

TRADE BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

What these notes do

- 1 These Explanatory Notes relate to the Lords Amendments to the Trade Bill (Bill 239) as brought from the House of Lords on 18 January 2021.
- 2 These Explanatory Notes have been prepared by the Department for International Trade to assist the reader of the Bill, 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 128, the Bill as printed on introduction in 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 Amendment 1 was tabled by Lord Purvis of Tweed and was opposed by the Government.
- 6 Lords Amendment 2 was tabled by Lord Collins of Highbury and was opposed by the Government.
- 7 Lords Amendment 3 was tabled by Lord Alton of Liverpool and was opposed by the Government.
- 8 Lords Amendment 4 was tabled by Baroness Thornton and was opposed by the Government.
- 9 Lords Amendment 5 was tabled by Lord Lansley and was opposed by the Government.
- 10 Lords Amendment 6, 9, 10, were tabled by Lord Grantchester and were opposed by the Government.
- 11 Lords Amendment 7 was tabled by Baroness Kidron and was opposed by the Government.
- 12 Lords Amendment 8 was tabled by Lord Hain and was opposed by the Government.
- 13 Lords Amendments 11 to 31 were tabled in the name of the Minister.
- 14 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 after Clause 2

Lords Amendment 1*

- 15 Lords Amendment 1 would introduce new parliamentary scrutiny obligations with respect to free trade agreements. First, the amendment would require the Government to make a statement to Parliament after deciding to begin free trade agreement negotiations. Second, it would require the Government to lay negotiating objectives in Parliament for approval by both Houses. Third, it would require the Government to keep Parliament updated throughout the progress of negotiations. And fourth, it would prevent the UK from signing a Free Trade Agreement (FTA) unless a draft of the agreement had been laid before, and approved by, both Houses of Parliament.
- 16 The Government would also be required to consult the devolved authorities and produce a sustainability impact assessment before laying its negotiating objectives, and to consult the devolved authorities and lay an independent impact assessment before laying the draft agreement.

Lords Amendment 2*

- 17 Lords Amendment 2 would require the Government to risk assess, before publishing negotiating objectives and any initial impact assessment, whether a proposed trade agreement would be compliant with the United Kingdom's international obligations. The risk assessment would need to make particular reference to compliance with human rights obligations, as well as to examine serious violations (including alleged violations) by other potential parties to the agreement. This risk assessment would be presented to the relevant Parliamentary Committees.
- 18 The Government would also be required to make a determination as to compliance and serious violations in advance of laying the agreement before Parliament for the purposes of section 20 of the Constitutional Reform and Governance Act 2020.
- 19 In addition, the Government would be required to report annually to Parliament on the continuing compliance of trade agreements and whether the other parties had committed serious violations. If breaches of international obligations or serious violations had taken place, Ministers of the Crown would be required to make a determination on the continuation of the trade agreement.
- 20 The amendment defines 'serious violations' to include the right to life, freedom from torture, freedom from slavery and forced labour, and other violations of rights and freedoms set out in international human rights instruments. It also includes a non-exhaustive list of types of trade agreements covered by the amendment.

Lords Amendment 3*

- 21 Lords Amendment 3 would provide the High Court of England and Wales with the power to revoke bilateral international trade agreements if they found that a signatory to that agreement had committed genocide as defined in the Genocide Convention, following an application from a targeted person, a targeted group, or a representative organisation. This provision would be limited to genocides which were ongoing at the time of the provision's entering into force or which occur after its entry into force.

Lords Amendment 4*

- 22 Lords Amendment 4 would place further conditions on the exercise of the clause 2 power (clause 2 gives the power to implement certain continuity free trade agreements). First, the amendment would provide that clause 2 could not be used to implement an international trade agreement if that agreement would undermine the Government's ability to deliver free and universal public health and care services. Some of the conditions set out in this subsection include specific matters relating to the protection of employment rights for public sector employees, and the regulation of the quality and safety of health or care services.
- 23 Second, the amendment would prevent clause 2 from being used in relation to agreements unless they expressly exclude public health and care data and services from the ambit of agreement provisions relating to investor-state dispute settlement; expressly recognise the right to regulate with respect to health and care; and restricts the sale of patient, public health, and social care data.
- 24 Third, the amendment would require any agreement to be implemented using clause 2 to expressly allow for the independent audit or scrutiny of the data processing methodology used for any traded algorithm or data-driven technology which could be used as a medical device.

Lords Amendment 5*

- 25 Lords amendment 5 would amend the Constitutional Reform and Governance Act 2010 (CRaG) for trade treaties. First, when laying treaties in Parliament, the Government would be required to publish an analysis of any necessary implementing legislation. Second, it would require that the necessary legislation had been enacted or laid before ratification. Third, ahead of ratification, it would require the Government to hold a debate where one had been requested by a relevant select committee.

Lords Amendment 6*

- 26 Lords Amendment 6 would require the Secretary of State to establish, via a statutory instrument, a code of practice setting out how a Minister should maintain standards in certain areas. These would include, among others, food, human rights, and environmental standards, where such standards are likely to be affected by a proposed international trade agreement.
- 27 This statutory code of practice would be able to provide for Ministers to ensure, as far as possible, that future trade agreements are consistent with UK standards. Under these provisions Ministers would have to notify relevant Parliamentary Committees and consult with (and seek the consent of) the devolved administrations when deciding that it would be appropriate and necessary to change standards in pursuit of an international trade agreement.
- 28 The amendment also stipulates that a Minister would have to take steps to ensure that any changes to primary or secondary legislation concerning standards must be completed before the agreement is laid under CRaG, alongside impact assessments covering the economic, social, environmental and animal welfare aspects of the agreement.

Lords Amendment 7*

- 29 Lords Amendment 7 would restrict the Government from signing international trade agreements unless they satisfy certain conditions. The international trade agreements proposed for signature would have to be consistent with: international obligations and the domestic law of England and Wales relating to the protection of children on the internet;

provisions on data protection for children, including as set out in the Data Protection Act 2018; and online protections for children in the UK, as deemed necessary by the Secretary of State. "Child" is defined to mean any person under the age of 18.

Lords Amendment 8*

- 30 Lords Amendment 8 would insert a new clause into the Bill with the aim of ensuring that there is no discrimination within the UK internal market against Northern Ireland goods and services, or against services provided to customers in Northern Ireland, as a result of UK trade agreements.
- 31 The amendment would prevent ratification of any trade agreement that is subject to the Constitutional Reform and Governance Act 2010 if there was anything in the agreement that would prevent 'unfettered access' for (a) Northern Ireland goods moving into other parts of the UK's internal market; (b) services being provided by service providers in Northern Ireland to customers in Great Britain; and (c) services being provided from providers in Great Britain to customers in Northern Ireland. The amendment would not cover goods moving from Great Britain to Northern Ireland.

The amendment would also prohibit the clause 2 power from being used to impose any tariffs or customs procedures for Northern Ireland originating goods entering Great Britain, or to discriminate in any way between such goods and other goods traded within the UK.

Lords Amendments to after Clause 6, after Schedule 5, and to the Bill title

Lords Amendment 9*

- 32 Lords Amendment 9 requires the Secretary of State to have regard to the desirability of appointing a person with expertise in 'public health and health inequalities' to the Trade and Agriculture Commission (TAC).

Lords Amendment 10*

- 33 Lords Amendment 10 includes 'human life or health' in the scope of the Secretary of State's duty to seek advice from the TAC, to align with the scope of the duty to report in section 42 of the Agriculture Act 2020. This will mean that the TAC will consider whether the measures in certain future free trade agreements, applicable to trade in agricultural products, are consistent with maintaining UK levels of statutory protection for human life or health.

Lords Amendments 11, 12, 30 and 31

- 34 These amendments are necessary to place the TAC on a statutory footing, reviewable every three years. They tie the TAC's advisory function to the report required by section 42 of the Agriculture Act 2020. The TAC will advise the Government on whether, and to what extent, new FTA measures applicable to international trade in agricultural products are consistent with maintaining UK statutory protections in relation to animal and plant health, animal welfare and the environment, in order to help inform Government's duty as set out in section 42 of the Agriculture Act.

Lords Amendments to Clause 8

Lords Amendment 13

- 35 Lords Amendment 13 ensures that HMRC is able to disclose information to a devolved authority.

Lords Amendment 14

36 Lords Amendment 14 corrects a drafting error.

Lords Amendment to Clause 9

Lords Amendment 15

37 Lords Amendment 15 corrects a drafting error.

Lords Amendment to Clause 10

Lords Amendment 16

38 Lords Amendment 16 is made in consequence of the passing of the Sentencing Act 2020.

Lords Amendment to Clause 11

Lords Amendment 17

39 Lords Amendment 17 aids interpretation and confirms what is meant for the purposes of this Bill by the term “devolved authority”.

Lords Amendments to Schedule 3

Lords Amendment 18 to 29

40 Lords Amendments 18 to 29 are minor and technical amendments, and merely bring the Bill in line with the European Union (Future Relationships) Act 2020.

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