

TRADE BILL

DELEGATED POWERS – MEMORANDUM BY THE DEPARTMENT FOR INTERNATIONAL TRADE

A. Introduction

1. This Memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Trade Bill (“the Bill”) published on 7 November 2017. The Memorandum has been prepared by the Department for International Trade (“the Department”). This Memorandum identifies the provisions of the Bill that confer powers to make delegated legislation, and explains in each case why the power has been taken and the nature of, and the reason for, the procedure selected.

2. The Bill contains 6 individual provisions containing delegated powers. Two of these, clauses 2(1) and 7(3), include a Henry VIII power.

3. The Department has considered the use of powers in the Bill as set out below and is satisfied that they are necessary and justified.

B. Overview of the Bill

Part 1: Implementation of International Trade Agreements

4. The UK requires powers to legislate to implement the provisions of the Agreement on Government Procurement (GPA) as an independent member and to make changes in domestic legislation to reflect both the accession of new parties to the GPA and the withdrawal of existing parties.

5. The EU currently also has a number of trade agreements with partner countries which the UK proposes to adopt on a bilateral basis on leaving the EU.

Implementation may be required for various reasons, for example because the EU has signed, but not implemented, such an agreement, or because amendments may be required to make the agreements work outside of an EU context. In addition, changes may be necessary to ensure the agreements remain operable over time.

The Government requires a power to change UK law should that be necessary to implement the agreements.

6. The power to implement trade agreements with partner countries is subject to sunset five years after exit day, but the Government can delay the sunset with the approval of both Houses.

Part 2: The Trade Remedies Authority

7. The Bill establishes a new independent body, the Trade Remedies Authority (TRA), to discharge functions in relation to trade remedy cases and to assist in the conduct of international trade disputes.¹

Part 3: Trade Information

8. Regulations will be used to specify the types of information that may be requested in order to assist the Secretary of State to establish the number and identity of persons exporting goods and services from the UK in a professional or business capacity and, how the request for this information can be made. The Bill also provides for the sharing of trade-related information by HM Revenue and Customs.

Part 4: General

9. Regulations will be used to commence the substantive provisions of the Bill. These regulations may also make transitional, transitory or saving provision.

General justification for delegated powers

10. In respect of the GPA, UK businesses currently benefit from guaranteed access through the GPA to global government procurement opportunities estimated as collectively worth over £1.3 trillion each year. The delegated powers in respect of the GPA will help the UK ensure that this position can be maintained beyond exit day.

11. The UK needs to establish UK trade agreements which ensure continuity in our existing trading relationships, as we leave the EU and are no longer party to EU-third country trade agreements. These agreements will have to be established in UK law by the time the UK leaves the EU. The delegated powers will support that effort.

¹ Functions relating to trade remedy cases will be conferred on the TRA by provisions in the Taxation (Cross-border Trade) Bill.

C. Analysis of Delegated Powers by Clause

Power to make regulations to implement the GPA (clauses 1(1)(a) and (b) and 3)

Power conferred on: Appropriate authority

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative resolution

12. The original GPA was negotiated and agreed in 1994 (“the 1994 Agreement”) following negotiations between likeminded countries to bring public procurement into the field of international trade. It entered into force on 1 January 1996. Subsequent negotiations between the Parties took place and a revised version of the GPA (“the revised GPA”) was adopted on 30 March 2012 and entered into force on 6 April 2014 by means of the Protocol Amending the Agreement on Government Procurement (“the 2012 Protocol”). In this memorandum the 1994 Agreement and the revised GPA are collectively referred to as the GPA.

13. Since the GPA’s formation, the UK has participated in the GPA by virtue of the UK’s EU membership. The GPA is one of the plurilateral agreements within the framework of the World Trade Organisation² (WTO), which means that joining is voluntary for WTO members (unlike a multilateral agreement, which is binding on all WTO members). It provides a framework of substantive and procedural rules, which provide for greater liberalisation in the field of public procurement. Through the GPA, UK businesses have guaranteed access to global government procurement opportunities that are estimated as collectively worth over £1.3 trillion each year. The GPA also ensures that businesses can compete for those public contracts without fear of discrimination. For UK contracting authorities, the GPA provides increased value for money through international competition for procurement contracts, where appropriate.

14. The UK’s obligations under the GPA are currently given effect in secondary legislation. This includes the UK public procurement regulations: the Public

² See Annex 4 to the Agreement establishing the WTO (the Marrakesh Agreement).

Contracts Regulations 2015 (“PCR³”), the Concessions Contracts Regulations 2016 (“CCR⁴”) and the Utilities Contracts Regulations 2016 (“UCR⁵”) (which implement EU procurement Directives 2014/24/EU, 2014/23/EU, and 2014/25/EU respectively). It also includes Scottish procurement Regulations, namely the Public Contracts (Scotland) Regulations 2015⁶, the Utilities Contracts (Scotland) Regulations 2016⁷ and the Concessions Contracts (Scotland) Regulations 2016⁸.

15. Unless the UK becomes a member of the GPA in its own right the UK will exit the GPA when it leaves the EU. The UK needs to ensure that it has achieved independent membership of the GPA by the time it leaves the EU to avoid a cliff edge in market access for UK businesses. If the UK does not obtain that independent membership, UK businesses would not have guaranteed access to the procurement opportunities for which they currently can compete.

16. The powers in clause 1(1)(a) and (b) are therefore needed to ensure that the UK can legislate to implement any obligations arising from the UK becoming a GPA member in its own right. Those powers will be used to make regulations implementing either the 1994 Agreement or the revised GPA or both. This is because the 1994 Agreement remains in existence until all GPA Parties which were members of the 1994 Agreement before the adoption of the 2012 protocol have adopted the revised GPA through their acceptance of that protocol. Currently Switzerland is the only remaining GPA Party yet to adopt the revised GPA. As a result, Parties are required to join both the 1994 Agreement and the revised GPA in order to ensure mutual access with the Swiss GPA market.

17. It should be noted that the actual decision for the UK to become an independent member of the GPA will be governed by the Constitutional Reform and Governance Act 2010 (CRaG)⁹, which requires Treaties to be laid before Parliament before they can be ratified. This process will allow Parliament to scrutinise the terms of the UK’s membership and decide whether the UK should become an independent member.

³ SI 2015/102.

⁴ SI 2016/273.

⁵ SI 2016/274.

⁶ SSI 2015/446.

⁷ SSI 2016/49.

⁸ SSI 2016/65, amended by SSI 2016/125.

⁹ <https://www.legislation.gov.uk/ukpga/2010/25/contents>.

18. Clause 3(1) provides that regulations made under clause 1(1) may make different provision for different purposes or areas; general or specific provision; incidental, supplementary and consequential provision; and transitional, transitory or saving provision. This clarifies the scope of the power in clause 1(1)(a) and (b).

Justification for delegation

19. Subsections (1)(a) and (b) will give the UK the power to make the legislative provision required to implement the GPA as an independent member. Before the power can be used the UK will need to decide whether to join the GPA as an independent member. To join the GPA as an independent member, the UK will need to seek Parliament's approval via the CRaG process. This process will provide Parliament with control and scrutiny over whether the UK becomes an independent member of the GPA. The UK Parliament has previously scrutinised changes to the GPA, for example through the European Scrutiny Committee.

20. If Parliament agrees to independent membership, the power in clause 1(1)(a) and (b) will allow the UK quickly to take forward any amendments required to its procurement regulations.

21. As explained above, the UK currently provides for its GPA obligations in the PCR, UCR, CCR and Scottish equivalent regulations. The powers in the European Union (Withdrawal) Bill will allow the UK to fix any deficiencies arising out of its exit from the EU. However, what is required in relation to the GPA is a power to legislate to reflect any changes needed as a result of the process whereby the UK becomes an independent member of the GPA. The GPA power in clause 1(1)(a) and (b) might be required simply to amend existing procurement regulations, for example to update these regulations to take account of the UK's independent membership, or alternatively to capture changes in the UK's commitments relative to those currently in the UK's EU offer. For example, this could reflect machinery of Government changes.

22. The UK will need to satisfy the GPA parties during its discussions on independent membership that legislation will be in place that will comply with the commitments under the Agreement. GPA Parties will be familiar with the UK's

procurement regulations and will want to scrutinise the proposed legislative changes to be satisfied they adequately reflect the UK's independent status.

23. The UK will need to have GPA compliant legislation in place and ready to come into force before it can deposit its instrument of GPA accession. Once a party deposits its instrument of accession, the GPA imposes a 30 day waiting period after which time the Agreement enters into force for that party. This means that once the UK has deposited its instrument of accession and this 30 day period has ended, the UK will have an immediate duty to comply with the commitments and obligations under the GPA. Without the power in clause 1(1)(a) and (b), when the UK leaves the EU and is no longer covered by the EU's GPA Annexes, the UK would not be able to respond quickly to make legislation to implement the GPA as an independent member with its own GPA Annexes.

24. If the legislative changes needed to reflect the UK's status as an independent GPA member had to be made via primary legislation, this could take much longer. It could create a significant delay before the UK could deposit its instrument of accession and be ready to comply with its commitments and obligations. This would be likely to mean that UK businesses would be denied, for some time, their existing guaranteed access to over £1.3 trillion each year of procurement opportunities through the GPA public procurement markets.

25. There is precedent for taking a delegated power to implement an international agreement that the UK has agreed to join. The Intellectual Property Act 2014 contains a power that allows the Secretary of State to make provision by secondary legislation giving effect in the UK to the provisions of the Geneva Act of the Hague Agreement, providing the necessary legislative framework for acceding to that Agreement¹⁰.

26. There is also precedent for using a delegated power to provide for the UK's GPA obligations, as these are presently contained in secondary legislation through the PCR, UCR, CCR and Scottish equivalent regulations. Having a delegated power is also appropriate given the power to implement the GPA could be used to amend this existing secondary legislation to make the changes required.

¹⁰ <http://www.legislation.gov.uk/ukpga/2014/18/section/8/enacted>.

Justification for procedure selected

27. As explained above, Parliament will, through CRaG, scrutinise whether the UK should join the GPA and decide whether to approve the UK joining the GPA and the terms on which it would join. If Parliament agrees that the UK should join the GPA, the UK Government will need a mechanism to implement the legislative changes required to reflect joining the GPA as an independent member. The UK needs to be able to use this mechanism without delay. As explained above, delays in the process will impact significantly on UK businesses that presently benefit from guaranteed access to over £1.3 trillion each year of procurement opportunities in the GPA market through the UK's membership of the EU.

28. Making the delegated power subject to the negative resolution procedure allows the UK to respond quickly once Parliamentary scrutiny through CRaG has taken place. This will ensure that UK businesses can maintain the significant economic benefits of GPA membership on which they currently rely, without delay.

29. The UK has implemented its existing GPA obligations through procurement regulations (the PCR, UCR, CCR and Scottish equivalent regulations). Those regulations were themselves made using the negative resolution procedure and the UK is likely to exercise the power to implement the GPA by amending these existing regulations.

30. For these reasons it is considered appropriate that the negative procedure should apply to this delegated power.

Power to make regulations to reflect the accession of a party to or a withdrawal of a party from the GPA (clauses 1(1)(c) and (d) and 3)

Power conferred on – Relevant authorities

Power exercisable by – Regulations made by Statutory Instrument

Parliamentary procedure – Negative resolution

Context and purpose

31. As described above, the UK gives effect to its GPA obligations in secondary legislation. This includes the UK public procurement Regulations and the Scottish procurement Regulations listed in paragraph 14 above.

32. The Government requires a power to allow the UK to make regulations to reflect parties that are joining, or withdrawing from, the GPA. This power is provided for in subsection (1)(c) and (d). The UK Government intends to use this power to amend existing procurement regulations to take account of changes in GPA parties and this might take the form of updating a list of GPA Parties. Amendments to the regulations would be limited in scope to those provided for under the following Articles:-

- Article XXIV:2 (1994 Agreement) and Article XXII:2 (revised GPA), which provide for the accession of other WTO members to the GPA;
- Article XXIV:10 (1994 Agreement) and Article XXII:12 (revised GPA), which provides for the withdrawal of any Party from the GPA either through notification, or automatically if that party ceases to be a member of the WTO.

33. Clause 3(1) provides that regulations made under clause 1(1) may make different provision for different purposes or areas; general or specific provision; incidental, supplementary and consequential provision; and transitional, transitory or saving provision. This clarifies the scope of the power in clause 1(1)(c) and (d).

Justification for delegation

34. Existing UK procurement legislation requires contracting authorities and utilities to give no less favourable treatment to the works, services, supplies and economic operators of the signatories to the GPA than they give to the works, supplies, services and economic operators of the EU. The PCR, UCR, CCR and equivalent Scottish regulations also place an express duty on contracting authorities and utilities to comply with any obligations contained in those Regulations in respect of economic operators from GPA States.

35. If the UK joins the GPA as an independent member and implements the GPA in regulations, it will need a power to amend those regulations to reflect new parties acceding to the GPA. GPA parties must provide guaranteed market access to suppliers from new GPA parties on a non-discriminatory basis and giving them the right to access the UK's procurement remedies regime.

36. The UK would also need a power to deal with existing parties that withdraw from the GPA. In this situation, the UK would need to amend its procurement regulations

to ensure it no longer gave suppliers from a withdrawing party guaranteed access to procurement opportunities in the UK's public procurement markets.

37. A delegated power would allow the UK to respond promptly to changes in GPA membership. In the case of parties joining the GPA, once a party deposits its instrument of accession there is a 30 day period before the accession comes into force and before the new party becomes a member of the GPA. After the new party has deposited its instrument and the 30 days have ended, as a GPA member, the UK must allow the acceding party guaranteed access, in accordance with the terms of the GPA, to the UK's public procurement markets. If the UK failed to provide that party with guaranteed access after the 30 day period, the UK would be in breach of its GPA commitments.

38. Withdrawals take place 60 days from the withdrawing party notifying the WTO Director-General of its withdrawal. If the UK failed to amend its regulations by the 60 day point, the UK would be giving access to suppliers from the withdrawing party that the party was not entitled to receive and which was not reciprocated to the UK. If a party left the WTO, it would automatically leave the GPA on the same day, meaning the timescales in which the UK would need to amend its regulations to respond would be even shorter. A delegated power allows the UK to respond promptly where a party leaves the GPA.

39. New accessions to the GPA occur frequently. Four accessions have taken place since 2015 (Montenegro, Moldova, New Zealand and Ukraine). A further three are expected shortly (Australia, Kyrgyz Republic, and Tajikistan). An additional seven WTO members are in the process of conducting accession negotiations, and a further five members have undertaken commitments in their WTO accession protocols to accede to the GPA. If primary legislation was required each time the UK needed to amend its procurement regulations to reflect a new party joining, a significant amount of Parliamentary time would be required to reflect these accessions. A delegated power would allow the UK to respond effectively to what may be frequent new accessions to the GPA.

40. The UK government considers a delegated power is appropriate given the requirement for the UK to amend its procurement regulations to take account of a new party, in time for 30 days after that party has deposited its instrument of

accession. A new Party may decide to deposit its instrument without delay following agreement within the GPA Committee on the terms of accession. Equally, a delegated power will mean the UK can amend its procurement regulations so that a withdrawing party is removed by the 60th day after it withdraws, or earlier, if it withdraws from the WTO.

41. A delegated power is also considered appropriate given the power in subsection (1)(c) and (d) is intended be used to amend secondary legislation that implements the UK's GPA obligations. It takes account of the fact the power is given for the narrow purpose of reflecting new accessions and departures from the GPA.

Justification for procedure selected

42. The negative resolution procedure will allow the UK to amend its legislation quickly to reflect new accession and withdrawals, recognising the need for the UK to meet set timescales expressly provided for by the terms of the GPA. Those timescales are triggered by the party joining or withdrawing from the GPA and the UK will need to be in a position to respond to them without delay.

43. The power in clause 1(1)(c) and (d) will be used to amend secondary legislation that implements the UK's GPA obligations. The Government considers it appropriate to use the negative resolution procedure to provide a power that will be used to amend secondary legislation for the narrow purpose of adding new GPA parties or removing existing ones.

44. Using the negative resolution procedure for this power is also consistent with the fact that the UK's current implementation of its GPA obligations is by regulations (the PCR, UCR, CCR and Scottish equivalent regulations), which were themselves made using the negative resolution procedure.

Power to make regulations to implement international agreements (clause 2(1) and 3)

Powers conferred on:

- a) a Minister of the Crown;*
- b) a devolved authority; or*

c) a Minister of the Crown acting jointly with a devolved authority.

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative

Context and purpose

45. At the point of EU Exit, the Government plans to adopt existing trade agreements between the EU and partner countries, as new UK-partner country agreements. The Government will achieve this working with these partner countries. The central aim will be maintaining as far as possible the status quo for UK businesses, workers and consumers.

46. Although the intention is to keep these trade agreements substantively the same or as similar as possible to the current EU-partner agreements, they will, nevertheless, be legally distinct. There will be textual changes to current agreements that ensure future operability. There could be consolidation of agreements. The power is broad enough to allow implementation of substantial amendments, including new obligations.

47. The power will be used in relation to provisions of the relevant trade agreements which 1) may need to be changed as a result of the UK's discussions with partner countries in order to maintain, as far as possible, the overall effects of the current EU-partner country agreements, or 2) where the agreements have not yet been fully implemented by the EU by exit day. Neither of these circumstances will be catered for in the European Union (Withdrawal) Bill, which preserves existing implemented EU law. The power will not be required if the relevant trade agreement has already been completely implemented, for example through EU law which at exit becomes retained EU law under the European Union (Withdrawal) Bill. The power specifically excludes provision that could be made under regulations under a section of the Taxation (Cross-border Trade) Bill that allows allowing the setting of preferential duties pursuant to international arrangements. Provision on tariffs can be implemented through the exercise of powers under that Bill; this power is to deal with other matters.

48. The power in subsection (1) will also ensure that those EU-partner country trade agreements that are transitioned as part of this process remain operable going forward, until the power is subject to sunset. While the European Union (Withdrawal) Bill will be able to fix any inoperabilities that exist on exit day, it will not deal with inoperabilities arising from subsequent changes to domestic frameworks or in consequence of decisions made by the joint committees of the parties under the agreements.

49. This power may be required for transitioning obligations of existing agreements and maintaining the status quo: for example, in relation to the transitioning of existing Mutual Recognition Agreements. Mutual Recognition Agreements provide a legal framework to allow states to recognise tests and documents issued by expert bodies in certain other states. This means that where the UK has these arrangements in place and the law requires the safety of a product to be tested a) imported goods do not need to be tested again in the UK before they are sold here if they have already been tested in the exporting state and b) UK exporters do not need to submit their goods to further sets of tests before they can be sold overseas. Specifically in this example, the power may be used to amend the definitions of expert bodies in various pieces of UK secondary legislation so that they include expert bodies from any countries that the UK has transitioned a mutual recognition agreement with. This is important to ensure that there is certainty for importing and exporting businesses.

50. This power will allow for delegation of functions for and for civil penalties to be established. The power will need to encompass such matters because the Secretary of State may need to delegate functions previously performed by EU institutions or employees to specified persons and to provide for enforcement. The power will not allow for the amendment of primary legislation except to the extent that it will allow for the amendment of retained EU law. As retained EU law is defined in the EU (Withdrawal) Bill to include that body of law as added to or modified under the Withdrawal Bill or other domestic law from time to time, after exit day primary legislation could come within the scope of retained EU law. Therefore the power would allow for the amendment of primary legislation, to the extent that retained EU law is contained in that primary legislation.

51. The power will not allow for sub-delegation of legislative powers, for the establishment of new criminal offences or extension of existing ones, or for the charging of fees. It also would not allow for the implementation of any agreement to which the EU is a party, so it could not be used to implement (for example) the GPA.

52. Clause 3(3) provides that regulations made under clause 2 may make different provision for different purposes or areas; general or specific provision; incidental, supplementary and consequential provision; and transitional, transitory or saving provision. This clarifies the scope of the power in clause 2.

Justification for delegation

53. The process of transitioning EU-partner country trade deals into UK domestic law is uncharted territory, and the Government is seeking to manage this uncertainty in the most proactive way possible. The Government seeks this delegated power for reasons of flexibility, transparency and efficiency.

54. As an EU member, the UK currently benefits from many trade agreements with partner countries. Including annexes, these may run to hundreds of pages, and sometimes more than a thousand pages. To ensure that consistency in the effects of these agreements is maintained after our EU exit, the UK requires a mechanism capable of implementing a potentially broad variety of non-tariff obligations into UK law. Since this makes it difficult to predict where such changes will emerge, it has been necessary to design a mechanism that offers the ability to mitigate this uncertainty. As a result, the scope of the powers has been drawn widely. Though these agreements should already have been substantially implemented by the EU, the UK cannot be certain that all changes it needs to make to the agreements will have been implemented, or that the EU has done all it needs to do to implement all the agreements by the exit day (for example in the case of an agreement signed shortly before exit day).

55. Further, this power has two separate legislative functions. First, it allows for the implementation of obligations flowing from what the Government refers to as “transitionally adopted” trade agreements, as part of the process of leaving the EU. These are the new agreements the UK will be making with partner countries, basing them as closely as possible on the trade agreements each country has with the EU.

Second, it ensures that these trade agreements remain operable going forward, until the power is subject to sunset, by subsequently implementing adjustments to obligations that emerge after the UK has left the EU. By offering a single legislative vehicle to implement both types of changes, this power helps the Government avoid a 'piecemeal' approach to transitional adoption, thereby ensuring a greater level of transparency throughout the process.

56. Lastly, to transition existing EU-partner country trade agreements, the UK needs the cooperation and agreement of those partner countries. This power will allow us to reassure our trading partners that we have the necessary legislative framework in place to deliver this efficiently within the short time we have available before day one of our EU exit. Failure to legislate for and then implement obligations within this timescale would risk damaging the UK's credibility on the international stage, and may provoke concern from potential trade partners that the UK will be unable to deliver on our trading commitments.

Constraints

57. It is recognised that Parliament will want considerable assurances from the Government that this power will not be used beyond what is necessary to ensure a seamless transition of the agreements in scope.

58. The power is limited to the implementation of provisions of international trade agreements, where the other signatory to the agreement (or each of the other signatories if more than one) is a country that was, immediately before exit day, also a signatory to an international trade agreement with the EU. The power will not allow the implementation of a free trade agreement where there was not a corresponding free trade agreement signed by the EU. It will not allow implementation of a future agreement between the UK and the EU.

59. This power will be subjected to a time limit of five years commencing on day one of our exit from the EU. Since the power may be required beyond the five year expiry date, the Government is seeking the option to extend this period, subject to the approval of both Houses.

60. This power will not allow for domestic legislation to keep pace with the original EU-partner country trade agreements, which have been transitioned, should they be

amended after the point at which the UK has left the EU. However, it will allow UK legislation to keep pace with review or amendment mechanisms that the UK itself agrees to in a relevant agreement until the power is subject to sunset.

Justification for procedure selected

61. The Department considers that this power is appropriate for the negative procedure. It will allow the implementation of obligations that are intended to, as far as possible, reflect existing obligations which form part of trade agreements between the EU and partner countries. These have already been through a domestic Parliamentary scrutiny process, so the Department considers that the negative procedure offers the appropriate level of further scrutiny.

Power to provide that the power to make regulations to implement international trade agreements does not expire after five years (clause 2(8)(b))

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative

Context and purpose

62. Under clause 2(8) [the power to make regulations under clause 2(1) expires five years after exit day. Clause 2(8)(b) creates a power to delay that expiry and to allow the power to continue in force for periods of up to five years at a time. The provision to delay the expiry of the clause 2(1) power allows the Government, with Parliament's approval, to extend the clause should it be useful.

Justification for delegation

63. A strict sunset clause without provision for extension would mean that only new primary legislation could prevent the expiry of the clause. Therefore, if there is to be a power to allow the sunset to be put off, it is appropriate that it be delegated.

Justification for procedure chosen

64. It is considered that the affirmative procedure is appropriate for this power, to ensure that there will be a debate in both Houses. The timing constraints that apply

to the regulations to be made under clause 2(1) would not apply to the delaying of the sunset.

Power to specify by regulations the type of export information that may be requested and how the information may be requested (clause 7(3))

Power conferred on: HM Treasury

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative (where amending or repealing an Act of Parliament) otherwise Negative

Context and purpose

65. This power enables the Treasury to specify by regulations the type of export information which may be requested and how it may be requested. The power will allow HMRC to request data from any person which will assist the Secretary of State to assess the number of persons exporting goods and services from the UK in the course of their trade, business or profession. That data will allow the Secretary of State to carry out functions linked to the provision of trade statistics and export trade promotion.

Justification for delegation and for procedure chosen

66. The power is a new function delegated to HM Revenue and Customs. The detailed policy underpinning the clause, determining what information is required and how that information is to be collected, is a power for the Treasury to exercise in regulations made by statutory instrument.

67. The power can be used to amend primary legislation, such as the tax Acts, where that is necessary to provide the mechanism to collect the data. In such cases, the use of the power will be subject to the affirmative procedure. In other cases it is subject to the negative procedure.

68. The details of the information being requested and how it is collected are administrative in nature. The details of the actual questions associated with the collection of the data are procedural matters which are administrative in nature and

secondary to delivery of the policy as a whole and therefore, in the view of the Department, appropriate to secondary legislation.

69. The information will be requested on a voluntary basis, so there is no imposition on UK businesses of a requirement to provide the information. This this will be made clear in the instruments made under this power.

Power to make transitional, transitory or savings provisions (clause 11(4))

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: None

Context and purpose

70. This power enables the Secretary of State to make transitional, transitory or savings provisions in regulations commencing the provisions of the Bill.

Justification for delegation

71. This power allows commencement regulations to make such provision as is necessary in relation to:

1. the application of existing enactments affected by the commencement of the provisions of this Bill;
2. the coming into effect of provisions in the Bill with modifications for a limited period; and
3. the saving of existing enactments repealed by provisions in the Bill for limited purposes.

72. The power ensures that the Secretary of State can provide a smooth commencement of new legislation and transition between existing legislation and the Bill, without creating any undue difficulty or unfairness in making these changes. There are numerous precedents for such a power, for example in section 100 of the

Enterprise and Regulatory Reform Act 2013¹¹ and section 160 of the Small Business, Enterprise and Employment Act 2015.¹²

Justification for procedure chosen

73. The Department considers that the power need not be subject to any Parliamentary procedure as the power is just to ensure a smooth transition between existing law and the Bill. This is consistent with numerous precedents, including those cited above.

¹¹ <http://www.legislation.gov.uk/ukpga/2013/24/section/100/enacted>.

¹² <http://www.legislation.gov.uk/ukpga/2015/26/section/160/enacted>.