

TRADE BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Trade Bill as introduced in the House of Commons on 7 November 2017 (Bill 122).

- These Explanatory Notes have been prepared by the Department for International Trade in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Trade Bill provides key measures that are required to build a future trade policy for the UK once we leave the EU. These measures include:
 - The Trade Bill includes a power to ensure that the UK can implement any procurement obligations arising from the UK becoming a member of the GPA in its own right. The Agreement on Government Procurement (GPA) is a plurilateral agreement within the WTO framework. It mutually opens government procurement markets and seeks to address trade barriers. The UK is currently a member by virtue of its EU membership and will have to re-join as an independent member.
 - The implementation of agreements with partner countries corresponding to the EU's Free Trade Agreements (FTAs) and other trade agreements in place before the UK's exit from the EU. The Trade Bill includes a power for the Government to implement any changes to domestic law which will be necessary for the UK to meet obligations flowing from these agreements.
 - Setting out the basis of a new Trade Remedies Authority (TRA) to deliver the new UK trade remedies framework.
 - The Trade Bill also enables the TRA to provide advice, support and assistance to the Secretary of State in connection with the conduct of international disputes and other functions of the Secretary of State relating to trade and functions of the TRA. The TRA may also provide such advice, support and assistance to other organisations on its own initiative.
 - Power for HMRC to collect data on behalf of the government to confirm the number of exporters of goods and services in the UK and to be able to identify those exporters for trade promotion purposes.
 - Power to establish a data sharing gateway between HM Revenue and Customs (HMRC) and other public and private bodies, so that those bodies, including Department for International Trade (DIT), can discharge their public functions and access record-level data for research, monitoring and evaluation.

Policy background

Government Procurement Agreement

- 2 The GPA is a plurilateral agreement within the framework of the WTO to mutually open government procurement markets among its parties. The GPA is comprised of two parts (a) the text of the Agreement and (b) parties' market access schedules of commitments.
- 3 The text of the Agreement establishes rules requiring open, fair and transparent conditions of competition in government procurement. These rules do not automatically apply to all procurement activities of each party. Rather, the coverage schedules (called Annexes) play a critical role in determining whether a procurement activity is covered by the Agreement or not. Only those procurement activities that are carried out by covered entities purchasing listed goods, services or construction services of a value exceeding specified threshold values

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are covered by the Agreement.

- 4 The UK currently participates in the GPA through its membership of the EU. The Trade Bill provides a power for the UK to implement the GPA obligations as an independent member.

International Trade Agreements – Maintaining Existing Trade Arrangements with other Countries

- 5 The UK currently enters into commitments in international trade agreements as a member of the European Union (EU). As a member of the EU, the UK has been party to the EU's trade agreements with third countries. The Government has committed to providing continuity in the UK's existing trade and investment relationships with these third countries. We are already discussing how best to replicate as closely as possible the effects of these trade agreements. The Government has termed this process 'transitional adoption'.
- 6 This work needs to be completed before the UK leaves the EU, if there is to be continuity in the UK's existing trade and investment relationships with these partner countries when we have left the EU. In light of this, the Trade Bill will provide the UK Government with the powers to make any changes to domestic legislation that are necessary to ensure these agreements, once signed by both parties, are fully implemented and can be ratified.

Trade Remedies Authority

- 7 Trade remedy measures protect domestic industries from injury caused by dumped, subsidised or surges of imports. Investigations, decisions and monitoring of trade remedy measures are performed by the European Commission on behalf of all Member States. Once the UK is no longer part of the EU and has an independent trade policy, UK companies will no longer be able to make a request to the European Commission to investigate claims of dumping or subsidy in the UK. To ensure that UK companies continue to have access to a trade remedies system, the provisions of the Trade Bill will allow the establishment of a new TRA to carry out investigations, and impose and enforce trade remedy measures.
- 8 The Bill provides for the establishment of the TRA, a new Non-Departmental Public Body. More details about the composition and responsibilities of the TRA are set out in Schedule 4. The TRA's functions in relation to trade remedy cases will be conferred by provisions in a separate Bill.
- 9 The measures in the Bill will allow the TRA to provide advice, support and assistance to the Secretary of State, so that the Government can fulfil its obligations relating to decisions on a number of areas including in relation to trade remedies and international trade disputes. It also allows the TRA to provide advice, support and assistance to other organisations on its own initiative.
- 10 The implementation of trade remedy measures will be taken forward via the Taxation (Cross-Border Trade) Bill, this impacts upon the financial privilege of the House of Commons.

Trade Information

- 11 The measures in the Trade Bill will allow HMRC to collect data on behalf of the government to confirm the number of exporters of goods and services in the UK and to be able to identify those exporters for trade promotion purposes. The Trade will also allow HMRC to share data with other public and private bodies as necessary, (so that those bodies can fulfil their public functions related to trade after the UK leaves the EU. This power will provide access to information which the Government and the TRA need to carry out functions that were previously carried out by the European

Commission and so the Government can design and monitor trade policy, including conducting trade disputes and the TRA can apply trade remedies. HMRC legislation will allow for HMRC to share data with departments when it is related to a customs duty purpose only. The Trade Bill includes powers to share data, when needed, with international organisations that oversee the world trade system (for example the World Trade Organization). There are measures in the Trade Bill to safeguard and protect appropriate use of the data.

Legal background

- 12 The relevant legal background is explained in the policy background section of these notes.

Territorial extent and application

- 13 Clause 10 sets out the territorial extent of the Trade Bill. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect rather than where it forms part of the law.
- 14 The Trade Bill extends and applies to the whole of the UK. In addition, repeals and amendments made by the Trade Bill have the same territorial extent as the legislation that they are repealing or amending.
- 15 The UK Parliament does not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned. It is also the practice of the Government to seek the consent of the devolved legislatures for provisions which would alter the competence of those legislatures or of the devolved administrations in Scotland and Northern Ireland.
- 16 The Government will therefore seek legislative consent for the provisions in the Trade Bill relating to the power to implement the Government Procurement Agreement (clause 1) and the power to implement qualifying international trade agreements (clause 2).
- 17 See the table in Annex A for a summary of the position regarding territorial extent and application in the UK. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of Bill

Part 1: Implementation of International Trade Agreements

Clause 1: Implementation of the Agreement on Government Procurement

- 19 The Agreement on Government Procurement (GPA) was negotiated and agreed in 1994 (“the 1994 agreement”) following negotiations between likeminded countries on bringing procurement within the field of international trade. It entered into force on 1 January 1996. Subsequent negotiations between Parties took place and a revised version of the GPA was adopted on 30 March 2012 (“the Revised GPA”) and entered into force on 6 April 2014 by means of the Protocol Amending the Agreement on Government Procurement (“the 2012 protocol”). In these notes the 1994 GPA and the Revised GPA are collectively referred to as the GPA. The UK currently participates in the GPA by virtue of the UK’s EU membership.
- 20 The GPA is a plurilateral agreement within the framework of the WTO. A plurilateral agreement is one that is voluntary and not all WTO members are obliged to join, unlike a multilateral agreement, which is binding on all WTO members. The GPA is between 19 WTO Members¹ including many of the major economies such as the United States, Canada, the EU and Japan. It aims to mutually open government procurement markets among its members, and seeks to address trade barriers, such as preferential treatment of domestic goods and services, in the government procurement sector.
- 21 The GPA sets out a high level framework of rules to ensure fair, open and transparent competition for government procurement covered by the agreement. It also contains provisions to ensure that GPA parties provide effective review procedures. The market access offered by each Party is set out in its Annexes, which list the entities and type of procurement covered by the GPA; this is known collectively as “coverage”. The Annexes also set out the various financial thresholds over which procurement will be covered under the GPA. Goods, services or entities not addressed in a Party’s annexes are not covered by the Agreement. This allows Parties to decide what level of market access they provide to other Parties, and to include, or exclude, goods, services or entities from the cover given.
- 22 Through the UK’s current membership, the GPA is estimated to provide UK businesses with annual guaranteed access to over £1.3 trillion of public procurement opportunities. In addition, the GPA protects UK subsidiaries and suppliers against discriminatory treatment when participating in those procurement opportunities. The UK also benefits from other Parties’ suppliers having access to those elements of the UK public procurement market which have been opened to international competition, through increased choice and value for money.
- 23 Because the UK currently participates in the GPA by virtue of its EU membership, the UK will leave the GPA once the UK ceases to be a member of the EU. Leaving the GPA would mean

¹ The 19 GPA parties are Armenia, Canada, the EU, Hong Kong China, Iceland, Israel, Republic of Korea, Liechtenstein, Moldova, Montenegro, the Netherlands with respect to Aruba, New Zealand, Norway, Singapore, Switzerland, Chinese Taipei, Ukraine, and United States.

UK businesses no longer had guaranteed access to the public procurement opportunities described above. Provision is therefore needed to allow the UK to make the legislative changes needed to reflect being an independent member of the GPA. The EU (Withdrawal) Bill will preserve EU law that has been fully implemented at the point that the UK leaves the EU. Although the UK has implemented EU procurement Directives that provide for GPA obligations, the EU (Withdrawal) Bill will not cover making the legislative changes needed to reflect the UK becoming a member of the GPA in its own right.

- 24 Parliamentary approval for ratifying the UK's membership of the GPA will be sought separately from the powers in this Bill via the Constitutional Reform and Governance Act 2010 (CRaG).
- 25 If the UK decided to become an independent member of the GPA, the UK would use the power in clause 1 to implement its GPA obligations. The UK would therefore need to be able to legislate to implement the provisions of the GPA in its new status as an independent member.
- 26 The UK currently gives effect to its GPA obligations in domestic public procurement regulations. These include the Public Contracts Regulations 2015 (PCR), the Concessions Contracts Regulations 2016 (CCR) and the Utilities Contract Regulations 2016 (UCR) (which implement EU Directives 2014/24/EU, 2014/23/EU, and 2014/25/EU respectively). They also include Scottish procurement regulations, namely the Public Contracts (Scotland) Regulations 2015, the Utilities Contracts (Scotland) Regulations 2016 and the Concessions Contracts (Scotland) Regulations 2016.
- 27 In the PCR and UCR and the Scottish equivalent regulations, contracting authorities and utilities are placed under an obligation to accord to the works, services, supplies and economic operators of the signatories to the GPA treatment that is no less favourable than the treatment accorded to the works, supplies, services and economic operators of the EU.
- 28 The PCR, UCR, CCR and Scottish equivalent 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.
- 29 Clause 1 permits the UK to make regulations to implement the requirements of the GPA as an independent member. An example of how the UK might use the power in clause 1 would be to amend existing procurement regulations that implement the UK's current membership of the GPA as an EU member, to take account of relevant changes reflecting the UK's new status as an independent member. These might include changes such as the creation of new Government departments since the UK's coverage was last set out in the EU's Annexes.
- 30 Clause 1 also permits the UK to make regulations to reflect new parties joining or existing parties withdrawing from the GPA. An example of how the power could be used would be to amend existing procurement regulations to reflect any changes in GPA parties.
- 31 Clause 1(1) explains that an appropriate authority can make regulations for the purposes set out in subsection (1)(a) to (d). An appropriate authority is defined in clause 4 as a Minister of the Crown or, a devolved authority.
- 32 Subsection (1) sets out four purposes for which regulations about the GPA can be made:
 - a. Subsection (1)(a) allows a relevant authority to make regulations considered appropriate for the purpose of implementing the 1994 Agreement. This provision is required because although the 2012 Protocol amended the 1994 Agreement by deleting and replacing its provisions with those in the Revised GPA, Switzerland is

the one remaining party of the 1994 Agreement that has not deposited its instrument of acceptance of the 2012 protocol. The 1994 Agreement therefore remains in existence. Parties that accede to the Revised GPA will therefore also accede to the 1994 Agreement unless and until Switzerland accepts the 2012 protocol. The UK may therefore be required to accede to the 1994 Agreement and requires the power to implement it.

- b. Subsection (1)(b) allows a relevant authority to make regulations considered appropriate for the purpose of implementing the Revised GPA. The Revised GPA is the amended version of the 1994 GPA that is now in force for all GPA parties (except Switzerland as set out above). The UK therefore requires the power to implement the Revised GPA.
 - c. Subsection (1)(c) allows an appropriate authority to make regulations considered appropriate to reflect new Parties acceding to the 1994 Agreement or existing Parties withdrawing from the 1994 GPA.
 - d. Subsection (1)(d) allows an appropriate authority to make regulations considered appropriate to reflect new Parties acceding to the Revised GPA or existing Parties withdrawing from Revised GPA.
- 33 Subsection (2) sets out four limitations on when regulations made under subsection (1) can come into force:
- a. Subsection 2(a) provides that regulations made under subsection (1)(a) may not come into force before the day the UK accedes to the 1994 GPA;
 - b. Subsection (2)(b) provides that regulations made under subsection (1)(b) may not come into force before the day the UK accedes to the Revised GPA;
 - c. Subsection (2)(c) provides that regulations made under subsection (1)(c) may not, in the case of a new party joining the 1994 GPA, come into force before the day the new party accedes. In the case of a party withdrawing from the 1994 GPA, regulations made under subsection (1)(c) may not come into force before the day the party withdraws from the 1994 GPA;
 - d. Subsection (2)(d) provides that regulations made under subsection (1)(d) may not, in the case of a new party joining the Revised GPA, come into force before the day the new party accedes. In the case of a party withdrawing from the Revised GPA, regulations made under subsection (1)(d) may not come into force before the day the party withdraws from the revised GPA.
- 34 Subsection (2) means that the regulations under subsection (1)(a) and (b) which are needed to implement the 1994 GPA and Revised GPA, can only come into force after the UK has become an independent member of the GPA. This reflects the fact that under Article XXII(2) of the Revised GPA and Article XXIV:2 of the 1994 GPA, to accede to the GPA, a Party must deposit with the Director-General of the WTO an instrument of accession that states the terms so agreed. The GPA will then enter into force for that Party on the 30th day following the Party depositing its instrument of accession.
- 35 Subsection (2) also limits regulations made to reflect new parties acceding to the 1994 GPA and the Revised GPA, or existing parties withdrawing from those Agreements, may not come into force until those parties have joined or withdrawn. The requirement to deposit an instrument of accession and the 30 day time period described, at paragraph 34 above, will

apply to parties intending to accede to the GPA. Withdrawals from the GPA take place either 60 days after the withdrawing party has notified the WTO Director-General of its withdrawal, or immediately, if the party also withdraws from the WTO.

Clause 2: Implementation of International Trade Agreements

- 36 Clause 2 permits the UK to make regulations to implement non-tariff obligations in any international trade agreements that the UK reaches with partner countries provided that those countries have signed a corresponding agreement with the EU before exit day.
- 37 International trade agreements are agreements between two or more countries aimed at reducing the barriers to trade in goods or services between them. The UK is currently signed up to many international trade agreements with other countries through its membership of the EU.
- 38 The Government has committed to providing continuity in the UK's existing trade and investment relationships with these partner countries. The aim is to establish a UK trade agreement with each partner country based, as closely as possible, on the corresponding trade agreement that country has with the EU.
- 39 Before an international trade agreement can come into force, the parties to that agreement must ensure that the agreement can be implemented domestically. This means they must ensure their domestic legislative framework is consistent with the commitments within the trade agreement. Not all obligations, within a trade agreement, require a change to the law.
- 40 While the UK is within the EU, the EU is able to negotiate and agree trade agreements on the UK's behalf. Currently when the EU implements these agreements, the EU's implementation flows through to the UK through the ECA 1972. This either happens directly under section 2(1) of that Act, or through regulations the UK makes under section 2(2) of that Act. The EU (Withdrawal) Bill will repeal the ECA 1972, which means that this arrangement will cease to exist and the UK will need to implement individual obligations where necessary.
- 41 The EU (Withdrawal) Bill is expected to preserve EU law existing at the point that the UK leaves the EU, and allow it to be amended to make it work in a UK context. It is therefore expected that, in most cases, the implementation of any obligations within these UK trade agreements can be dealt with through the EU (Withdrawal) Bill.
- 42 Not all EU-third country trade agreements will have been fully implemented via EU legislation by exit day. If any part of these trade agreements requires changes to domestic legislation and these changes are not made by exit day, the EU (Withdrawal) Bill cannot be used and another legislative vehicle will be needed to enable these trade agreements to be fully implemented within UK law.
- 43 It is also possible that in order to ensure the trade agreements work outside the original EU context, adjustments need to be agreed. If implementing those adjustments requires a change to UK law, we will need a vehicle to make those legislative changes.
- 44 In addition, it will be important that the agreements remain operable and up to date beyond day one of the UK's exit from the EU, and where technical changes to the agreement are necessary, these can be implemented. For example, ensuring recognition within UK law of new assessment bodies in the partner country, which allow businesses to lawfully use those bodies.
- 45 The current agreements are UK wide in their application. Therefore we also need the devolved administrations to be able to implement these agreements in devolved areas.

- 46 The Trade Bill sets out a power for the implementation of provisions in trade agreements between the UK and partner countries. These provisions could be both obligations on the UK under the agreements and discretionary measures that the UK can take under them. The Power specifically excludes provision that could be made under regulations under a section of the Taxation (Cross-Border Trade) Bill that allows the setting of preferential duties pursuant to the international arrangements. The Trade Bill will be used to implement non-tariff provisions. Non-tariff provisions are those that do not relate to taxes and duties.
- 47 Tariff provisions – elements of a trade agreement that set tax and duties on imports and exports – will be addressed separately in the Taxation (Cross-Border Trade) Bill.
- 48 The Bill will allow provisions of trade agreements to be implemented through secondary legislation. For example, if a trade agreement requires countries to share product safety checking procedures, this needs to be reflected in the domestic legislative framework to enable this obligation to be met. Therefore the Government could use the power to make secondary legislation introducing any necessary changes.
- 49 Through its membership of the EU, the UK benefits from the EU’s trade agreements. For example, the EU currently has free trade agreements with Switzerland, Canada, South Korea, Israel and Mexico. This power could be used to implement non-tariff obligations of UK trade agreements with these countries. The EU also has other types of trade agreements - a full list can be found on the European Commission website.² This power can also be used to implement obligations flowing from trade and trade-related agreements with countries with which the EU has not yet signed an agreement, but does so before exit day. For example, the EU is currently negotiating trade agreements with Singapore and Vietnam. As long as the UK is still a member of the EU, it will also continue to support ongoing EU negotiations with third countries.
- 50 These new UK-third country agreements will still be subject to Parliamentary scrutiny before they can be ratified (formal indication that a State intends to be bound by the agreement). The Constitutional Reform and Governance Act 2010 sets out the process for Parliamentary involvement in the ratification process for international treaties in the UK.
- 51 The types of agreement that are in scope of this clause are international trade agreements signed by the UK, where the other signatory to the agreement (or each of the other signatories, if more than one) was also a signatory to an international trade agreement with the EU immediately before exit day. The types of agreements within scope of the definition of ‘international trade agreements’ are ‘free trade agreements’ and other international agreements aside from free trade agreements if they mainly relate to trade.
- 52 The types of trade agreement that mainly relate to trade will include the key trade agreements, and associated ancillary agreements, that the EU currently has with third countries. For example it will include mutual recognition agreements. Mutual recognition agreements provide a legal framework to allow us to recognise tests and documents issued by expert bodies in certain other states. This means that where we have 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

² <http://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/>.

before they can be sold overseas.

- 53 Although the Government's policy intention is to ensure continuity in the effects of the UK's current trading arrangements, the new UK-third country agreements that are implemented through use of this power will be legally distinct from the EU-third country agreements on which they are based. It may also be necessary to substantively amend the text of the previous EU agreements, so that the new agreements can work in a UK legal context. For these reasons, the Government has avoided describing new UK-third country agreements as 'equivalent to', 'replications', or 'copies' of EU-third country agreements.
- 54 The effect of subsection (3) is that the power will not allow the implementation of a 'free trade agreement' unless the EU had signed a free trade agreement with the relevant country or countries before exit day. The clause uses an objective definition of 'free trade agreement' set out in subsection (6). Subsection (4) extends this approach to international trade agreements not meeting the definition of 'free trade agreement'. The clause uses an objective definition of 'free trade agreement' set out in subsection (7).
- 55 As previously established, the power will only be used to implement non-tariff provisions of trade agreements non-tariff obligations are elements of a (trade) agreement that are not related to tax and duties. Tariff obligations – elements of a trade agreement that set or relate to tax and duties on imports and exports – will be addressed separately in the Taxation (Cross-Border Trade) Bill. Subsection (5) therefore specifically provides that regulations made under subsection (1) may not make provision that could be made by regulations under clause 9 of the Taxation (Cross-Border Trade) Bill. That section allows regulations to be made to give effect to provision made by the arrangements made with the government of a country or territory outside the United Kingdom.
- 56 Subsection (6) provides for what sort of provision may be made by regulations under subsection (1). Regulations may among other things: modify retained EU law, as defined in the EU (Withdrawal) Bill, including primary legislation that is retained EU law; confer functions on the Secretary of State, or any other person, including conferring a discretion; provide for the delegation of functions; and provide for civil penalties.
- 57 Subsections (8) and (9) make the power in subsection (1) subject to a sunset requirement. This means that after five years the power will cease to have effect. However, subsection (8)(b) and (9) provide that this period can be extended by the Government on review, with the approval of both Houses of Parliament, for further periods of not more than five years at a time.

Clause 3: Regulations: devolved authorities and general provision

- 58 Clause 3(1) provides for different types of provision that could be made by regulations under these clauses where needed, for example consequential provisions, or transitional or savings provisions.
- 59 This clause provides for how regulations under clauses 1 and 2 can be made and what provision such regulations can make. It also provides for restrictions as to how regulations under clauses 1 and 2 may be made by a devolved authority. The clause also gives effect to Schedules 1, 2 and 3.
- 60 Clause 4 defines an 'appropriate authority' as a Minister of the Crown or a devolved authority for the purpose of making regulations under clause 1 (implementation of the Agreement on Government Procurement) or clause 2 (implementation of qualifying international trade agreements). Clause 4 also defines 'devolved authority' as the Scottish Ministers, the Welsh Ministers or a Northern Irish department. Minister of the Crown is defined in clause 9 (see paragraph 80 below).

Clause 4 Interpretation in Part 1

61 Clause 4 also outlines how certain terms within Part 1 of the Trade Bill should be interpreted.

Part 2: Trade Remedies Authority

Clause 5 Trade Remedies Authority

62 This clause establishes a new non-departmental public body, the TRA.

63 Subsection (2) introduces Schedule 4, which contains further provisions regarding the governance and accountability of the TRA.

Clause 6 Provision of advice, support and assistance by the Trade Remedies Authority

64 This clause sets out the circumstances in which the TRA can apply its expertise more widely in relation to international trade and trade remedies.

65 It provides that, when requested to do so, the TRA must provide the Secretary of State with advice, support and assistance in connection with decisions on trade remedies and international trade disputes. The Secretary of State is required to consult the TRA before making such a request. When making a request, the Secretary of State is also required to have regard to the TRA's operational independence, impartiality and expertise.

66 The TRA may also provide such advice, support and assistance to other organisations on its own initiative in relation to international trade and trade remedies.

Part 3: Trade Information

Clause 7: Collection of exporter information by HMRC

67 This clause introduces a new function for HMRC to collect information on behalf of the Government which will identify companies, partnerships and sole traders which export goods and services.

68 Subsection (1) creates the new function for HMRC to request information from any person in order to assist the Secretary of State for Trade to confirm the number of exporters of goods and services in the UK and to be able to identify those exporters for trade promotion purposes.

69 Subsection (2) defines export of goods and services as supply to a person who is outside of the United Kingdom.

70 Subsection (3) provides the Treasury with the power to specify in regulations the type of information to be collected and how it will be requested, whether in the tax return or some other method of collect.

71 Subsection (4) provides that regulations made under subsection (3) can modify (amend or repeal) primary legislation. This power is needed in order to make amendments to the tax acts, as necessary, in order to request the information.

72 Subsection (5) provides that any regulations made under subsection (3) which amend or repeal an Act of Parliament are subject to the affirmative procedure. Subsection (6) confirms that any other regulations made under subsection (3) are subject to the negative procedure.

Clause 8 Disclosure of information by Her Majesty's Revenue and Customs

- 73 After leaving the EU, several bodies will need to have access to HMRC data to enable them to carry out functions relating to trade which are currently fulfilled by the European Commission, for example, on trade disputes or trade remedies and production of statistics, research and analysis that can both inform the development of evidence-based trade policy and monitor and evaluate its effectiveness. The measure allows HMRC to share data with those bodies in order that they can fulfil those functions.
- 74 This power is needed in addition to the power in the Taxation (Cross-Border Trade) Act Clause 25 because that power is limited to import duty for customs duty purposes only, which does not cover the full scope of HMRC's activities. The data sharing powers in this Bill are permissive so all instances of data sharing must be approved by HMRC Commissioners who act as guardians of the data.
- 75 Subsection (1) allows HMRC to share data with public or private bodies in order that they can fulfil their public functions as they relate to trade. This includes powers to share data, when needed, with international organisations that oversee the world trade system (for example the WTO).
- 76 Subsection (2) ensures that the information can only be used by the recipient for the purpose which it was disclosed by HMRC and prohibits any onward sharing of the data beyond the bodies with which sharing has been agreed, unless expressly permitted by HMRC Commissioners. Permission can be granted on an individual disclosure basis or on a more general basis, where ongoing disclosure is required for the same purpose and with the same organisation. This restriction on disclosure mirrors the restrictions in the Commissioners of Revenue and Customs Act 2005 (CRCA).
- 77 Subsection (3) outlines the penalties for any unauthorised sharing of data that will apply under section 19 and 20 of the CRCA.
- 78 Subsection (4) confirms that the data sharing clause in this Bill does not limit or constrain data sharing powers in the CRCA or in any other enactment or rule of law. In effect this means that any restrictions on the sharing of data under this provision are limited to the scope of this Act.
- 79 Subsection (5) confirms that nothing in the clause permits the disclosure of information which is not also permitted under the Data Protection Act 1998 or the Investigatory Powers Act 2016.

Part 3: General

Clause 9: Interpretation

- 80 This clause explains what is meant for the purposes of this Bill by the terms "Minister of the Crown" (which is defined in section 8(1) of the Ministers of the Crown Act 1975 as "the holder of an office in Her Majesty's Government in the United Kingdom, and includes the Treasury, the Board of Trade and the Defence Council) and "modify".

Clause 10: Extent

- 81 This clause provides that this Bill extends to the whole of the UK.

Clause 11: Commencement

- 82 This clause enables a Minister of the Crown to bring into force by commencement regulations the provisions in Part 1, 2 and 3 of this Bill on such days and at such times as the Minister appoints.

Clause 12: Short title

83 Clause 12 establishes that the short title of the Bill is the Trade Act 2018.

Schedules

Schedule 1 – Restrictions on Devolved Authorities

84 The Schedule describes the circumstances in which a devolved authority (defined in clause 3) as the Scottish Ministers, Welsh Ministers and a Northern Ireland departments) can use the powers in clauses 1 and 2 to make regulations.

No power to make provision outside devolved competence

85 Paragraph 1 provides that a devolved authority may not make regulations under clauses 1 or 2 unless every provision of those regulations is within the devolved authority's devolved competence. Devolved competence is defined in paragraphs 7 to 9.

No power to modify retained direct EU legislation etc.

86 Sub - paragraph (1) of paragraph 2 provides that the devolved authorities may not use the powers to modify retained direct EU legislation as defined in section 14(1) of the EU (Withdrawal) Bill or retained EU law by virtue of section 4 of that Bill.

87 Sub - paragraph (2) prohibits the devolved authorities from using the power in ways that would create inconsistencies with any modifications to retained direct EU legislation and retained EU law (as referred to above) which the UK Government has made.

Requirement for consent in certain circumstances

88 Paragraph 3 sets out the requirement for the devolved authorities to seek consent from the UK Government prior to making regulations in certain circumstances. These circumstances are where regulations under clauses 1 or 2 are being commenced prior to exit day, or where regulations under clause 2 make provision about any quota arrangements or are incompatible with such quota arrangements. Quota arrangements are defined in sub-paragraph (2).

Requirement for consent where it would otherwise be required

89 Paragraph 4 sets out that consent of a Minister of Crown is required if a devolved authority is making a provision using the powers in clauses 1 or 2 and the provision would require consent if it were a provision in legislation of the relevant devolved legislature or where the devolved authority would normally require consent to make such a provision via secondary legislation. This will not apply if the devolved authority already has power to make such provision using secondary legislation without needing the consent of the Minister of the Crown.

Requirement for joint exercise where it would otherwise be required

90 Paragraph 5 sets out that where a devolved authority would normally only be able to make legislation jointly with the UK Government, the devolved authority will still have to make such legislation jointly when exercising the powers in clauses 1 or 2.

Requirement for consultation where it would otherwise be required

91 Paragraph 6 requires consultation with the UK Government on legislation made by a devolved authority in the exercise of the powers in clauses 1 or 2 where the devolved authority would normally be required to consult with the UK Government when making

those kind of changes in legislation.

Meaning of devolved competence

- 92 Paragraphs 7 to 9 define devolved competence for the purposes of exercising the power in clauses 1 or 2. The definition of ‘legislative competence’ for the purposes of exercising these powers disappplies the normal restriction on the devolved legislatures’ competence which prevents the Scottish Parliament from legislating in a way that is incompatible with EU law. This disapplication is necessary to enable devolved authorities to make all necessary regulations under this power in devolved areas. This is because exercise of these powers will inevitably require some changes that would be incompatible with EU law and therefore would be outside the normal legislative competence of the devolved legislatures.

Interpretation

- 93 Paragraph 10 provides an interpretation of “Northern Ireland devolved authority” for the purpose of the Schedule.

Schedule 2 – Regulations

- 94 Part 1 of the Schedule provides that the power make regulations under Part 1 of the Trade Bill is exercisable by statutory instrument, and makes corresponding provision for the devolved authorities and for a Minister of the Crown acting jointly with a devolved authority.
- 95 Part 2 of the Schedule provides for scrutiny by the UK Parliament and the devolved legislatures of regulations made under clause 1 or 2.

Scrutiny of regulations made by Minister of the Crown or devolved authority acting alone

- 96 Paragraph 2 provides that the negative procedure applies to regulations made by a Minister of the Crown or a devolved authority acting alone under clause 1 or 2(1).

Scrutiny of regulations made by Minister of the Crown and devolved authority acting jointly

- 97 Paragraph 3 provides for the negative procedure to apply to regulations made jointly by a Minister of the Crown and a devolved authority under clauses 1 or 2(1).

Schedule 3 – Exceptions to restrictions in the devolution settlements

- 98 Schedule 3 modifies the test for executive competence of the devolved authorities.
- 99 Paragraph 1 makes provision in relation to the existing limit in section 57 Scotland Act 1998 (as amended by the EU (Withdrawal) Bill). It provides that the constraint on modification of retained EU law in that section does not apply to the making of regulations under clauses 1 or 2.
- 100 Paragraphs 2 and 3 make equivalent provision in respect of the Government of Wales Act 2006 and the Northern Ireland Act 1998.
- 101 Paragraph 4 provides that section 57(2) of the Scotland Act 1998, section 80(8) of the Government of Wales Act 2006 and section 24(1)(b) of the Northern Ireland Act, so far as relating to EU law, do not apply to regulations made under clauses 1(1) and 2(1).

Schedule 4 – The Trade Remedies Authority

- 102 This Schedule sets out further information on the composition of the TRA, established by

- clause 5, and prescribes how it is to operate. Much of its content is self-explanatory.
- 103 The Schedule makes detailed provision for the membership and staffing of the TRA, and how the terms and conditions of its members and employees (including remuneration) are to be determined.
- 104 The Secretary of State is responsible for appointing non-executive members, including a Chair. The Chair is responsible for appointing executive members, including a Chief Executive. The appointment of the Chief Executive is subject to the approval of the Secretary of State. The Secretary of State may also appoint the first Chief Executive, but only in certain circumstances.
- 105 The Secretary of State will be responsible for determining remuneration and terms and conditions of appointment for non-executive members, who are not employees of TRA. The Chair will be responsible for determining remuneration and terms and conditions of employment of employees who are executive members, which will be subject to the approval of the Secretary of State. For other employees who are not executive members, the TRA will determine their remuneration and terms and conditions of employment.
- 106 The TRA will be funded by the Secretary of State. It is required to keep proper records and accounts, and to provide a report on its activities to the Secretary of State every financial year. The report, which includes a statement of accounts, must be laid before Parliament.
- 107 The Secretary of State may give the TRA general guidance on how to discharge certain aspects of its responsibilities, but in doing so, the Secretary of State must have regard to the TRA's independence, impartiality and expertise. The Secretary of State may not give the TRA guidance in relation to specific and ongoing investigations.
- 108 The Schedule also amends various pieces of existing legislation so as to apply their provisions to the TRA. These include the Freedom of Information Act 2000 and the Equality Act 2010.

Commencement

- 109 Clause 11 provides for the commencement of the provisions in the Trade Bill. The general provisions in Part 4 will come into force on the day on which the Bill becomes an Act of Parliament. The specific provisions in Parts 1, 2 and 3 will come into force on days appointed by the Minister of the Crown by commencement regulations.

Financial implications of the Bill

- 110 Schedule 4 will have immediate financial implications as it provides for the creation of the TRA and sets out, amongst other things, how the TRA will be funded. It is estimated that the costs of funding the TRA could amount to £15-20m annually, paid for out of the Consolidated Fund. The final amount and timing of any financial implications depends on the outcome of negotiations with the EU and on policy decisions yet to be taken. Further detail on the financial implications of the TRA is set out in the impact assessment on trade remedies accompanying this bill.
- 111 The other provisions of the Trade Bill that have immediate financial implications are clause 2. The power contained within clause 2 will only be used to ensure that trade agreements that are already in place (or will be at the point that the UK leaves the EU), remain operational for the UK after leaving the EU. As a result, there should be no significant costs to business, however, some costs, such as those associated with familiarisation, may arise as a consequence of the specific changes to secondary legislation. These specific changes will

only be determined following further discussions with partner countries on how to transition the agreements effectively.

Compatibility with the European Convention on Human Rights

112 The Government considers that the Trade Bill is compatible with the European Convention on Human Rights (“ECHR”). Accordingly, Secretary of State for International Trade has made a statement under section 19(1)(a) of the Human Rights Act 1998 to this effect.

Related documents

113 The following documents are relevant to the Bill and can be read at the stated locations:

- Preparing for our future UK Trade Policy
<https://www.gov.uk/government/publications/preparing-for-our-future-uk-trade-policy>

Annex A - Territorial extent and application in the United Kingdom

The Trade Bill extends and applies to the whole of the UK. Repeals and amendments made by the Trade Bill have the same territorial extent and application as the legislation that they are repealing or amending.

The information provided is the view of the UK government.³

| Provision | Extends to E & W and applies to England? | Extends to E & W and applies to Wales? | Extends and applies to Scotland? | Extends and applies to Northern Ireland? | Would corresponding provision be within the competence of the National Assembly of Wales? | Would corresponding provision be within the competence of the Scottish Parliament? | Would corresponding provision be within the competence of the Northern Ireland Assembly? | Legislative Consent Motion needed? |
|-----------------------|--|--|----------------------------------|--|---|--|--|------------------------------------|
| Part 1 (Clauses 1-4) | Yes | Yes | Yes | Yes | N/A | N/A | N/A | Yes (S, W, NI) |
| Part 2 (Clauses 5-6) | Yes | Yes | Yes | Yes | N/A | N/A | N/A | No |
| Part 3 (Clauses 7-8) | Yes | Yes | Yes | Yes | N/A | N/A | N/A | No |
| Part 4 (Clauses 9-12) | Yes | Yes | Yes | Yes | N/A | N/A | N/A | No |
| Schedules 1-3 | Yes | Yes | Yes | Yes | N/A | N/A | N/A | Yes (S, W, NI) |
| Schedule 4 | Yes | Yes | Yes | Yes | N/A | N/A | N/A | No |

³ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

*These Explanatory Notes relate to the Trade Bill as introduced in the House of Commons on 7 November 2017
(Bill 122)*

Annex B - Glossary

| Term | Definition |
|---|---|
| Act of Parliament | An Act of Parliament is a law that both Houses of Parliament have agreed to, and which is enforced in all the areas of the UK where it is applicable. |
| Affirmative procedure | Under the affirmative procedure a statutory instrument must be approved by both the House of Commons and the House of Lords to become law. There are two sub-categories of the affirmative procedure in this Bill. Under the <i>draft affirmative</i> procedure, the statutory instrument cannot be made unless a draft has been laid before and approved by both Houses. Under the <i>made affirmative</i> procedure, the statutory instrument can be made and come into force before it is debated, but cannot remain in force unless approved by both Houses within one month. |
| Bill | A proposal for a new law or an amendment to an existing law that has been presented to Parliament for consideration. Once agreed and made into law, it becomes an Act. |
| Coming into force | The process by which an Act of Parliament, secondary legislation or other legal instrument comes to have legal effect. The law can be relied upon from the date on which it comes into force but not any sooner. Also known as commencement. |
| Devolution settlements | The constitutional arrangements governing which decision making responsibilities and legislation making powers have been devolved and the mechanisms through which these operate. |
| Devolution statutes (or Acts/legislation) | The principal Acts of Parliament that set out the terms of the devolution settlements. These are the Scotland Act 1998, the Northern Ireland Act 1998, and the Government of Wales Act 2006. 'Devolution legislation' may refer either to the devolution statutes or to the statutes together with the secondary legislation |

These Explanatory Notes relate to the Trade Bill as introduced in the House of Commons on 7 November 2017 (Bill 122)

| | |
|--------------------------|--|
| | made under them. |
| Devolved administrations | The governments of the devolved nations of the UK. These are the Scottish Government, the Welsh Government and the Northern Ireland Executive. |
| Devolved competence | The areas in which the devolved legislatures are responsible for making laws ('legislative competence') or the devolved administrations are responsible for governing or making secondary legislation ('executive competence'). |
| Devolved institutions | Used to refer collectively to both the devolved administrations and the devolved legislatures. |
| Devolved legislatures | The law making bodies of the devolved nations of the UK. These are the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. |
| European Commission | The Commission is the main executive body of the EU. It has general executive and management functions. In most cases it has the sole right to propose EU legislation. In many areas it negotiates international agreements on behalf of the EU and represents the EU in international organisations. And the Commission also oversees and enforces the application of Union law, in particular by initiating infraction proceedings where it considers that a member state has not complied with its EU obligations. See Article 17 of the Treaty on European Union and Articles 244 to 250 of the Treaty on the Functioning of the European Union. |
| Negative procedure | A statutory instrument under the negative procedure will become law once made without debate unless there is an objection from either House. |
| Secondary legislation | Legal instruments (including regulations and orders) made under powers delegated to ministers or other office holders in Acts of Parliament. They have the force of law but can be disapplied by a court if they do not comply with the terms of their parent Act. Also called subordinate or delegated legislation. |

Statutory instrument

A form of secondary legislation to which the Statutory Instruments Act 1946 applies.

TRADE BILL

EXPLANATORY NOTES

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