

Trade Bill

LORDS NON-INSISTENCE AND AMENDMENTS IN LIEU

[The page and line numbers refer to HL Bill 128, the bill as first printed for the Lords, or to the Lords Amendment]

After Clause 2

LORDS AMENDMENT 1

1 Insert the following new Clause—

“Parliamentary approval of trade agreements

- (1) Nothing in this section restricts the power conferred by Her Majesty’s prerogative to commence, conduct negotiations towards and then conclude a trade agreement.
- (2) If a decision has been made by the Secretary of State to commence negotiations towards a free trade agreement, a statement must be made to both Houses of Parliament.
- (3) Negotiations for that trade agreement may not proceed until the Secretary of State has laid draft negotiating objectives in respect of that agreement before Parliament, and a motion endorsing draft negotiating objectives has been approved by a resolution of each House of Parliament.
- (4) Prior to the draft negotiating objectives being laid, the Secretary of State must—
 - (a) consult each devolved authority on the content of the draft negotiating objectives, and
 - (b) produce a sustainability impact assessment including, but not limited to, an assessment of the impact of the proposed negotiating objectives on human, animal or plant life or health, animal welfare, environmental protection, human rights and equalities, and employment and labour.
- (5) A sustainability impact assessment under subsection (4)(b) must include—
 - (a) a statement on how the proposed trade agreement will advance the meeting of the Sustainable Development Goals; and
 - (b) a plan to maintain UK levels of statutory protection on the protection of human, animal or plant life or health, animal welfare, environmental protection, human rights and equalities, and employment and labour.

- (6) The Secretary of State must inform both Houses of Parliament, and any Select Committee charged by the relevant House with scrutinising trade negotiations in a manner and to an extent agreed with the Committee, of developments in the negotiations, but this does not affect the power of the Secretary of State to conduct negotiations as the Secretary of State considers appropriate.
- (7) For the purposes of subsection (6), “developments” means—
- (a) a pause in negotiations;
 - (b) an ending of negotiations;
 - (c) the conclusion of a negotiated round of discussions;
 - (d) the decision to agree in principle an agreement; or
 - (e) other necessary aspects of the negotiations of which the Secretary of State considers it necessary to inform Parliament.
- (8) The United Kingdom may not become a signatory to a free trade agreement to which this section applies unless a draft of the agreement in the terms in which it is to be presented for signature by parties to the agreement has been laid before, and approved by, a resolution of each House of Parliament.
- (9) Before a Minister of the Crown moves a resolution to approve the text of a proposed free trade agreement in either House of Parliament, the Secretary of State must—
- (a) consult each devolved authority on the text of the proposed agreement, and
 - (b) lay before Parliament an independent impact assessment of the agreement including, but not limited to, the requirements in subsection (4).
- (10) In this section—
- “devolved authority” has the meaning given in section 4(1) of this Act;
- “free trade agreement” means any agreement which is—
- (a) within the definition given in section 4(1) of this Act, and
 - (b) an agreement between the United Kingdom and one or more partners that includes components that facilitate the trade of goods, services or intellectual property;
- “UK levels of statutory protection” means levels of protection provided for by or under any—
- (a) primary legislation
 - (b) subordinate legislation, or
 - (c) retained direct EU legislation,
- which has effect in the United Kingdom, or the relevant part of the United Kingdom, on the date on which the sustainability impact assessment is produced.”

COMMONS REASON

The Commons disagree to Lords Amendment 1 for the following Reason –

- 1A** *Because Parliamentary scrutiny of trade agreements is ensured by existing measures and UK standards cannot be changed without further implementing legislation (itself subject to Parliamentary scrutiny).*

LORDS AMENDMENT 5

5 Insert the following new Clause—

“Ratification of international trade agreements and treaties

- (1) The Constitutional Reform and Governance Act 2010 is amended as follows.
- (2) In section 20 (treaties to be laid before Parliament before ratification), after subsection (1)(b) insert—
 - “(ba) where the treaty is an international trade agreement as defined in the Trade Act 2021—
 - (i) a Minister of the Crown has published an analysis of the requirement for the treaty to be implemented through changes to domestic legislation, and
 - (ii) where changes to domestic legislation would be required as described in the analysis under subparagraph (i), the necessary legislation has been laid in the form of a statutory instrument or the necessary primary legislation has been enacted.”
- (3) In section 21 (extension of 21 sitting day period), after subsection (2) insert—
 - “(2A) Where a relevant Committee of either House of Parliament has recommended that a treaty constituting an international trade agreement as defined by the Trade Act 2021 should be debated in that House, the Minister of the Crown must ensure that the period does not expire before that debate has taken place.”

COMMONS REASON

The Commons disagree to Lords Amendment 5 for the following Reason—

- 5A *Because Parliamentary scrutiny of trade agreements is ensured by existing measures and UK standards cannot be changed without further implementing legislation (itself subject to Parliamentary scrutiny).*

LORDS NON-INSISTENCE AND AMENDMENT IN LIEU

The Lords do not insist on their Amendments 1 and 5, to which the Commons have disagreed for their Reasons 1A and 5A, and do propose Amendment 1B in lieu—

1B After Clause 2, insert the following new Clause—

“Parliamentary approval of international trade agreements and treaties

- (1) If a decision has been made by the Secretary of State to commence negotiations towards a free trade agreement, a statement must be made to both Houses of Parliament.
- (2) Negotiations for that trade agreement may not proceed until the Secretary of State has laid draft negotiating objectives in respect of that agreement before Parliament, and an amendable motion endorsing the draft negotiating objectives has been approved by a resolution of the House of Commons.

- (3) Prior to the draft negotiating objectives being laid, the Secretary of State must consult each devolved authority on the content of the draft negotiating objectives, and seek their consent.
- (4) The Constitutional Reform and Governance Act 2010 is amended as follows.
- (5) In section 20 (treaties to be laid before Parliament before ratification), after subsection (1)(b) insert—
 - “(ba) where the treaty is an international trade agreement as defined in the Trade Act 2021, a Minister of the Crown has published an analysis of the requirement for the treaty to be implemented through changes to domestic legislation, and
 - (bb) where the treaty is an international trade agreement as defined in the Trade Act 2021, the House of Commons has resolved, within period A, that the treaty should be ratified, and”
- (6) In section 21 (extension of 21 sitting day period), after subsection (2) insert—
 - “(2A) Where a relevant Committee of either House of Parliament has recommended that a treaty constituting an international trade agreement as defined by the Trade Act 2021 should be debated in that House, the Minister of the Crown must ensure that the period does not expire before that debate has taken place.””

After Clause 2

LORDS AMENDMENT 2

2 Insert the following new Clause—

“Free trade agreements: determination on compliance with international obligations and state actions

- (1) Before publishing the objectives and any initial impact assessments of a proposed trade agreement to be implemented under the Constitutional Reform and Governance Act 2010, the Government must conduct a risk assessment which considers whether the agreement would comply with the United Kingdom’s international treaties and other obligations, with particular reference to human rights, and examines serious violations committed, or alleged to have been committed, by the state or states who will be signatory to the proposed trade agreement.
- (2) The risk assessment under subsection (1) must be presented to the relevant Committees in both Houses of Parliament.
- (3) Before a trade agreement can be laid before Parliament under section 20(1) of the Constitutional Reform and Governance Act 2010 (“the CRAG procedure”), Ministers of the Crown must determine whether the trade agreement, if ratified, would be compliant with the United Kingdom’s international obligations, with particular reference to human rights, and whether serious violations have been committed by the state or states of the signed trade agreement. Such a determination must be published and made available to the relevant Committees at the same time as they are requested to consider a signed trade agreement.

- (4) The Government must present an annual report to the relevant Committees in both Houses of Parliament on the continuing compliance of trade agreements with the United Kingdom's international obligations, with particular reference to human rights, and which examines serious violations committed or alleged to have been committed by the state or states who are signatory to the trade agreement since it was signed. If breaches of the United Kingdom's international obligations or serious violations have taken place, Ministers of the Crown must make a determination on the continuation of a trade agreement.
- (5) In this section, "serious violations" include an activity by a state which would violate an individual's—
- (a) right to life, including but not limited to genocide;
 - (b) right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment;
 - (c) right to be free from slavery and not to be held in servitude or required to perform forced or compulsory labour;
- or other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.
- (6) In this section, "trade agreement" refers to any agreement between the United Kingdom and one or more partners that includes components that facilitate the trade of goods, services or intellectual property, including but not limited to—
- (a) free trade agreements as defined by section 4;
 - (b) Interim Association Agreements and Association Agreements;
 - (c) Economic Partnership Agreements;
 - (d) Interim Partnership Agreements;
 - (e) Stabilisation and Association Agreements;
 - (f) Global Agreements;
 - (g) Economic Area Agreements;
 - (h) Cooperation Agreements;
 - (i) Comprehensive Economic and Trade Agreements;
 - (j) Association Agreements with strong trade component;
 - (k) Transatlantic Trade and Investment Partnerships; and
 - (l) Investment Protection Agreements."

COMMONS REASON

The Commons disagree to Lords Amendment 2 for the following Reason –

2A

Because it is unnecessary in light of existing international obligations.

LORDS NON-INSISTENCE AND AMENDMENT IN LIEU

The Lords do not insist on their Amendment 2, to which the Commons have disagreed for their Reason 2A, and do propose Amendment 2B in lieu –

2B After Clause 2, insert the following new Clause –

“Free trade agreements: determination on state actions

- (1) Before a trade agreement can be laid before Parliament under section 20(1) of the Constitutional Reform and Governance Act 2010, Ministers of the Crown must determine whether another signatory to the relevant agreement has committed crimes against humanity, or if the agreement is compliant with the United Kingdom’s human rights and international obligations. Such a determination must be published and made available to the relevant Committees in both Houses of Parliament at the same time as they are requested to consider a signed trade agreement.
- (2) The Government must present an annual report to the relevant Committees in both Houses of Parliament which examines any crimes against humanity committed or alleged to have been committed by another signatory to the relevant agreement since it was signed. If such crimes have taken place, Ministers of the Crown must make a determination on the continuation of a trade agreement.”

After Clause 2

LORDS AMENDMENT 3

3 Insert the following new Clause –

“Agreements with states accused of committing genocide

- (1) International bilateral trade agreements are revoked if the High Court of England and Wales makes a preliminary determination that they should be revoked on the ground that another signatory to the relevant agreement represents a state which has committed genocide under Article II of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, following an application to revoke an international bilateral trade agreement on this ground from a person or group of persons belonging to a national, ethnic, racial or religious group, or an organisation representing such a group, which has been the subject of that genocide.
- (2) This section applies to genocides which occur after this section comes into force, and to those considered by the High Court to have been ongoing at the time of its coming into force.”

COMMONS REASON

The Commons disagree to Lords Amendment 3 for the following Reason –

3A *Because it is not an effective means of dealing with cases of state genocide.*

LORDS NON-INSISTENCE AND AMENDMENT IN LIEU

The Lords do not insist on their Amendment 3, to which the Commons have disagreed for their Reason 3A, and do propose Amendment 3B in lieu –

3B After Clause 2, insert the following new Clause –

“Agreements with states accused of committing genocide

- (1) The High Court of England and Wales, or the Court of Session in Scotland, or the High Court of Justice in Northern Ireland, may make a preliminary determination that another signatory to a relevant agreement represents a state which has committed genocide, within the meaning of Article II and Article III of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, following an application to the Court from a person or group of persons belonging to a national, ethnic, racial or religious group, or an organisation representing such a group, which is alleged to have been the subject of that genocide.
- (2) “A relevant agreement” in subsection (1) is a bilateral trade agreement towards which the United Kingdom is negotiating or to which it is a signatory.
- (3) The Lord Chancellor must lay before both Houses of Parliament any such preliminary determination by the Court.
- (4) After the laying before Parliament of a preliminary determination under subsection (3) a Minister of the Crown must, after a reasonable period, make arrangements for a motion to be debated in each House of Parliament requiring the Government to set out its course of action relating to the relevant agreement in subsection (1).
- (5) This section applies to genocides which occur after this section comes into force, and to those considered by any Court in subsection (1) to have been ongoing at the time of its coming into force.
- (6) A Minister of the Crown may by regulations made by statutory instrument make provision for or in connection with an application and preliminary determination made pursuant to subsection (1).
- (7) Regulations under subsection (6) above may in particular –
 - (a) specify the form, content, and criteria for applications;
 - (b) make provision about the procedure to be followed in relation to applications;
 - (c) make provision about the procedure and rules of evidence necessary for consideration of an application by the Court, allowing for contradictory representations to be made.
- (8) In making such regulations the Minister of the Crown must have regard to –
 - (a) the experience gained in the operation of this section;
 - (b) the object and intended purpose behind the operation of this section including –
 - (i) the upholding of all undertakings in and international obligations arising from the United Nations Convention on the Prevention and Punishment of the Crime of Genocide;
 - (ii) provision of meaningful access to the Court by persons making applications specified in subsection (1) without hindrance from unreasonable provision made pursuant to subsection (7).
- (9) Regulations under subsection (6) may contain supplemental, incidental, consequential and transitional provision.

- (10) A statutory instrument containing regulations under subsection (6) is subject to annulment in pursuance of a resolution of either House of Parliament.”

After Clause 2

LORDS AMENDMENT 6

6 Insert the following new Clause –

“Standards affected by international trade agreements

- (1) The Secretary of State must by regulations made by statutory instrument establish a code of practice setting out how a Minister of the Crown should take steps to maintain standards established by any enactment regarding –
- (a) food,
 - (b) animal welfare,
 - (c) the environment,
 - (d) human rights,
 - (e) welfare, and
 - (f) labour law,
- if a proposed international trade agreement is likely to affect such standards.
- (2) A statutory instrument containing regulations under subsection (1) may not be made unless a draft of the instrument has been laid before and approved by resolution of each House of Parliament.
- (3) The code under subsection (1) may provide that a Minister of the Crown ensures as far as possible that a future trade agreement is consistent with United Kingdom levels of statutory protection regarding, among other things –
- (a) human, animal or plant life or health;
 - (b) animal welfare;
 - (c) the environment;
 - (d) food safety, quality, hygiene and traceability;
 - (e) employment and labour standards; and
 - (f) human rights and equalities, including but not limited to –
 - (i) women’s rights,
 - (ii) child rights, and
 - (iii) the Human Rights Act 1998.
- (4) This is in addition to and does not impact on the provisions in section 42 of the Agriculture Act 2020 (reports relating to free trade agreements).
- (5) Where a Minister of the Crown decides that it is appropriate and necessary to change standards in pursuit of an international trade agreement, a Minister of the Crown must –
- (a) send a notification of the necessary changes to primary or subordinate legislation to the relevant Committee in each House of Parliament at the earliest opportunity;
 - (b) consult and seek the consent of the devolved authorities; and

- (c) take steps to ensure that necessary changes to primary or subordinate legislation have completed their parliamentary processes before the final texts of agreed trade agreements, together with full impact assessments which cover the economic impacts and social, environmental, and animal welfare aspects of the agreement, are laid before Parliament under section 20 of the Constitutional Reform and Governance Act 2010.
- (6) In this section, “United Kingdom levels of statutory protection” means levels of protection provided for by or under any –
- (a) primary legislation,
 - (b) subordinate legislation, or
 - (c) retained direct EU legislation,
- which has effect in the United Kingdom, or the part of the United Kingdom in which the regulations have effect, on the date on which a draft of the regulations is laid.”

COMMONS REASON

The Commons disagree to Lords Amendment 6 for the following Reason –

- 6A** *Because Parliamentary scrutiny of trade agreements is ensured by existing measures.*

LORDS NON-INSISTENCE AND AMENDMENT IN LIEU

The Lords do not insist on their Amendment 6, to which the Commons have disagreed for their Reason 6A, and do propose Amendment 6B in lieu –

- 6B** After Clause 2, insert the following new Clause –

“Standards affected by international trade agreements

- (1) If regulations under subsection (1) of section 2 of this Act, or any other provisions of primary or subordinate legislation to implement an international trade agreement as defined in section 2(2), include provision in any of the areas listed in subsection (2), the provision must be consistent with maintaining United Kingdom levels of statutory protection in that area.
- (2) The areas referred to in subsection (1) are –
 - (a) the protection of human, animal or plant life or health;
 - (b) animal welfare;
 - (c) environmental protection;
 - (d) employment and labour;
 - (e) online protections for children and vulnerable users;
 - (f) health and care, and publicly funded data processing services and IT systems in connection with the provision of health and care; and
 - (g) human rights and international obligations.
- (3) “United Kingdom levels of statutory protection” means levels of protection provided for, by or under any –
 - (a) primary legislation,
 - (b) subordinate legislation, or
 - (c) retained direct EU legislation,

which has effect in the United Kingdom, or the part of the United Kingdom in which the regulations or other provisions have effect, on the date on which a draft of the regulations is laid or (as the case may be) the provisions are first published.”

LORDS NON-INSISTENCE AND
AMENDMENTS IN LIEU TO THE
Trade Bill

*Ordered, by The House of Commons,
to be Printed pursuant to Standing Order
Nos. 78 and 57A, 2nd February 2021.*

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