

External Affairs and Additional Legislation Committee – Written Evidence (TWP0005)

The [External Affairs and Additional Legislation Committee](#) (“the EAAL Committee”) is the Senedd committee that, alongside other responsibilities, scrutinises UK international agreements. It does so from the perspective of their implications for Wales and the devolution settlement.

The EAAL Committee has taken a role both in terms of:

- the routine consideration of UK international agreements subject to the Constitutional Reform and Governance Act 2010; and
- scrutiny of the Welsh Government’s role, and assessing the treatment of the devolution settlement, in the negotiation of new international agreements.

In December 2019, the EAAL Committee published a report expressing its view on a role for the Senedd in the development and scrutiny of UK international agreements: *UK international agreements after Brexit: A role for the Assembly [Senedd]*. The Welsh Government responded to the report on 5 February 2020.

This submission provides the outline approach from the above report and an update on the early operation of the approach.

Details of how the EAAL Committee conducts its routine scrutiny are available on its website and a diagram illustrating the approach is appended to this submission.

A role for the Senedd

1. In our December 2019 report, *UK international agreements after Brexit: A role for the Assembly [Senedd]*, we set out a five phase process for engaging with the conduct of international negotiations, the agreement of treaties, their implementation, and ongoing monitoring of their implementation.
2. The five phases can be summarised as follows:

- **Phase 1:** Early engagement: engaging ahead of the UK mandate being set to ensure Welsh interests are considered and any devolution consequences are understood.
- **Phase 2:** Monitoring the negotiations: seeking timely provision of information and engagement during the negotiating phase, including parity of access to negotiation texts.
- **Phase 3:** At the end of the negotiations: the Senedd's views are communicated to the UK Parliament before the conclusion of the UK Parliament's scrutiny of a draft agreement.
- **Phase 4:** Implementation of devolved aspects of international agreements by Welsh Ministers and the Senedd.
- **Phase 5:** Monitoring the implementation and governance of an agreement.

3. This submission focuses on a description of these five phases.

Phase 1: Early engagement and the UK mandate

4. Our institutional experience of engaging with EU negotiations on significant reforms (such as those to the Common Agricultural Policy and Common Fisheries Policy for the post 2013 period) has demonstrated the need for engagement at the earliest phases of the process, ahead of the UK's negotiating position being settled or a mandate agreed.
5. For the Senedd to be in a position to engage in this way, it needs to be consulted by the UK Government ahead of the UK Government finalising its negotiating position and to be notified in advance of plans for forthcoming international agreements through a published multiannual forward work programme.
6. Early engagement is vital if the Senedd is to be in a position to add value to the process in terms of the early identification of any Wales-specific technical, legislative or policy issues. Addressing issues upstream should lead to a clearer route through subsequent phases of engagement and scrutiny.

7. It would also enable the Senedd to engage with the other party (or parties) to the agreement, and/or relevant sub-state regions that exist, should it wish.
8. For these reasons, we believe this type of early engagement can make a positive contribution to UK trade policy objectives.
9. We also emphasise the importance of the UK Government engaging with the Senedd and not solely with the Welsh Government to ensure a complete understanding of the devolved position.
10. The Welsh Government has emphasised the importance of being involved in the setting of the UK negotiating mandate. It follows that the Senedd will also want to scrutinise the position taken by the Welsh Government and any compromises it has had to make in seeking agreement with the UK Government on the mandate.
11. In circumstances where the Welsh Government is seeking to reach an agreement that would constrain the future legislative competence of the Senedd once implemented, then the Welsh Government should seek the Senedd's consent before making such representations to the UK Government.
12. In our 2019 report, we recommend that the Welsh Government lays a UK Outline Approach at the same time as the Outline Approach is laid before the UK Parliament.
13. Further, we recommended that the Outline Approach should be accompanied by an additional memorandum that explains the Welsh Government's position and the effect of implementing the eventual agreement on the Senedd's legislative competence and/or the Welsh Ministers' functions.
14. The Welsh Government largely accepted this recommendation, though it noted that its ability to meet our recommendations rested to an extent on the Welsh Government having sight of the Outline Approach ahead of it being laid or published.
15. In the case of the potential UK-US Free Trade Agreement, the UK Government published its outline approach as part of a wider document, rather than laying a discrete Outline Agreement before Parliament.

16. In these circumstances, the Welsh Government acted in the spirit of its commitment to meet our recommendations, with the Minister for International Relations and the Welsh Language laying a Written Statement before the Senedd and writing to us, the EAAL Committee, to notify it of the publication of the UK Government's Outline Agreement within the wider UK-US Trade Agreement document.
17. In keeping with our view on controlling the Senedd's legislative competence in the context of international agreements (see paragraph 11 above), we recommended that, in circumstances where the Welsh Government is seeking to reach an agreement (with the UK Government) that would constrain the future legislative competence of the Senedd once implemented, then the Welsh Government should seek the Senedd's consent before making such representations to the UK Government.
18. This recommendation was accepted in principle by the Welsh Government, with the Welsh Government's acceptance again predicated on securing the role it is seeking in negotiations.
19. The Welsh Government commits to ensure that any provisional agreement it might reach with the UK Government in the context of confidential negotiations would ultimately be subject to scrutiny by the Senedd.

Phase 2: Negotiation phase

20. On commencement of the negotiating phase, the timetable and format of the negotiations should be transparently communicated by the UK Government.
21. Once a structure for negotiations has been developed, the Senedd should receive regular pre- and post- negotiation briefing from the Welsh Government on the position taken and the outcomes achieved at each negotiating round, with particular emphasis on how issues of concern raised during the early stage of scrutiny/position development have been addressed.
22. This approach will rely on the UK Government ensuring that the Welsh Government has a meaningful role in the process.

23. In the absence of more formalised intergovernmental relations, our preference would be to see the establishment of a JMC International Trade, as called for by the Welsh Government. We note the creation of a Ministerial Forum for International Trade and that it met for the first time on 22 April 2020.
24. We understand the need to maintain a degree of confidentiality around aspects of the negotiating process and that the degree of confidentiality can vary. For example, there might be a need to restrict certain information absolutely. In other cases, a controlled sharing of information might be appropriate.
25. For the Senedd to play its part in holding the Welsh Government to account, and representing the interests of the people of Wales, it must have the same level of access to information as UK parliamentarians in cases where negotiations relate to devolved competences, or matters that might affect devolved competences.
26. On occasion, the opportunity to discuss progress with UK Ministers directly can be of considerable assistance to the Senedd's work. We would hope that UK Ministers would continue to look favourably on reasonable requests to participate in the work of Senedd Committees.
27. We recommended that the Welsh Government continues to engage with the UK Government to ensure that negotiation documents laid in Parliament can be laid in the Senedd at the same time. Additionally, where the UK Parliament is offered enhanced access to negotiation documents, we recommended that the Welsh Government ensures equivalent access is granted for Members of the Senedd insofar as the documents relate to devolved areas and areas that might affect devolved competence.
28. The Welsh Government accepted this recommendation as a "pragmatic and reasonable request".

Phase 3: At the end of the negotiations

29. In our view, adjusting the devolution settlement through acceding to international agreements is as constitutionally significant as adjusting it through UK legislation.

30. It follows therefore, that, as a minimum, a convention is needed to cover this area of shared competence at the point when a stable text emerges from the negotiations.
31. As international agreements have the potential to adjust the devolved competence of the Senedd, we believe that the convention should (as with the legislative consent convention) be a convention between legislatures.
32. In the anticipation of UK Parliament developing its scrutiny of international agreements, following the UK's departure from the European Union, we recommend that any proposals for a revised process of UK Parliamentary scrutiny incorporated the need to consider the views of the Senedd before the conclusion of its scrutiny process.

Phase 4: Implementation of devolved aspects of international agreements

33. The Senedd and/or Welsh Ministers are responsible for the domestic implementation of devolved aspects of international agreements, including any legislative measures that might be necessary.
34. In circumstances where the UK Government intends to give provisional effect to an international agreement (in part or in full) then we believe it should be required to notify Welsh Ministers and the Senedd of this intention.
35. We recommended that the Welsh Government seeks a commitment from the UK Government to notify Welsh Ministers and the Senedd if it intends to give provisional effect to an international agreement (in part or in full).
36. The Welsh Government accepted this recommendation.

Differential implementation of international agreements

37. Ultimately, UK international agreements that incorporate the particular needs of Wales and that respect the devolution settlement have the potential to be of significant benefit to the people of Wales.
38. We would hope that a UK international agreement would work in the best interests of all of the UK.

39. However, we recognise that there could be circumstances in which a particular Welsh issue cannot be addressed through a more general UK approach.
40. In such circumstances, well-established mechanisms exist to accommodate differential implementation of agreements. For example, the inclusion of annexes of reservations to an agreement.
41. We believe that the scope for differential implementation of future UK international agreements should be considered seriously by the UK Government as it develops its approach.
42. We recommended that the Welsh Government pursues differential implementation of international agreements as a means of ensuring devolved interests are observed without causing impediment to the progress of a UK agreement.
43. The Welsh Government accepted this recommendation in principle.

Phase 5: Monitoring the implementation and governance of an agreement

44. We anticipate that the Senedd will wish to be engaged in the ongoing process of monitoring the governance arrangements associated with an international agreement and any interinstitutional arrangements it establishes e.g. dispute resolution mechanisms.
45. Senedd committees are likely to want to periodically review an agreement to ensure that it has delivered the benefits it was designed to provide for Wales and to learn lessons for engagement with subsequent international agreements.

Conclusion

46. The Senedd's ability to effectively engage with UK international agreements, and properly assess their implications for Wales and the devolution settlement, is critically affected by two factors:
 - Intergovernmental i.e. the role afforded to the Welsh Government by the UK Government; and

- Interparliamentary i.e. the extent to which the UK Parliament is willing to consider the Senedd's position, as part of its emerging scrutiny approach.
47. The second factor also relies on the extent of Parliament's role in the scrutiny of international agreements and the level of influence Parliament is able to bring to bear through scrutiny.
 48. As we understand it, progress is being made at an intergovernmental level, with meetings of the Ministerial Forum for International Trade having taken place and work towards agreeing a concordat on international trade continuing.
 49. We continue to examine this through our scrutiny sessions with the Minister for International Relations and the Welsh Language.
 50. In terms of interparliamentary working, we welcome the creation of the International Agreements Sub-Committee and this inquiry into how Parliament scrutinises treaties.
 51. An interparliamentary dialogue on international trade, perhaps under the aegis of the Interparliamentary Forum on Brexit, would be welcome from our perspective.

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