

TRADE (DISCLOSURE OF INFORMATION) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Trade (Disclosure of Information) Bill as introduced in the House of Commons on 15 December 2020 (Bill 232).

- These Explanatory Notes have been provided by the Cabinet Office in order to assist the reader of the Bill. 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 (Disclosure of Information) Bill provides key data sharing measures that are required as the UK Government prepares for its new relationship with the European Union. These measures include:
 - a. A power for HMRC to share data with public or private bodies in order that they can fulfil their public functions relating to trade. This power will enable HMRC to share data with a Minister of the Crown, devolved authorities and international organisations or any other body, in order that they can fulfil their public functions relating to trade.
 - b. A power for specified public authorities (Secretaries of State, the Minister for the Cabinet Office, Highways England and Port Health Authorities) to share data in order to facilitate the exercise by a Minister of the Crown of the Minister's functions relating to trade.
 - c. The creation of an offence where a person discloses information in contravention of clause 2 which relates to a person whose identity is specified in the disclosure, or can be deduced from it.
 - d. A provision which provides the Secretary of State with a regulation making power which will apply if, in the same session in which this Act is passed, an Act resulting from the Trade Bill is passed which contains provisions that the Secretary of State is of the opinion have a similar effect to sections 1-3 of this Bill.

Policy Background:

2. After leaving the European Union (EU), irrespective of the nature of the future relationship, Government departments with trade functions will need to have access to data held by other public authorities to assist them to carry out their functions relating to trade. For example, information will be required by the Cabinet Office so that, through its Border and Protocol Delivery Group, it can analyse and promote efficiencies in the flow of traffic, goods and services in and out of the United Kingdom. Clauses 1 and 2 allow specific public authorities to share data with Government departments with trade functions in order that they can fulfil those functions.
3. Whether a Free Trade Agreement is agreed with the EU or not, the end of the Transition Period will see the introduction of new border requirements. Delivering the data sharing clauses in this Bill are an integral part of the smooth and effective implementation of the UK's new relationship with the EU.
4. The Cabinet Office is establishing the Border Operations Centre to manage and mitigate potential disruption caused by the new border requirements at the crucial moment of transition. Without the data sharing clauses, Cabinet Office will be limited in the data it can receive from other departments, which will significantly hamper its ability to provide the single version of truth for flow of goods through the border, including a commodity level view of flow across the border (such as medicines and food supply). This will limit its ability to manage flow, minimise the friction caused by new controls introduced at the end of the Transition Period, and support the continued supply of critical goods.

Legal background

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

Territorial extent and application

6. Clause 6 sets out the territorial extent of the Trade (Disclosure of Information) 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.
7. The Trade (Disclosure of Information) Bill extends and applies to the whole of the UK.
8. The UK Parliament does not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru 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 that alter devolved competence, i.e. by modifying the devolved legislatures legislative competence or the devolved administration's executive competence.
9. The Government will therefore seek legislative consent for the provision in the Trade (Disclosure of Information) Bill relating to the power in clause 2(9) for the Minister of the Crown to amend clause 2 for the purpose of specifying additional public authorities or removing them from the list of specified public authorities to which the clause applies. The power in clause 2(9) could be used to specify the devolved administrations as public authorities for the purposes of clause 2. 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 the Bill:

Clause 1: Trade Functions: disclosure of information by HMRC

10. Clause 1(1) allows HMRC to share data with public or private bodies in order that they can fulfil their public functions relating to trade. This will support the sharing of data related to the movement of goods across the border, which will allow the government to build a commodity level view of flow at the border and identify any friction to flow. The clause includes powers to share data with government departments, including the Cabinet Office and the devolved authorities. The clause also includes the powers to share data with international organisations that oversee the world trade system, facilitating the functions of other departments, such as the Department for International Trade, after the end of the Transition Period.
11. Clause 1(2) provides a non-exhaustive list of functions connected with the border which are part of wider Minister of the Crown functions relating to trade, in particular those of the Minister for the Cabinet Office.

12. Clause 1(3) 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 information, except with the permission of the Commissioners of HMRC. 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.
13. Clause 1(4) applies the offence and penalties under section 19 of the Commissioners for Revenue and Customs Act 2005 in respect of any unauthorised sharing of information received under this power, in the same way that it applies in relation to a breach of section 20(9) of that Act.
14. Clause 1(5) confirms that this data sharing clause does not limit the circumstances in which information may be shared under section 18(2) of the Commissioners for Revenue and Customs Act 2005 or under any other enactment or rule of law.
15. Clause 1(6) confirms that nothing in the clause permits the disclosure of information which is not also permitted under the data protection legislation or the Investigatory Powers Act 2016.
16. Clause 1(7) provides a definition of “devolved authority” for the purposes of Clause 1.

Clause 2: Trade functions: disclosure of information by other authorities

17. Clause 2(1) allows specified public authorities to share data for the purpose of facilitating the exercise by a Minister of the Crown of the Minister’s function as they relate to trade. The purpose of the provision is to support the sharing of data related to the movement of goods across the border, which will allow the government to build a comprehensive view of flow at the border and identify any friction to flow. The data sharing power is permissive so the public authority sharing the information must satisfy itself that disclosure of the information would facilitate a Minister of the Crown’s trade functions. Clause 2(3) lists the specific public authorities who are able to disclose information under clause 2(1).
18. Clause 2(2) provides a non-exhaustive list of functions connected with the border which are part of wider Minister of the Crown functions relating to trade. Listing these functions will enable the specific public authorities to more readily satisfy themselves that these functions connected with the border are functions for which disclosure would be permitted under clause 2(1).
19. Clause 2(4) ensures that information can only be used by the recipient for the purpose for which it was disclosed, that is, to facilitate the exercise by a Minister of the Crown of the Minister’s functions relating to trade (or, if the information has been further disclosed under clause 2(5) to another public authority, to facilitate the exercise of that public authority’s functions relating to trade). Functions in relation to trade include the functions listed in clause 2(2).
20. Clause 2(5) provides a power enabling the recipient to further disclose the information if it receives the consent of the public authority that disclosed the information under clause 2(1).

Permission can be granted on an individual disclosure basis or on a general basis. The recipient of information under clause 2(5) is subject to the restrictions on use in clause 2(4).

21. Clause 2(6) confirms that this section does not limit the circumstances in which information can be shared under any other enactment or rule of law.
22. Certain information held by specific public authorities are subject to constraints on disclosure. To enable sharing of this information, clause 2(7) provides a general disapplication of these restrictions. As a result, disclosure under this section does not breach any obligation of confidence owed by a person disclosing information, or any other restriction on the disclosure of information. This means that any information held by the specified public authorities can be disclosed, should the purpose in clause 2(1) be satisfied.
23. Clause 2(8) confirms that nothing in this section authorises the disclosure of information which would contravene data protection legislation or which is prohibited under the Investigatory Powers Act 2016.
24. Clause 2(9) provides the Minister of the Crown with the power by regulations to add or remove public authorities from the list of specified public authorities in clause 2(3) who can disclose information under subsection (1). Regulations made under clause 2(9) are subject to the affirmative resolution procedure, as set out in clause 2(10).
25. Clause 2(11) provides a definition of “public authority” for the purposes of Clause 2.

Clause 3: Offence relating to disclosure under section 2

26. This clause provides that an offence is committed where a person discloses information in contravention of clause 2 which relates to a person whose identity is specified in the disclosure, or can be deduced from it. Clause 3(2) sets out a defence for a person charged with an offence under this section, where the person can prove that they reasonably believed the disclosure was lawful or that the information had already been lawfully made available to the public. Clause 3(3) sets out that prosecution for an offence under this section may only be brought in England and Wales with consent of the Director of Public Prosecutions, and may only be brought in Northern Ireland with the consent of the Director of Public Prosecutions for Northern Ireland. Clause 3(4) sets out the penalties which may be imposed where a person is found guilty of an offence. Clause 3(5) provides that if an offence is committed in England and Wales before the commencement of paragraph 24(2) of Schedule 22 to the Sentencing Act 2020, the imprisonment term referenced in subclause (4)(b)(i) to 12 months should be read as a reference to 6 months.

Clause 4: Expiry of sections 1-3

27. This clause provides the Secretary of State with a regulation making power which will apply if, in the same session in which this Act is passed, an Act resulting from the Trade Bill is passed which

contains provisions that the Secretary of State is of the opinion have a similar effect to sections 1 to 3 of this Bill. If this situation arises, the Secretary of State must, by regulations, provide for clauses 1 to 3 of this Bill to expire at the time the corresponding provisions come into force to any extent.

Clause 5: Interpretation

28. This clause provides for the interpretation of the terms “the data protection legislation”, “enactment”, “the investigatory powers legislation”, and “Minister of the Crown” for the purposes of this Bill.

Clause 6: Extent, Commencement and Short Title

29. Clause 6(1) provides that the Bill extends to England and Wales, Scotland and Northern Ireland.
30. Clause 6(2) provides that the Bill will come into force on the day on which it is passed.
31. Clause 6(3) establishes that the short title of this Bill will be the Trade (Disclosure of Information) Act 2020.

Commencement

32. Clause 6(2) provides that the provisions will come into force on the day in which the Bill becomes an Act of Parliament.

Financial implications of the Bill

33. There are no financial implications associated with this Bill.

Compatibility with the European Convention on Human Rights

34. The Government considers that the Trade (Disclosure of Information) Bill is compatible with the European Convention on Human Rights (ECHR). Accordingly, the Secretary of State for International Trade has made a statement under section 19(1)(a) of the Human Rights Act 1998 to this effect.
35. Clause 1(1) permits the disclosure by HMRC of personal information relating to natural and/or legal persons, for the purpose of facilitating the exercise by the Minister of the Crown of the Minister’s functions relating to trade, or facilitating the exercise by a devolved authority of the authority’s functions relating to trade, or by 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 clause 1(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 personal information pursuant to clause 1. It is considered that these safeguards ensure that this provision is compatible with the ECHR.

36. Clause 2 permits the disclosure by specified public authorities (Secretaries of State, the Minister for the Cabinet Office, Highways England and Port Health Authorities) of information for the purpose of facilitating the exercise by a Minister of the Crown of the Minister's functions relating to trade. Clause 2(5) prohibits onwards disclosure of information received under this clause, unless permitted by the authority who disclosed it. Clause 2(4) provides that the information may only be used by the recipient for trade-related functions. Clause 2(8) provides that any person disclosing information in reliance on clause 2 must also comply with data protection legislation. Further, clause 3 provides that it is an offence for a person to onwards disclose information, in contravention of clause 2, if a person's identity is specified or can be deduced from the information. For these reasons, the Government considers the provisions of the Bill are compatible with the ECHR.

37. The Government considers that no other articles of the ECHR are engaged by the other provisions of the Trade (Disclosure of Information) Bill.

Equalities

38. It is not expected that these clauses will have an impact on groups with protected characteristics.

Annex A - Territorial extent and application in the United Kingdom

The Trade (Disclosure of Information) 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.

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 Senedd Cymru?	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?
Clause 1	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 2	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes
Clause 3	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 4	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause s 5-6	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

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 draft affirmative procedure, the statutory instrument cannot be made unless a draft has been laid before and approved by both Houses. Under the made affirmative 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
Devolved Authority	The Scottish Ministers, the Welsh Ministers or a Northern Ireland department.
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').
Minister of the Crown	As defined in the section 8 of the Ministers of the Crown Act 1975.
Public authority	For the purposes of clause 2 of the Bill, means an authority exercising functions of a public nature.

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