe the efforts made demonstrate the importance the UK Government continues to place on the Sewel Convention.

I am committed to continuing to engage the DAs on future legislation and to seeking legislative consent where appropriate. And my Ministerial colleagues and officials in the Department for Business and Trade continue to share information and updates with their counterparts in the DA throughout the process of negotiating trade agreements.

Thank you again for your valuable contributions during the Bill's passage.

I am copying this letter to all noble Lords who participated in the Bill's third reading, who I trust share an interest in this important subject. I am also placing a copy of this letter in the Library of the House.

Best wishes,

A handwritten signature in dark ink, appearing to read 'R. Johnson', with a horizontal line underneath.

**Lord Johnson of Lainston CBE**  
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