

# TRADE BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Trade Bill as introduced in the House of Commons on 19 March 2020 (Bill 120).

- 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 as the UK Government develops its trade policy for the UK now it has left the European Union (EU). These measures include:
  - A power to ensure that the UK can implement procurement obligations that will arise from the UK acceding to the Agreement on Government Procurement (GPA) in its own right and not as a member state of the EU. The GPA is a plurilateral agreement within the World Trade Organization (WTO) framework. It mutually opens government procurement markets and seeks to address trade barriers among its parties. This power will allow the Government and devolved authorities to use the negative resolution procedure to implement changes to domestic law which will be necessary for the UK to meet and enforce obligations arising from its independent membership of the GPA.
  - A power to assist with the implementation of UK trade agreements with partner countries with which the EU has existing trade agreements as at 31 January 2020. This power will allow the Government and devolved authorities to use the affirmative resolution procedure to implement changes to domestic law which will be necessary for the UK to meet obligations flowing from these agreements.
  - Provisions establishing a new body, the Trade Remedies Authority (TRA), to deliver the new UK trade remedies framework, and to enable the TRA to provide advice, support and assistance to the Secretary of State in connection with the conduct of international disputes, other functions of the Secretary of State relating to trade and functions of the TRA. The TRA may also provide advice, support and assistance in relation to international trade and trade remedies to others as it considers appropriate.
  - A power for HM Revenue and Customs (HMRC) to collect information on behalf of the Government to confirm the number of exporters of goods and services there are in the UK, to enable the Government to identify those exporters for trade promotion purposes.
  - A power to establish a data sharing gateway between HMRC and other public and private bodies, so that those bodies, including the Department for International Trade, can discharge their public functions and access relevant data for research, monitoring and evaluation.

## Policy background

### Government Procurement Agreement

- 2 The GPA is a plurilateral agreement within the framework of the WTO which mutually opens up government procurement markets among its parties. The UK currently participates in the GPA as if it were an EU Member State and intends to join as an independent party at the end of the transition period. This will ensure that UK businesses are still able to bid for overseas government procurement opportunities covered by the GPA after the end of the transition period.

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- 3 The GPA consists of (a) the text of the GPA and (b) parties' market access commitments. The text of the GPA 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) determine which entities are covered and whether a procurement activity falls within the scope of the GPA or not. Only these procurement activities that are covered by entities purchasing listed goods, services or constructions services of a value exceeding the specified thresholds are within the scope of the agreement.
- 4 During the transition period, the UK will continue to be covered by the GPA, as when it was an EU member state, i.e. under the EU's coverage schedules. The Trade Bill will provide the Government and the devolved authorities with a power to make the changes to domestic legislation which are necessary to ensure the UK's obligations arising from independent membership of the GPA can be fully implemented. It will also ensure that the UK is able to take action against GPA parties who do not observe their obligations to the UK. This implementation power uses the negative resolution procedure.

## **International Trade Agreements – Maintaining Trade Arrangements with other Countries**

- 5 As a member of the EU, the UK participated in the EU's trade agreements with partner countries. This meant that the UK entered into commitments in international trade agreements as a member of the EU. The Government seeks continuity in the effects of these existing trade and investment relationships as far as possible. The Government has been discussing with the UK's existing partner countries how best to achieve that aim and has been working to transition these agreements to make them apply to the UK after the end of the transition period. This is the Government's continuity negotiations program, which is distinct from its future trade agreements program.
- 6 The Trade Bill will provide the Government and the devolved authorities with the power to make the changes to domestic legislation that are necessary to ensure that these agreements can be fully implemented. This implementation power uses the affirmative resolution procedure and the power can only be used to implement agreements the EU has signed with third countries by 31 January 2020. Consequently, the power cannot be used to implement a free trade agreement with the USA or China.

## **Trade Remedies Authority**

- 7 Trade remedies measures protect domestic industries against injury caused by unfair trading practices, such as dumping and subsidies, and from unforeseen surges in imports. Investigations, decisions and monitoring of trade remedies measures are currently performed by the European Commission on behalf of all Member States. The Trade Bill will establish a UK body – the Trade Remedies Authority (TRA) – to ensure the UK can continue to provide a safety net to domestic industries after the UK has left the EU.
- 8 The TRA will be set up as a non-departmental public body. It will be responsible for conducting trade remedies investigations under a statutory framework provided by the Taxation (Cross-border Trade) Act 2018, and for making impartial recommendations to the

Secretary of State.<sup>1</sup>

- 9 Measures in the Bill will also require the TRA, upon request, to provide advice, support and assistance to the Secretary of State in connection with the Secretary of State's trade-related functions, international trade disputes, and the TRA's functions. This provision also allows the TRA to provide advice, support and assistance to others as it considers appropriate in relation to international trade and trade remedies.

## Trade Information

- 10 Other 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 allow the Government to identify those exporters for trade promotion purposes.
- 11 The Trade Bill will permit HMRC to share data with other bodies so that they can fulfil their public functions related to trade. 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. That information will inform the Government in designing and monitoring trade policy, including conducting trade disputes, and assist the TRA in investigating trade remedy cases.
- 12 The Trade Bill also includes powers for HMRC to share data with public and private bodies for trade purposes. These bodies include the international organisations that oversee the world trade system (for example the WTO). These data sharing powers are subject to strict safeguards under the Bill, the Commissioners for Revenue and Customs Act 2005 and the Data Protection Act 2018, ensuring appropriate protection and use of the data.

## Legal background

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

## Territorial extent and application

- 14 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.
- 15 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.
- 16 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

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<sup>1</sup> Since the implementation of trade remedies measures impacts upon the financial privilege of the House of Commons, the TRA's functions in relation to trade remedies cases will be conferred by provisions in the Taxation (Cross-Border Trade) Act 2018.

which would alter the competence of those legislatures or of the devolved administrations in Scotland, Wales and Northern Ireland.

- 17 The Government will therefore seek legislative consent for the provisions in the Trade Bill relating to the power to implement the GPA (Clause 1) and the power to implement qualifying international trade agreements (Clause 2).
- 18 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 GPA was negotiated and agreed in 1994 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 the parties took place and a revised version of the 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). All GPA parties have adopted the 2012 Protocol other than Switzerland, which is in the process of adopting it.
- 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 20 parties within the WTO membership,<sup>2</sup> 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

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<sup>2</sup> The 20 GPA parties are Armenia, Australia, Canada, the EU, Hong Kong, Iceland, Israel, Japan, Republic of Korea, Liechtenstein, Moldova, Montenegro, the Netherlands with respect to Aruba, New Zealand, Norway, Singapore, Switzerland, Chinese Taipei, Ukraine, and United States.

include, or exclude, goods, services or entities from the cover given.

- 22 The UK, when it was a member of the EU, participated in the GPA through its EU membership. GPA parties have acknowledged in a GPA Committee decision that now the UK has left the EU, the UK will continue to be covered by the GPA as now until expiry of the transition period. The power in Clause 1 will enable the UK and the devolved authorities to make changes to domestic law which will be necessary for the UK to meet obligations arising from its independent membership of the GPA, at the end of the transition period after the UK has acceded to the GPA.
- 23 Before the GPA can come into force for the UK as an independent member, the UK must ensure that the agreement can be implemented domestically. When the UK was an EU Member State, the UK's obligations under the GPA were implemented by secondary legislation made under powers in section 2(2) of the European Communities Act 1972 (ECA), the effect of which has been saved by the European Union (Withdrawal Agreement) Act 2020 for the duration of the transition period. The European Union (Withdrawal) Act 2018, as amended by the European Union (Withdrawal Agreement) Act 2020 will preserve in UK law the EU law existing at the end of the transition period, and allow it to be amended to make it work in a UK context. The implementation of the UK's existing obligations under the GPA will have been preserved.
- 24 However, this does not enable the UK to give full effect in domestic law to obligations arising from its independent membership of the GPA. To ensure that the UK's obligations arising from independent membership of the GPA can be fully implemented, the power in Clause 1 gives the Government and devolved authorities ("appropriate authorities") the power to make regulations to implement changes to domestic law which will be necessary for the UK to meet its obligations as an independent member of the GPA.
- 25 The UK currently gives effect to its GPA obligations in domestic public procurement regulations. For England, Wales and Northern Ireland these include the Public Contracts Regulations 2015, the Utilities Contract Regulations 2016 and the Concession Contracts Regulations 2016 (the "UK Regulations"). For Scotland, these include Scottish procurement regulations, namely the Public Contracts (Scotland) Regulations 2015, the Utilities Contracts (Scotland) Regulations 2016 and the Concession Contracts (Scotland) Regulations 2016 (the "Scottish Regulations"). The UK Regulations and the Scottish Regulations implement EU Directives 2014/24/EU, 2014/25/EU, 2014/23/EU, 89/665/EEC and 92/13/EEC.
- 26 In the UK Regulations and the Scottish Regulations, contracting authorities and utilities are placed under an obligation to accord to the goods, services and suppliers of the signatories to the GPA treatment that is no less favourable than the treatment accorded to the goods, services and suppliers of the EU.
- 27 Clause 1(1) provides a power for appropriate authorities to make regulations for five purposes:
  - a. Subsection (1)(a) allows an appropriate authority to make regulations for the purpose of implementing the GPA. An example of how the UK might use this power is to amend existing secondary legislation to refer to the version of the GPA which reflects the UK as an independent member, and which includes the UK's coverage schedules.
  - b. Subsection (1)(b)(i) permits an appropriate authority to make regulations to reflect new parties acceding to the GPA or existing parties withdrawing from GPA. This is needed to enable the UK to make regulations to effect changes to the GPA membership. An example of how the power could be used would be to extend rights



and remedies to a newly acceding party's suppliers once that party accedes.

- c. Subsection (1)(b)(ii) allows an appropriate authority to make regulations to enforce the UK's rights under the GPA in the event of a dispute between the UK and another GPA party, by suspending concessions or other obligations to that GPA party or to provide mutually acceptable non-financial compensation should the UK need to increase concessions or other obligations where it is not able to bring itself into compliance. An example of how the power could be used is to amend the Public Contract Regulations 2015 to exclude from public procurement suppliers of goods or services established in or operating from that GPA party's territory.
- d. Subsection (1)(b)(iii) allows an appropriate authority to make regulations, where required, which are consequential on other parties making modifications to their market access schedules in their Appendix I to the GPA. Examples of how the power could be used are extending market access to suppliers from an expanded territory of a GPA party, for example if a new member joins the EU, or withdrawing equivalent coverage from a party where a UK objection to another party's modification has not been resolved.
- e. Subsection (1)(b)(iv) allows an appropriate authority to make regulations to reflect any modifications to the list of central government entities of the UK listed in Annex 1 to the UK's Appendix I to the GPA. The UK anticipates that GPA parties will expect the UK to commit to commence the process for updating the list of central government entities in its Annex 1 shortly after acceding to the GPA as an independent party. This subsection will allow the UK to implement the updated list of central government entities in domestic legislation.

28 Clause 1(2) sets out limitations on when regulations made under Clause 1(1) may come into force:

- a. Subsection (2)(a) provides that regulations made under subsection (1)(a) may not come into force before the day on which the UK accedes to the GPA. The wording reflects the fact that, under Article XXII(2) of the 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 which have been agreed. The GPA will then enter into force for that party on the 30th day following the party depositing its instrument of accession.
- b. Subsection (2)(b) provides that regulations made under subsection (1)(b)(i) may not, in the case of a new party joining the GPA, come into force before the day on which the new party accedes. In the case of a party withdrawing from the GPA, regulations made under subsection (1)(b)(i) may not come into force before the day on which the party withdraws from the GPA. The requirement to deposit an instrument of accession and the 30-day time period described 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 from the GPA, or immediately if the party also withdraws from the WTO.
- c. Subsection (2)(c) provides that regulations made under subsection (1)(b)(iii) and subsection (1)(b)(iv) may not come into force before modifications to other parties' Appendix I to the GPA or the modifications to the UK's Annex 1 list of central government entities to the GPA or become effective. This reflects the fact that, under Article IXX(5) of the GPA, modifications made by parties to its schedules become effective only where certain conditions are met.

- d. Regulations made under subsection 1(b)(ii) are not subject to the limitations set out in clause 1(2), since such regulations cannot be made until the UK has acceded to the GPA. This is because, as described below, the powers under subsection 1(b)(ii) cannot be exercised until a dispute has arisen under the GPA between the UK and another GPA party.
- 29 Clause 1(3) establishes what sort of provision may be made by regulations under Clause 1(1). Regulations may modify retained direct principal EU legislation, as defined in the European Union (Withdrawal) Act 2018.
- 30 Clause 1(4) defines a “dispute” for the purposes of subsection 1(b)(ii) as a matter that the UK or another party would be entitled to challenge under the WTO’s Dispute Settlement Understanding (“DSU”). Article XX of the GPA provides that, where a GPA party considers that its benefits under the GPA are being blocked or impaired by another GPA party, it may refer the matter for dispute settlement under the terms of the DSU.

## Clause 2: Implementation of international trade agreements

- 31 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 was signed up to many international trade agreements with other countries through its membership of the EU, and this continues throughout the transition period.
- 32 The Government’s policy has been to seek continuity in the UK’s existing trade relationships once the transition period has expired. To achieve this, it has been working to establish a UK trade agreement with each existing partner country based, as closely as possible, on maintaining the effects of the trade agreement that that country already has with the EU.
- 33 Before an international trade agreement can enter into force, the parties to that agreement must ensure that the agreement is implemented domestically, to avoid breach of the agreement on entry into force. This means they must ensure their domestic legislative framework is consistent with the commitments within the trade agreement. However, it should be noted that not all obligations within a trade agreement require a change to the law. It is a convention within the UK that an international treaty is not ratified until it has been implemented. It is envisaged that the main area where a change to UK law is required, for the purposes of the international trade agreements in the scope of this Bill, is in implementing the procurement obligations of these international trade agreements and mutual recognition agreements.
- 34 Now the UK has left the EU, the ECA 1972 has been repealed, but the effects of sections 2(1) and 2(2) have been preserved for the transition period. At the end of the transition period, when the UK is no longer bound by EU law, the UK will need to have in place a legislative framework that enables us to implement, in the UK’s domestic legislation, obligations flowing from international trade agreements which the UK is making with countries with which it has trade agreements via its membership of the EU, in or domestic legislation.
- 35 As a general rule, the European Union (Withdrawal) Act 2018 will preserve in UK law the EU law existing at the point at which the UK leaves the EU, and allow it to be amended to make it work in a UK context after the end of the transition period . It is therefore expected that, in most cases, the implementation of any already existing obligations within these new UK-partner country trade agreements will have been preserved by the operation of the European Union (Withdrawal) Act 2018 and the powers under it.
- 36 Not all obligations in EU-partner country trade agreements will have been fully implemented by the EU in EU law (or by the UK implementing EU obligations into UK law) by the end of the transition period. Consequently, the European Union (Withdrawal) Act 2018’s

preservation provisions, and its powers to correct deficiencies in retained EU law arising from the UK's exit from the EU, will not assist. Another legislative vehicle – such as the power in Clause 2 - will be needed to ensure that these trade agreements can be fully implemented within UK law. The Government expects that these obligations will primarily relate to procurement, mutual recognition (as a consequence of transitioning Mutual Recognition Agreements) or in respect of enforcement or compensation provisions should any dispute or other issues arise.

- 37 It is also possible that adjustments may be required to ensure that the new UK-partner country trade agreements work outside the original EU context. If implementing those adjustments requires a change to UK law, the Government will need a vehicle to make those legislative changes to ensure that it is not in breach of its international obligations.
- 38 In addition, it is important that UK-partner country agreements remain operable and up to date after the end of the transition period. Where appropriate changes to the agreement are necessary, it is important that these can be implemented efficiently. This could include, for example, implementing decisions made by a joint committee of the parties set up under a trade agreement or implementing the results of an arbitration/alternative dispute resolution decision.
- 39 To ensure that the UK's trade agreements with EU partner countries can be fully implemented, the power in Clause 2 gives the Government and devolved authorities the power to make regulations to implement non-tariff provisions in any international trade agreements that the UK makes with partner countries, provided that those countries have signed a trade agreement with the EU before 31 January 2020. Those provisions could be both obligations on the UK under the agreements and discretionary measures that the UK can take under them.
- 40 The power will be used to implement non-tariff provisions. Non-tariff provisions are those that do not relate to taxes and duties. The power expressly excludes provisions that could be made under regulations under section 9 of the Taxation (Cross-border Trade) Act 2018, which allows the setting of preferential duties pursuant to international arrangements.<sup>3</sup>
- 41 The Clause 2 power will allow provisions of trade agreements to be implemented in the UK through secondary legislation made under the affirmative resolution procedure. If, for example, a trade agreement requires countries to treat businesses from their respective countries equally when they bid for government procurement contracts, this must be reflected in the domestic legislative framework of both countries to enable that obligation to be met by each. The Government and devolved authorities could use the power to make secondary legislation under Clause 2 to introduce any appropriate changes within areas of devolved competence.
- 42 When the UK was a member of the EU, the UK benefited from the EU's trade agreements with partner countries. For example, the EU currently has free trade agreements with Switzerland, South Korea, and Israel. The power in Clause 2 could be used to implement the non-tariff obligations of UK free trade agreements with these countries.

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<sup>3</sup> Tariff provisions – that is, the elements of a trade agreement that set tax and duties on imports and exports – are addressed separately in the Taxation (Cross-Border Trade) Act 2018.

- 43 Where continuity UK-partner country agreements need ratifying (which means a form of formal indication that a State intends to be bound by the agreement), they will be subject to Parliamentary scrutiny in accordance with the Constitutional Reform and Governance Act 2010.
- 44 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 there is more than one) was also a signatory to an international trade agreement with the EU immediately before 31 January 2020. The types of agreements within scope of the definition of ‘international trade agreements’ are a) free trade agreements (as defined in clause 4(1) – see paragraph 46 below) and b) other international agreements which are not free trade agreements, but which mainly relate to trade (as defined in clause 2(2) – see paragraph 47 below).
- 45 The types of trade agreement that mainly relate to trade comprise the key trade agreements the EU currently has with partner countries, including associated ancillary agreements, bilateral procurement agreements and mutual recognition agreements on product conformity assessment. Mutual recognition agreements on product conformity assessment provide a legal framework to allow states to recognise tests and documents issued by expert bodies in 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 from the partner country 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 in the partner country.
- 46 Although the Government’s policy intention is to ensure continuity as far as possible of the effects of the UK’s current trading arrangements, the new UK-partner country agreements that are implemented using this power will be legally distinct from the original EU-partner country agreements on which they are based. It may be necessary to amend the text of the previous EU agreements, for example so that the new agreements can work in a UK legal context.
- 47 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 31 January 2020. Subsection (4) extends this approach to international trade agreements not falling within the definition of a “free trade agreement”. Clause 4 (interpretation of Part 1) provides the definition of a “free trade agreement” and Clause 2 (Implementation of international trade agreements) provides a definition of “international trade agreement”.
- 48 As previously indicated, the Clause 2 power will only be used to implement the non-tariff provisions of trade agreements. Subsection (5) therefore specifically provides that regulations made under subsection (1) may not make provisions that could be made by regulations under section 9 of the Taxation (Cross-border Trade) Act 2018. That section allows regulations to be made to give effect to preferential tariff rate arrangements between the UK and the government of a country or territory outside the United Kingdom.
- 49 Subsection (6) establishes 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 European Union (Withdrawal) Act 2018, including primary legislation that is retained EU law and retained direct EU legislation; confer functions on the Secretary of State, or any other person, including conferring a discretion; provide for the delegation of functions (other than law-making functions); and provide for civil penalties. Subsection (6) does not allow for regulations to make or extend criminal offences, charge fees, amend primary legislation other

than retained EU law, or create new public bodies.

- 50 Subsection (7) makes the power in subsection (1) subject to a sunset requirement. This means that five years after the end of the transition period the power will cease to have effect. Subsections (7)(b) and (8) provide that this period can be extended by the Government on review, with the approval of both Houses of Parliament (see Part 4 of Schedule 2 for procedural requirements), for further periods of up to 5 years at a time.

### Clause 3: Regulations: devolved authorities and general provision

- 51 Clause 3(1) provides for different types of provision that could be made by regulations under clauses 1 and 2 where needed, for example consequential provisions, or transitional or savings provisions. The clause also gives effect to Schedules 1, 2 and 3.
- 52 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.

### Clause 4: Interpretation of Part 1

- 53 Clause 4 sets out how certain terms within Part 1 of the Trade Bill should be interpreted.
- 54 Amongst these definitions, Clause 4(1) 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 GPA) and Clause 2 (implementation of international trade agreements). “Minister of the Crown” is defined in Clause 9 (see paragraph 98 below). Clause 4(1) also defines “devolved authority” as the Scottish Ministers, the Welsh Ministers or a Northern Irish department.
- 55 Clause 4(1) defines “free trade agreement” by reference to provisions in GATT and GATS which concern the formation of regional trade agreements. Specifically, the subsection refers to the requirements in GATT and GATS to notify WTO members when parties have decided to enter into a regional trade agreement (paragraph 7(a) Article XXIV GATT; paragraph 7(a) Article V GATS). Therefore, the term “free trade agreement” means an agreement which triggers the notification requirement under those provisions. Under GATT, this covers an agreement to enter into a customs union or a free-trade area or an interim agreement leading to the formation of a customs union or a free-trade area.
- 56 For these purposes a customs union means a situation where two or more customs territories become one customs territory. It has two main features (in each case subject to exceptions in GATT). One is that duties and other restrictive regulations of commerce are eliminated with respect to substantially all the trade between those customs territories with respect to substantially all the trade in products originating in such territories. The other is that substantially the same duties and other regulations of commerce are applied by each of the members of the customs union to the trade of territories not included in the customs union.
- 57 A free-trade area under GATT means a group of two or more customs territories in which (subject to exceptions in GATT) the duties and other restrictive regulations of commerce are eliminated on substantially all the trade between the territories making up the area in products originating in those territories.
- 58 Under GATS, regional trade agreements are known as economic integration agreements. These liberalise trade in services between the parties to the agreements, and must have substantial sectoral coverage and provide for the absence or elimination of substantially all discrimination between the parties in the sectors covered (again, subject to exceptions in GATS).

- 59 Clause 4(2) provides for references in Part 1 of the Bill to being a “signatory” to an international trade agreement to be read, in addition to signature, as also covering a party doing anything that would amount to a consent to be bound by the agreement as a matter of international law.
- 60 Clause 4(3) explains that references in Part 1 of the Bill to anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 (directly effective Treaty rights etc.) includes modifications of the rights, powers, liabilities, obligations, restrictions, remedies or procedures concerned, as well as the rights etc. themselves.

## Part 2: Trade Remedies Authority

### Clause 5: The Trade Remedies Authority

- 61 This clause establishes a new non-departmental public body, the TRA.
- 62 Subsection (2) introduces Schedule 4, which contains further provisions regarding the governance and accountability of the TRA.
- 63 Subsection (3) introduces Schedule 5, which makes provision about schemes for the transfer of staff in connection with the establishment of the TRA.

### Clause 6: Provision of advice, support and assistance by the TRA

- 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 the conduct of international trade disputes, the Secretary of State’s trade-related functions, and the TRA’s functions. Before making such a request, the Secretary of State is required to consult the TRA and to have regard to the TRA’s expertise and the need to protect its operational independence and impartiality.
- 66 The TRA may also provide such advice, support and assistance as it considers appropriate to others 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, namely, to collect information on behalf of the Government which will assist the Government in identifying companies, partnerships and sole traders that export goods and services.
- 68 Clause 7(1) creates a new function for HMRC to request information from any person in order to assist the Secretary of State to establish the number of exporters of goods and services in the UK and to be able to identify those exporters for trade promotion purposes. Compliance with such a request will be entirely voluntary and the Bill does not provide for the imposition of any sanctions in the event of non-compliance.
- 69 Clause 7(2) defines export of goods and services as supply to a person who is outside of the United Kingdom.
- 70 Clause 7(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 collection.
- 71 Clause 7(4) provides that regulations made under subsection (3) can modify (i.e. amend or

repeal) primary legislation. This power is needed so that amendments can be made to the tax Acts, as necessary, in order to allow corporation and personal tax returns to be amended to include the request for exporter information.

- 72 Clause 7(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, information will be required by the Department for International Trade and the TRA to conduct trade disputes on behalf of the UK or impose trade remedies. Access to the information will also be required in order to produce trade statistics and for trade research and analysis purposes which can both inform the development of evidence-based trade policy and be used to monitor and evaluate its effectiveness. Clause 8 allows HMRC to share data with those bodies in order that they can fulfil such functions.
- 74 This provision is needed in addition to the disclosure of information power in Clause 25 of the Taxation (Cross-border Trade) Act 2018 because that power is limited to matters related to customs duty purposes, which does not cover the full scope of the Government's activities.
- 75 Clause 8(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) as well as with other departments and the devolved authorities.
- 76 Clause 8(2) ensures that information can only be used by the recipient for the purpose for 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. These restrictions mirror the restrictions in the Commissioners for Revenue and Customs Act 2005.
- 77 Clause 8(3) applies the penalties under section 19 and 20 of the Commissioners for Revenue and Customs Act 2005 in respect of any unauthorised sharing of information received under this power.
- 78 Clause 8(4) confirms that this data sharing clause does not limit or constrain data sharing powers in the Commissioners for Revenue and Customs Act 2005 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 Bill.
- 79 Clause 8(5) confirms that nothing in the clause permits the disclosure of information which is not also permitted under the Data Protection Act 2018 or the Investigatory Powers Act 2016.

## Part 4: 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 the 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 this Bill will be the Trade Act 2020.

# Schedules

## Schedule 1 – Restrictions on Devolved Authorities

84 The Schedule describes the circumstances in which a devolved authority (defined in Clause 4 as the Scottish Ministers, Welsh Ministers and a Northern Ireland department) 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 provision under Clauses 1 or 2 unless the provision is within the devolved authority's devolved competence. Devolved competence is defined in paragraphs 6 to 8 of the Schedule (see paragraph 110 below).

*Requirement for consultation in certain circumstances*

86 Paragraph 2 sets out the requirement for the devolved authorities to consult the Government prior to making regulations in certain circumstances. These circumstances are where regulations under Clauses 1 or 2 are being commenced prior to the end of the transition period, 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 (3).

*Requirement for consent where it would otherwise be required*

87 Paragraph 3 sets out that consent of a Minister of the Crown is required if a devolved authority is making a provision using the powers in Clauses 1 or 2 and the provision would otherwise require consent if it were being made under other powers. That could be where the relevant devolved legislature's legislative powers were subject to a consent requirement, or where the devolved authority would normally require consent to make such a provision via secondary legislation. This requirement for consent 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*

88 Paragraph 4 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*

89 Paragraph 5 requires consultation with the 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 Government when making those kind of changes in



legislation.

*Meaning of devolved competence*

- 90 Paragraphs 6 to 8 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 them 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*

- 91 Paragraph 9 provides an interpretation of meaning of “Northern Ireland devolved authority” for the purpose of the Schedule.

## Schedule 2 – Regulations under Part 1

- 92 Part 1 of the Schedule provides that the power to 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.
- 93 Parts 2, 3, 4 and 5 of the Schedule provide for scrutiny by the UK Parliament and the devolved legislatures of regulations made under Clauses 1 and 2.

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

- 94 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.
- 95 Paragraph 4 provides that the affirmative procedure applies to regulations made by a Minister of the Crown or a devolved authority acting alone under Clause 2(1)

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

- 96 Paragraph 3 provides for the negative procedure to apply to regulations made jointly by a Minister of the Crown and a devolved authority under Clause 1.
- 97 Paragraph 5 provides for the affirmative procedure to apply to regulations made jointly by a Minister of the Crown and a devolved authority under Clause 2(1).
- 98 Part 4 of the Schedule provides for scrutiny by the UK Parliament of regulations made under Clause 2(7)(b) to extend the time during which the Clause 2 power may be exercised. The affirmative procedure applies to such regulations.

## Schedule 3 – Exceptions to restrictions in the devolution settlements

- 99 Schedule 3 modifies the test for executive competence of the devolved authorities.
- 100 Paragraph 1 makes provision in relation to the existing limit in section 57 of the Scotland Act 1998 (as amended by the European Union (Withdrawal) Act 2018 and European Union (Withdrawal Agreement) Act 2020). 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.
- 101 Paragraphs 2 and 3 make equivalent provision in respect of the Government of Wales Act 2006 and the Northern Ireland Act 1998.

*These Explanatory Notes relate to the Trade Bill as introduced in the House of Commons on 19 March 2020 (Bill 120)*

102 Paragraph 4 provides that the restrictions on the devolved executives making secondary legislation that is incompatible with EU law found in 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 1998 do not apply to regulations made under Clauses 1(1) and 2(1).

#### Schedule 4 – The Trade Remedies Authority

103 This Schedule sets out further provision on the composition of the TRA, established by Clause 5, and how it is to operate. Much of its content is self-explanatory.

104 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.

105 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.

106 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.

107 The TRA will be funded by the Secretary of State. It will be 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.

108 The Secretary of State may publish guidance to which the TRA must have regard when exercising its functions. Before doing so, the Secretary of State must consult the TRA and must also have regard to the TRA's expertise, independence and impartiality. The Secretary of State may not publish guidance in relation to specific trade remedies investigations.

109 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.

#### Schedule 5 – Transfer Schemes

110 This Schedule contains provisions enabling the Secretary of State to create staff transfer schemes in connection with the establishment of the TRA, including making provision which is the same as, or similar to, the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE Regulations). This will enable the TRA to be fully staffed and operational for the end of the transition period.

## Commencement

111 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

112 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. Further detail on the financial implications of the TRA is set out in the impact assessment on trade remedies accompanying this Bill.

## Compatibility with the European Convention on Human Rights

113 The Government considers that the Trade Bill is compatible with the European Convention on Human Rights (ECHR). Accordingly, the Minister of State for Trade Policy, the Rt Hon Conor Burns MP, has made a statement under section 19(1)(a) of the Human Rights Act 1998 to this effect.

114 Clauses 7 (collection of exporter information by HMRC) and 8 (disclosure of information by HMRC) of the Bill are considered to engage Article 8 of the ECHR (private life, home and family life). However, it is considered that any interference is justified as a proportionate and necessary means of achieving a legitimate aim for the following reasons.

115 Clause 7 permits the collection of personal data relating to natural and/or legal persons for the purpose of assisting the Secretary of State to establish the number and identity of persons exporting goods or services from the UK in the course of a trade, business or profession. It will allow companies and individuals (i.e. sole traders) to be identified as exporters of goods or services in order to target Government trade promotion efforts. The information will be collected from companies and individuals by HMRC on a voluntary basis. The clause is subject to data protection legislation and the provisions of the Commissioners of Revenue and Customs Act 2005 which places conditions on the use and disclosure of personal data. It is considered that the safeguards, conditions and checks on the data handling ensure that the provision is Article 8 compliant.

116 Clause 8 permits the disclosure by HMRC of personal information relating to natural and/or legal persons, for the purpose of facilitating the exercise by the Secretary of State of the Secretary of State's functions relating to trade, or facilitating the exercise by an international organisation or authority, or by any other body of its public functions relating to trade. Disclosure may only be made for the purposes set out in section 8(1) and any disclosure of personal information will be subject to the provisions of the Commissioners for Revenue and Customs Act 2005 and the data protection legislation which place strict conditions on use and disclosure. In particular, section 19 of the Commissioners for Revenue and Customs Act 2005 (which creates an offence of wrongful disclosure) is applied to disclosures of information pursuant to Clause 7 by Clause 8(3). It is considered that these safeguards ensure that this provision is Article 8 compliant.

117 The Government considers that no other articles of the ECHR are engaged by the other provisions of the Trade Bill.

## Equalities

118. During the passage of the European Union (Withdrawal) Act 2018 through the House of Commons, the Government committed to providing a statement on the impact of EU-exit primary legislation on either the Equality Act 2006 or the Equality Act 2010.

119. The Trade Bill does not amend, repeal or revoke any provision of the Equality Act 2006 or any subordinate legislation made under that Act or the Equality Act 2010.

120. The Trade Bill amends the Equality Act 2010 only to the extent of adding the TRA to the list of public authorities in Part 1 of Schedule 19 to that Act (by paragraph 40 of Schedule 4). The effect of this amendment is to make the TRA subject to the Public Sector Equality Duty, which means that the TRA must, in the exercise of its functions, have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it (see section 149 of the Equality Act 2010). The relevant protected characteristics are defined in section 4 of the Equality Act 2010 and comprise age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

121. In relation to the policy which is given effect by the Bill, the Secretary of State for International Trade has had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.

## Related documents

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

- Preparing for our future UK Trade Policy and Preparing for our future UK Trade Policy – government response  
<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.<sup>4</sup>

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 sought?
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
Schedule 5	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

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<sup>4</sup> 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.

## Annex B - Glossary

Term	Definition
Act of Parliament	An Act of Parliament is a law that both Houses of Parliament and the Queen have agreed to. An Act may be 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.

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 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 but ceases to be law if there is an objection from either House within a set time.
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.

*These Explanatory Notes relate to the Trade Bill as introduced in the House of Commons on 19 March 2020 (Bill 120)*







# TRADE BILL

## EXPLANATORY NOTES

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