

# TRADE BILL

## EXPLANATORY NOTES ON LORDS AMENDMENTS

### What these notes do

- 1 These Explanatory Notes relate to the Lords Amendments to the Trade Bill as brought from the House of Lords on Thursday 21 March.
- 2 These Explanatory Notes have been prepared by the Department for International Trade in order to assist the reader of the Bill and the Lords amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Lords amendments themselves, refer to HL Bill 127, the Bill as first printed for the Lords.
- 4 These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.
- 5 Lords Amendments 1 to 6, 12 to 15 and 18 to 40 were tabled in the name of the Minister.
- 6 Lords Amendment 7 was tabled by Lord Stevenson of Balmacara, Lord Hannay of Chiswick and Lord Purvis of Tweed, and was opposed by the Government.
- 7 Lords Amendment 8 was tabled by Lord Stevenson of Balmacara, Lord Kerr of Kinlochard, Lord Purvis of Tweed and Baroness Altmann, and was opposed by the Government.
- 8 Lords Amendment 9 was tabled by Lord Hain, Lord Kerr of Kinlochard, Lord Bruce of Bennachie and Baroness Altmann, and was opposed by the Government.
- 9 Lords Amendment 10 was tabled by Lord Fox, Baroness Bull and the Earl of Clancarty, and was opposed by the Government.
- 10 Lords Amendment 11 was tabled by Lord Stevenson of Balmacara, Baroness Jones of Moulsecoomb, Baroness Henig and Baroness McIntosh of Pickering, and was supported by the Government.
- 11 Lords Amendment 16 was tabled by Lord Stevenson of Balmacara and Lord Kerr of Kinlochard, and was opposed by the Government.
- 12 Lords Amendment 17 was tabled by Lord Stevenson of Balmacara, and was opposed by the Government.
- 13 In the following Commentary, an asterisk(\*) appears in the heading of any paragraph that deals with a non-Government amendment.

## Commentary on Lords amendments

### Lords Amendments to Clause 1: Implementation of the Agreement on Government Procurement

#### Lords Amendment 1

- 14 Lords Amendment 1 would amend clause 1(3) of the Bill to change what was previously a reference to "retained direct EU legislation" to "retained direct principal EU legislation". The effect of this would be that specific provision was made to allow regulations made under clause 1 to amend retained direct principal EU legislation. Section 7 of the European Union (Withdrawal) Act 2018 (the Withdrawal Act) provides that retained direct principal EU legislation cannot be amended by regulations made under an Act of Parliament unless certain conditions are met, one of which is that that Act makes specific reference to the power to do so. This amendment would ensure that regulations under clause 1 can make such amendments. Such regulations could also amend retained direct minor EU legislation because specific further express provision is not needed to allow regulations made under an Act of Parliament to make such amendments.

### Lords Amendments to Clause 2: Implementation of international trade agreements

#### Lords Amendment 2

- 15 Lords Amendment 2 would replace "(4)" with "(4A)" to give effect to Lords Amendment 3 below.

#### Lords Amendment 3

- 16 Lords Amendment 3 would amend clause 2 of the Bill to include a requirement that regulations made under clause 2 are consistent with maintaining United Kingdom (UK) levels of statutory protection in the following areas: protection of human, animal or plant life or health; animal welfare; environmental protection; and employment and labour. UK levels of statutory protection would be defined as meaning levels of protection provided for, by or under any (i) primary legislation, (ii) subordinate legislation, or (iii) retained direct EU legislation which had effect in the UK (or part of the UK in which the regulations have effect) on the date on which a draft of the regulations is laid.

#### Lords Amendment 4

- 17 Lords Amendment 4 would amend clause 2(5) of the Bill to change what was previously a reference to "retained direct EU legislation" to "retained direct principal EU legislation". The effect of this would be that specific provision was made to allow regulations made under clause 2 to amend retained direct principal EU legislation. As noted in paragraph 14 above, section 7 of the Withdrawal Act provides that retained direct principal EU legislation cannot be amended by regulations made under an Act of Parliament unless certain conditions are met, one of which is that that Act makes specific reference to the power to do so. This amendment would ensure that regulations under clause 2 can make such amendments. Such regulations could also amend retained direct minor EU legislation because specific further express provision is not needed to allow regulations made under an Act of Parliament to make such amendments.

#### Lords Amendment 5

- 18 Lords Amendment 5 would insert "civil" in clause 2(5)(d) to clarify that regulations made under clause 2 could only make provision for civil penalties for failure to comply with them, and not criminal ones.

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## **Lords Amendments to Part 1: Post-ratification report**

### **Lords Amendment 6**

- 19 Lords Amendment 6 would impose a requirement on a Minister of the Crown to publish a report within 5 years of the ratification of a free trade agreement where the other party to the agreement (or each of the parties, if there are more than one) was also a signatory to a free trade agreement with the European Union (EU) immediately before exit day. The report, giving the Minister's assessment of the impact of the agreement on trade between the UK and the other party (or each other party), would be required to be published within five years after the date on which the UK ratified the free trade agreement.

## **Lords Amendments to Part 1: Parliamentary approval of trade agreements**

### **Lords Amendment 7\***

- 20 Lords Amendment 7 would establish an alternative procedure for consultation on and Parliamentary approval of free trade agreements. A free trade agreement would be defined by reference to a non-exhaustive list of types of agreements, and these agreements would be excluded from the provisions of the Constitutional Reform and Governance Act 2010.
- 21 The amendment would require the Secretary of State, prior to commencing negotiations, to consult with each devolved administration on the content of a draft negotiating mandate, and for the mandate to be approved both by an appropriately constituted Committee and a resolution of both Houses of Parliament. The Committee would be required to produce a sustainability impact assessment before it could consider approving the mandate.
- 22 The amendment would provide that a free trade agreement could not be ratified unless the agreement had been approved by an amendable resolution of both Houses of Parliament. Before either House of Parliament could approve such a resolution the agreement would be subject to approval by the Committee and consultation with the devolved administrations. The Committee would be required to produce a report in accordance with Schedule 1 (Amendment 17) before it could approve the text of the agreement, and that report would be required to be laid before both Houses of Parliament.

## **Lords Amendments to Part 1: Customs union**

### **Lords Amendment 8\***

- 23 Lords Amendment 8 would impose an objective on the Secretary of State to take all necessary steps to implement an international trade agreement which enabled the UK to participate after exit day in a customs union with the EU.

## **Lords Amendments to Part 1: Continuation of North-South trade and prevention of customs arrangements at borders**

### **Lords Amendment 9\***

- 24 Lords Amendment 9 would prevent the ratification of an international trade agreement between the UK and the EU under the procedures established by Constitutional Reform and Governance Act 2010 unless that agreement was compatible with the Northern Ireland Act 1998, did not negatively affect any form of trade in goods or services between Northern Ireland and the Republic of Ireland or the operation of relevant North-South implementation bodies, and did not create or facilitate certain customs arrangements between Northern Ireland and the Republic of Ireland after exit day. The relevant customs arrangements would be ones which featured: physical infrastructure related to customs checks; a requirement for customs or regulatory checks; random checks on goods vehicles; or any other checks and controls related to

trade that did not exist before exit day and which were not subject to an agreement between the Governments of the UK and the Republic of Ireland.

## **Lords Amendments to Part 1: Trade agreement with the EU: mobility framework**

### **Lords Amendment 10\***

- 25 Lords Amendment 10 would impose an objective on the Secretary of State to take all necessary steps to secure an international trade agreement with the EU which included a mobility framework that would enable all UK and EU citizens to exercise the same reciprocal rights to work, live and study in each other's territories for the purpose of the provision of trade in goods or services.

## **Lords Amendments to Part 1: UK participation in EU and EEA organisations**

### **Lords Amendment 11\***

- 26 Lords Amendment 11 would require the Secretary of State to seek to negotiate an international trade agreement with the EU which would enable the UK to continue to co-operate closely with specified EU and EEA bodies after exit day. The specified bodies would be: the European Medicines Agency, the European Chemicals Agency, the European Aviation Safety Agency, the European Maritime Safety Agency, the European Network of Transmission System Operators for Electricity, and the European Network of Transmission System Operators for Gas.

## **Lords Amendments to Part 1: Statement on equalities legislation**

### **Lords Amendment 12**

- 27 Lords Amendment 12 would provide for a Ministerial Statement to be made when a Minister of the Crown proposed to make any regulations under the clause 2(1) power. This statement would be required to state whether those regulations would, if made, modify any provision of the Equality Acts 2006 and 2010 or any subordinate legislation made under those enactments, and to explain the effect of any such modification. If the Minister failed to make the statement, the Minister would be required to make a statement explaining why.

## **Lords Amendments to Clause 7: Regulations: devolved authorities and general provision**

### **Lords Amendment 13**

- 28 Lords Amendment 13 would remove clause 7(2), which makes provision that is already in place by virtue of the Withdrawal Act. Clause 7(2) allows for devolved administrations to make regulations under clause 1(1) or 2(1) of the Bill modifying retained EU law before exit day provided that those regulations do not come into effect until exit day. This is already provided for by paragraph 12(3) of Schedule 8 to the Withdrawal Act, which applies this principle to all Bills passed after the Withdrawal Act in the same session of Parliament.

## **Lords Amendments to Clause 8: Interpretation of Part 1**

### **Lords Amendments 14, 15 and 18**

- 29 Lords Amendment 14 would change the definition of "subordinate legislation" from that used in the Interpretation Act 1978 to that used in section 20(1) of the Withdrawal Act. This would ensure that the definition included any instrument made under an Act of the Scottish Parliament, Northern Ireland legislation or a Measure or Act of the National Assembly for Wales.

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- 30 Lords Amendments 15 and 18 would move the definition of “domestic law” from paragraph 2(7) of Schedule 1 to clause 8(6), so that it would sit alongside other definitions.

## **Lords Amendments to Part 4: Conditions of commencement**

### **Lords Amendment 16\***

- 31 Lords Amendment 16 would have the effect that Parts 1 to 3 of the Bill could only be commenced when the House of Commons had approved a motion either (i) agreeing to a withdrawal agreement and a framework for the future relationship with the EU, or (ii) approving the UK leaving the EU without such an agreement and framework. The amendment would prevent the substantive provisions of the Bill from coming into force in the event that the UK left the EU without the House of Commons having approved one or other of those motions.

## **Lords Amendments to the Schedules: Committee on trade agreements**

### **Lords Amendment 17\***

- 32 Lords Amendment 17 would provide that the Committee’s report on a free trade agreement (required by Amendment 7) must include: an account of the Committee’s consultation with various parties including the public, the devolved authorities and public bodies; an assessment of the impact of the proposed agreement on the economy, environment, human rights and labour standards etc. in the UK; and an assessment of the same impacts on any other state which is a signatory to the agreement. The amendment would also require the report to include an assessment of the impacts of the proposed agreement on a variety of international obligations and principles, including the sustainable development goals and international environmental obligations.

## **Lords Amendments to Schedules 1 and 2: Restrictions on devolved authorities and regulations under Part 1**

### **Lords Amendments 18 to 40**

- 33 Lords Amendment 18 would remove the definition of “domestic law” from paragraph 2(7) of Schedule 1. As noted in paragraph 30 above, the definition would be moved to clause 8(6) so that it would sit alongside other definitions
- 34 Lords Amendments 19 to 25 and 27 to 40 would provide clarity on which provisions in the Schedules to the Bill only apply when the devolved authorities are acting alone. Schedule 1 allows for joint procedure requirements that derive from outside of the Bill to continue to apply to regulations made under clauses 1 and 2 of the Bill. By inserting the phrase “acting alone” to appropriate places in Schedules 1 and 2, the amendment would clarify that some provisions only apply when the Devolved Authorities are acting alone. For example, the consent requirement in paragraphs 4(1), (2) and (4) of Schedule 1 are unnecessary if the devolved authority is acting jointly, hence the words “acting alone” have been added.
- 35 Lords Amendment 26 would ensure that paragraph 6 of Schedule 1 operates correctly in relation to Northern Ireland by replacing Northern Ireland “department” with “devolved authority”. Paragraph 6 requires consultation with the Government on legislation made by a devolved authority in the exercise of the powers in clauses 1 and 2, where the devolved authority would normally be required to consult with the Government when making those kinds of changes in legislation. Without the amendment the provision would only catch consultation requirements that would otherwise bind Northern Ireland departments. “Northern Ireland devolved authorities” means not only Northern Ireland departments, but also the First Minister and deputy First Minister in Northern Ireland acting jointly, and a Northern Ireland Minister.

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## Financial Effects of Lords Amendments

36 The Lords amendments do not alter the statements made at paragraphs 132 and 133 of the Explanatory Notes that accompanied the Bill (HL Bill 127 Explanatory Notes); there will be no further financial implications as a result of these amendments.

## Territorial extent and application to the United Kingdom

37 The following is the Department's assessment of the Bill as brought from the House of Lords on Wednesday 20 March.

38 The Lords amendments do not change the territorial application of the Bill. All clauses extend to England, Scotland, Wales and Northern Ireland.

39 The information provided is the view of the UK Government.

40 References in this table 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.

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 1-8)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Part 1(Lords Amendments 6 to 12)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 2 (Clauses 9-10)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 3 (Clauses 11-12)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 4 (Clauses 13-16)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 4	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

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<b>Provision</b>	<b>Extends to E&amp;W and applies to England?</b>	<b>Extends to E&amp;W and applies to Wales?</b>	<b>Extends and applies to Scotland?</b>	<b>Extends and applies to Northern Ireland?</b>	<b>Would corresponding provision be within the competence of the National Assembly of Wales?</b>	<b>Would corresponding provision be within the competence of the Scottish Parliament?</b>	<b>Would corresponding provision be within the competence of the Northern Ireland Assembly?</b>	<b>Legislative Consent Motion needed?</b>
(Lords Amendment 16)								
Schedules (Lords Amendment 17)	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
Schedule 5	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

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