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Economy and Fair Work Committee

Report on the Legislative Consent Memorandum for the Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Bill



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Economy and Fair Work Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Wellbeing Economy, Fair Work and Energy with the exception of matters relating to energy; and on matters relating to just transition within the responsibility of the Cabinet Secretary for Net Zero and Just Transition.



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Introduction

1. The [Trade \(Comprehensive and Progressive Agreement for Trans-Pacific Partnership\) Bill](#) was introduced in the House of Lords on 8 November 2023.
2. A [Legislative Consent Memorandum](#) ("LCM") was lodged by Shona Robison, Deputy First Minister and Cabinet Secretary for Finance, on 22 November 2023. It was supported by Tom Arthur, Minister for Community Wealth and Public Finance . The Committee was designated as lead committee on 6 December 2023.

The provisions in the Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Bill

3. The UK Government describes the Bill as providing measures to ensure the UK will be compliant with its international obligations pursuant to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). The CPTPP is a free trade agreement between Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, New Zealand, Singapore and Vietnam. It was signed in Chile in March 2018.
4. The Bill covers three areas where primary legislative intervention is necessary to comply with the terms of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP): conformity assessment bodies; public procurement; and intellectual property. The Bill triggers the legislative consent process for the part of the Bill relating to public procurement, as this is a devolved competence.
5. The Bill consists of eight clauses and a Schedule.
6. Clause 1 describes the meaning of CPTPP as a Free Trade Agreement known as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, which was signed on 8 March 2018, with the UK accession protocol signed on 16 July 2023.
7. Clause 2 enables the Secretary of State to make regulations to implement Article 8.6 of the CPTPP Chapter on Technical Barriers to Trade. This article requires each Party to accord to conformity assessment bodies located in the territory of another Party treatment no less favourable than that it accords to conformity assessment bodies located in its own territory or in the territory of any other Party.
8. Clause 3, in combination with the Schedule, amends domestic public procurement legislation in three ways, in order that it is compliant with the terms of the CPTPP. For Scotland, these amendments are set out in Schedule 1, Part 2 of the Bill. It is these provisions that require the consent of the Scottish Parliament.
9. Clauses 4 and 5 of the Bill make changes in relation to geographical indications (GIs), and copyright and related rights, in order to ensure compliance with the Intellectual Property Chapter of the CPTPP agreement.
10. Clauses 6 to 8 set out the extent, commencement and short title provisions of the Bill.

Section 42 Report

11. The Committee also received [a letter](#) on 25 January from the Cabinet Secretary for Rural Affairs, Land Reform and Islands, Mairi Gougeon MSP, and the Minister for Small Business, Innovation, Tourism and Trade, Richard Lochhead MSP, relating to the section 42 report on the CPTPP. The section 42 report is a requirement from

section 42 of the UK Agriculture Act 2020, which requires that the Secretary of State produce a report on any completed Free Trade Agreements (FTA) prior to the formal ratification process. This report considers the extent to which a FTA is consistent with the maintenance of the statutory protections on human, animal or plant health and life, animal welfare and the environment. This report is provided to Scottish Ministers, but there is no formal process for the Scottish Parliament to engage.

12. The Scottish Government notes several concerns in their response to this report. One issue highlighted is the Scottish Government's long-standing concerns about the inclusion of Investor-State Dispute Settlement (ISDS) provisions in trade agreements. The Scottish Government position is "that no future ISDS system should prevent the UK and Scottish Governments from making laws on health, social, environmental and economic matters." The response also notes concern about the cost and resource implications of ISDS court cases. It goes on to state: "While the Scottish Government has raised these concerns on several occasions, including through Ministerial correspondence, the UK Government has yet to address them fully."

Legislative Consent Memorandum

13. The Scottish Government lodged its LCM on 22 November 2023 and recommended that Parliament consent to the Bill. The LCM states that Clause 3 and the schedule (part 2) require consent and relate to Scotland.
14. The LCM describes the provisions as making ‘minor, technical amendments’ to devolved procurement rules in Scotland and sets out the three areas of amendments:
 - the exclusions to domestic regulations,
 - the detail authorities are required to put in a notice advertising the award of a contract,
 - to insert the CPTPP into the relevant international agreements lists in Scottish procurement regulations, parties to which are afforded rights of equal treatment in relation to covered contracts.
15. The LCM sets out that the “amendments to the Scottish procurement regulations made by this Bill, and described in this memorandum, do amount to material divergence from EU law, however they are very minor”. The Scottish Government adds that: “As they are required in order to meet an international obligation, Scottish Ministers have no substantive discretion in the matter.”
16. The Scottish Government recommends consent to the devolved provision in the Bill, stating in the LCM:
 - ” As these amendments are necessary in order to implement an international obligation, there is no substantive discretion exercisable in the matter. Should consent be withheld and those provisions are removed from this Bill, separate primary legislation would be needed in Scotland. Given that these amendments are needed to implement an international obligation across the whole of the UK, and that there is no substantive discretion available in so doing, allowing the UK Parliament to legislate provides for more effective use of time and resource.
17. The motion to be lodged by the Minister for Community Wealth and Public Finance, is—
 - ” That the Parliament agrees that the relevant provisions of the Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Bill, introduced in the House of Lords on 8 November 2023, relating to procurement, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.

Committee Consideration

18. At its [meeting on 31 January 2023](#), the Committee took evidence on the LCM from Tom Arthur, Minister for Community Wealth and Public Finance.
19. The Committee asked the Minister how the Scottish Government views the opportunities created by the CPTTP, particularly opportunities for increasing exports of Scotch whisky to developing markets due to potential reduction in tariffs, and their impact on the Scottish economy.
20. The Minister welcomed the opportunities that the agreement will afford. He stated that the analysis indicates that overall the impact in the UK economic growth over the next two decades is expected to be relatively minor but that any opportunities for key Scottish industries, such as Scotch whisky, "are, of course, welcomed". The Minister also highlighted the work that the Cabinet Secretary for Rural Affairs, Land Reform and Islands and the Minister for Small Business, Innovation, Tourism and Trade were doing in engaging with the UK Government on the broader policy intent of the agreement.ⁱ
21. The Committee asked further about this work of the Cabinet Secretary for Rural Affairs, Land Reform and Islands and the Minister for Small Business, Innovation, Tourism and Trade and the concerns they had raised in their [letter to the Committee](#) about the potential for competition from producers in countries with lower animal welfare standards. The Committee asked if the Scottish Government would monitor the impact of this on Scottish producers.
22. The Minister responded that the Scottish Government would continue to seek to engage constructively with the UK Government on the implementation of this agreement and continue to engage with stakeholders.ⁱⁱ
23. The Committee also asked about the engagement the Scottish Government has had with the UK Government in relation to the ISDS provisions in the CPTTP.
24. The Minister indicated that the position in relation to engagement was as set out in the correspondence from the Cabinet Secretary for Rural Affairs, Land Reform and Islands and the Minister for Small Business, Innovation, Tourism and Trade. He added that the matters before the Committee today, that trigger the requirement for legislative consent, are "fairly narrow and technical and relate to the devolved aspect of procurement".ⁱⁱⁱ
25. The Committee further probed the potential impact on broader policy work in Scotland if ISDS clauses are in place.
26. The Minister responded that he recognised that there would be a range of views in relation to provisions of any trade agreement but ultimately the decision on whether to enter into these agreements is a matter for the UK Government. He stated that he appreciates the opportunities for engagement with the UK Government that are

ⁱ Economy and Fair Work Committee, [Official Report, 31 January 2024](#), column 3.

ⁱⁱ Economy and Fair Work Committee, [Official Report, 31 January 2024](#), column 3.

ⁱⁱⁱ Economy and Fair Work Committee, [Official Report, 31 January 2024](#), columns 3-4.

afforded, and expressed a desire to strengthen these, but "the matter before us this morning is about the relatively narrow and technical aspects of implementation through the Act, and how they trigger legislative consent with regard to procurement".^{iv}

27. The Committee then asked about the lack of role for the Scottish Parliament in scrutinising free trade agreements generally and how the Scottish Government would like to see any future free trade agreements progressed to ensure scrutiny.
28. The Minister responded that this goes beyond his remit on public procurement but the Scottish Government's position is clearly set out in the paper [Scotland's Vision for Trade](#) and that the Scottish Government would always "seek the maximum engagement possible with the UK Government to ensure that Scottish interests are represented".^v
29. In relation to the specifics of the LCM, the Committee asked about the impact of an amendment made by the Bill relating to the information that must be provided in relation to procurement contracts.
30. The Minister responded that the Bill makes minor changes that the Scottish Government is required to make given the requirement to implement the agreement. A Scottish Government official explained that the amended information requirement relates to contract award notices, which must be published after a contract has been awarded. Currently these award notices can state the actual value of the contract awarded, or the highest and lowest tenders received. The CPTTP does not allow that choice, the actual value of the contract awarded must be published in the award notice. However, no significant impact on authorities is expected as a result of this change.^{vi}

^{iv} Economy and Fair Work Committee, [Official Report, 31 January 2024](#), column 4.

^v Economy and Fair Work Committee, [Official Report, 31 January 2024](#), column 4.

^{vi} Economy and Fair Work Committee, [Official Report, 31 January 2024](#), column 5.

Conclusion

31. **Given the minor and technical nature of the amendments made by the Bill, and the necessity of making these to comply with the CPTTP, the Committee recommends to the Parliament that the Scottish Government's motion be agreed to.**
32. **The Committee also notes the outstanding concerns about the inclusion of Investor-State Dispute Settlement provisions in trade agreements and asks the Scottish Government to discuss these further with the UK Government.**

