

TRADE BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Trade Bill as brought from the House of Commons on 18 July 2018 (HL Bill 127).

- 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 build a future trade policy for the UK once we leave the European Union (EU). These measures include:
 - A power to ensure that the UK can implement any procurement obligations arising from the UK becoming a member of the GPA in its own right. The Agreement on Government Procurement (GPA) is a plurilateral agreement within the World Trade Organisation (WTO) framework. It mutually opens government procurement markets and seeks to address trade barriers. The UK is currently a member by virtue of its EU membership and will have to re-join as an independent member.
 - A power to assist with the implementation of UK trade agreements with existing partner countries which correspond to the EU's existing trade agreements. 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 in the UK, and 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 to mutually open government procurement markets among its parties. The GPA is in two parts: (a) the text of the Agreement and (b) parties' market access schedules of commitments.
- 3 The text of the Agreement 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) play a critical role in determining the covered entities and whether a procurement activity falls within the scope of the Agreement or not. Only those procurement activities that are carried out by covered entities purchasing listed goods, services or construction services of a value exceeding specified threshold values are within the scope of the Agreement.

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- 4 The UK currently participates in the GPA through its membership of the EU. The Trade Bill provides a power for the UK to implement the GPA obligations as an independent member.

International Trade Agreements – Maintaining Existing Trade Arrangements with other Countries

- 5 Since becoming a member of the EU the UK has participated in the EU's trade agreements with partner countries. This means that the UK currently enters 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 as we leave the EU. The Government has been discussing with the UK's existing partner countries how best to achieve that aim. This is the Government's programme of 'trade agreements continuity', which is distinct from its future trade agreements programme.
- 6 This continuity work needs to be completed before the UK leaves the EU if there is to be continuity in the UK's existing trade and investment relationships after the UK has left (should the UK not agree an implementation period with the EU during which, for a limited time after exit day, the UK continues to be treated as an EU member state for the purpose of the EU's existing trade agreements). In light of this, 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 these agreements, once signed by both parties, are fully implemented and can therefore be ratified. This implementation power uses the affirmative resolution procedure.
- 7 For free trade agreements which the UK reaches with partner countries, the Trade Bill will also require reporting in relation to changes from the existing EU free trade agreements with those countries. The reporting obligation will apply during the life of the implementation power, either before free trade agreements are ratified (for those subject to ratification) or before regulations under the implementation power are laid.

Trade Remedies Authority

- 8 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.
- 9 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) Bill, and for making impartial recommendations to the Secretary of State.¹
- 10 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.

¹ 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) Bill.

Trade Information

- 11 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.
- 12 The Trade Bill will permit HMRC to share data with other bodies so that they can fulfil their public functions related to trade after the UK leaves the EU. 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.
- 13 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

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

Territorial extent and application

- 15 Clause 14 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.
- 16 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.
- 17 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 which would alter the competence of those legislatures or of the devolved administrations in Scotland and Northern Ireland.
- 18 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).
- 19 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

- 20 The GPA was negotiated and agreed in 1994 (the 1994 Agreement) 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 (the Revised GPA) and entered into force on 6 April 2014 by means of the Protocol Amending the Agreement on Government Procurement (the 2012 Protocol). In these Notes the 1994 Agreement and the Revised GPA are collectively referred to as the GPA. The UK currently participates in the GPA by virtue of the UK's EU membership.
- 21 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 19 WTO Members,² 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.
- 22 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 include, or exclude, goods, services or entities from the cover given.
- 23 Through the UK's current membership, the GPA is estimated to provide UK businesses with annual guaranteed access to over £1.3 trillion of public procurement opportunities. In addition, the GPA protects UK subsidiaries and suppliers against discriminatory treatment when participating in those procurement opportunities. The UK also benefits from other parties' suppliers having access to those elements of the UK public procurement market which have been opened to international competition, through increased choice and value for money.
- 24 Because the UK currently participates in the GPA by virtue of its EU membership, the UK will leave the GPA once it ceases to be a member of the EU, unless it accedes to the GPA in its own right. Leaving the GPA would mean UK businesses no longer had guaranteed access to the public procurement opportunities described above. Provision is therefore required to allow the UK to make the legislative changes needed to reflect it being an independent member of the GPA. The European Union (Withdrawal) Act 2018 will preserve EU law that has been fully implemented at the point that the UK leaves the EU but, although the UK has

² The 19 GPA parties are Armenia, Canada, the EU, Hong Kong China, 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.

implemented EU procurement Directives that provide for GPA obligations,³ the powers in the European Union (Withdrawal) Act 2018 do not cover the making of the legislative changes needed to reflect the UK becoming a member of the GPA in its own right.

- 25 If the UK does, as expected, decide to become an independent member of the GPA, the UK will be able to use the power in Clause 1 to implement its GPA obligations.
- 26 Parliamentary approval for ratifying the UK's membership of the GPA will be sought separately from the powers in this Bill in accordance with the procedures set out in the Constitutional Reform and Governance Act 2010.
- 27 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 (PCR), the Utilities Contract Regulations 2016 (UCR) and the Concession Contracts Regulations 2016 (CCR). They also include Scottish procurement regulations, namely the Public Contracts (Scotland) Regulations 2015, the Utilities Contracts (Scotland) Regulations 2016 and the Concessions Contracts (Scotland) Regulations 2016. These regulations implement EU Directives 2014/24/EU, 2014/25/EU, and 2014/23/EU respectively.
- 28 In the PCR and UCR and the Scottish equivalent regulations, contracting authorities and utilities are placed under an obligation to accord to the works, services, supplies and economic operators of the signatories to the GPA treatment that is no less favourable than the treatment accorded to the works, supplies, services and economic operators of the EU.
- 29 The PCR, UCR, CCR and Scottish equivalent regulations also place an express duty on contracting authorities and utilities to comply with any obligations contained in those regulations in respect of economic operators from GPA States.
- 30 Clause 1 permits the UK to make regulations to implement the requirements of the GPA as an independent member. An example of how the UK might use the power in Clause 1 would be to amend existing procurement regulations that implement the UK's current membership of the GPA as an EU member to take account of relevant changes reflecting the UK's new status as an independent member.
- 31 Clause 1 also permits the UK to make regulations to reflect new parties joining or existing parties withdrawing from the GPA. An example of how the power could be used would be to amend existing procurement regulations to reflect any changes in GPA parties.
- 32 Clause 1 will also allow the UK to make regulations implementing any changes made to the list of central government entities in Annex 1 of the UK's Appendix I to the GPA after the UK has become an independent member of the GPA. The UK could use the power to amend the list of central government entities in existing procurement regulations, to reflect any modifications the UK has made to Annex 1 to update the list of central government entities.
- 33 Clause 1(1) explains that an appropriate authority can make regulations for the purposes set out in subsection (1)(a) to (f). An appropriate authority is defined in Clause 8 as a Minister of the Crown or a devolved authority.
- 34 Clause 1(1) sets out six purposes for which regulations about the GPA can be made:

³ Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement, and Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors.

- a. Subsection (1)(a) allows a relevant authority to make regulations for the purpose of implementing the 1994 Agreement. This provision is required because although the 2012 Protocol amended the 1994 Agreement by deleting and replacing its provisions with those in the Revised GPA, Switzerland is the one remaining party of the 1994 Agreement that has not deposited its instrument of acceptance of the 2012 Protocol. The 1994 Agreement therefore remains in existence. Parties that accede to the Revised GPA will therefore also accede to the 1994 Agreement unless and until Switzerland accepts the 2012 Protocol. The UK may therefore be required to accede to the 1994 Agreement and may require the power to implement it;
 - b. Subsection (1)(b) allows a relevant authority to make regulations for the purpose of implementing the Revised GPA. The Revised GPA is the amended version of the 1994 Agreement that is now in force for all GPA parties (except Switzerland as set out above). The UK therefore requires the power to implement the Revised GPA;
 - c. Subsection (1)(c) allows an appropriate authority to make regulations to reflect new parties acceding to the 1994 Agreement or existing parties withdrawing from the 1994 Agreement;
 - d. Subsection (1)(d) allows an appropriate authority to make regulations to reflect new parties acceding to the Revised GPA or existing parties withdrawing from Revised GPA;
 - e. Subsection (1)(e) allows an appropriate authority to make regulations to reflect any modifications to the list of UK central government entities listed in Annex 1 to the UK's Appendix I to the 1994 GPA;
 - f. Subsection (1)(f) 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 Revised GPA.
- 35 Clause 1(2) sets out five limitations on when regulations made under subsection (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 1994 Agreement;
 - b. Subsection (2)(b) provides that regulations made under subsection (1)(b) may not come into force before the day on which the UK accedes to the Revised GPA;
 - c. Subsection (2)(c) provides that regulations made under subsection (1)(c) may not, in the case of a new party joining the 1994 Agreement, come into force before the day on which the new party accedes. In the case of a party withdrawing from the 1994 Agreement, regulations made under subsection (1)(c) may not come into force before the day on which the party withdraws from the 1994 Agreement;
 - d. Subsection (2)(d) provides that regulations made under subsection (1)(d) may not, in the case of a new party joining the Revised GPA, come into force before the day on which the new party accedes. In the case of a party withdrawing from the Revised GPA, regulations made under subsection (1)(d) may not come into force before the day on which the party withdraws from the Revised GPA;
 - e. Subsection (2)(e) provides that regulations made under subsection (1)(e) or (f) may not come into force before the modifications to the Annex 1 list of central government entities to either the 1994 Agreement or the Revised GPA become effective in the United Kingdom.

- 36 Clause 1(2) means that regulations under subsection (1)(a) and (b) to implement the 1994 Agreement and Revised GPA can only come into force after the UK has become an independent member of the GPA. This reflects the fact that, under Article XXII(2) of the Revised GPA and Article XXIV:2 of the 1994 Agreement, 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 thirtieth day following the party depositing its instrument of accession.
- 37 Clause 1(2) also means that regulations made under subsection (1)(c) or (d) to reflect new parties acceding to the 1994 Agreement and the Revised GPA, or existing parties withdrawing from those Agreements, can only come into force once those parties have joined or withdrawn. 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.
- 38 The limitations provided for in Clause 1(2)(e) mean that regulations made under subsection (1)(e) or (f), to reflect any modifications made to the list of central government entities in Annex 1 of the UK's Appendix I to either the 1994 Agreement or the Revised GPA, cannot come into force until those modifications have become effective under Article XXIV(6) of the 1994 GPA and Article XIX(5) of the Revised GPA.
- 39 Clause 1(3) clarifies that regulations made under Clause 1(1) may make provision modifying retained direct EU legislation. This clarification is made in light of section 7 of the European Union (Withdrawal) Act 2018, which treats retained direct EU legislation, and rights preserved under section 4 of that Act, as having the same status as primary legislation.

Clause 2: Implementation of International Trade Agreements

- 40 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 is currently signed up to many international trade agreements with other countries through its membership of the EU.
- 41 The Government's policy is to seek continuity in the UK's existing trade relationships as the UK leaves the EU. To achieve this, it will establish a UK trade agreement with each existing partner country based, as closely as possible, on maintaining the effects of the current trade agreement that that country already has with the EU.
- 42 Before an international trade agreement can come into force, the parties to that agreement must ensure that the agreement can be implemented domestically. 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.
- 43 While the UK is a member of the EU, the EU is able to negotiate and agree trade agreements with partner countries on the UK's behalf. Currently when the EU implements these agreements, the EU's implementation flows through into UK law through the European Communities Act 1972 (ECA 1972). This either happens directly under section 2(1) of that Act, or through regulations the UK makes under section 2(2). The European Union (Withdrawal) Act 2018 will repeal the ECA 1972 on exit day, which will mean that the current arrangements will cease to apply and the UK will need to implement individual obligations under its own trade agreements where necessary.
- 44 As a general rule the European Union (Withdrawal) Act 2018 will preserve in UK law the EU law existing at the point that the UK leaves the EU, and allow it to be amended to make it work in a UK context. 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.

- 45 However, 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 exit day. In that case, 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 these trade agreements can be fully implemented within UK law.
- 46 It is also possible that adjustments may be required to ensure 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.
- 47 In addition, it is important that UK-partner country agreements remain operable and up to date after the UK's exit from the EU, and where appropriate changes to the agreement are necessary 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.
- 48 To ensure that the UK's continuity trade agreements can be fully implemented, the power in Clause 2 gives the Government and devolved authorities (as "appropriate 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 exit day. Those provisions could be both obligations on the UK under the agreements and discretionary measures that the UK can take under them.
- 49 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 provision that could be made under regulations under Clause 9 of the Taxation (Cross-Border Trade) Bill, which allows the setting of preferential duties pursuant to the international arrangements.⁴
- 50 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 share product safety checking procedures, this must be reflected in the domestic legislative framework of both countries to enable that obligation to be met. The Government and devolved authorities could use the power to make secondary legislation to introduce any appropriate changes.
- 51 Through its membership of the EU, the UK currently benefits from the EU's trade agreements with partner countries. For example, the EU currently has free trade agreements with Switzerland, Canada, South Korea, Israel and Mexico.⁵ The power in Clause 2 could be used to implement the non-tariff obligations of relevant UK trade agreements with these countries.
- 52 The power could also be used to implement obligations flowing from trade and trade-related agreements with countries with which the EU has not yet signed an agreement, but does so before exit day. For example, the EU is currently negotiating trade agreements with Singapore and Japan.

⁴ 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) Bill.

⁵ A full list of the EU's free trade agreements can be found on the European Commission website: <http://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/>.

- 53 Where continuity UK-partner country agreements need ratifying, they will still be subject to Parliamentary scrutiny before they can be ratified (which means formal indication that a State intends to be bound by the agreement). The Constitutional Reform and Governance Act 2010 sets out the process for Parliamentary involvement in the ratification process for international treaties in the UK.
- 54 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 are more than one) was also a signatory to an international trade agreement with the EU immediately before exit day. The types of agreements within scope of the definition of “international trade agreements” are a) free trade agreements (as defined in Clause 8(1) – see paragraphs 73 to 77 below) and b) other international agreements which are not free trade agreements but which mainly relate to trade.
- 55 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.
- 56 Although the Government’s policy intention is to ensure continuity as far as possible in the effects of the UK’s current trading arrangements, the new UK-partner country agreements that are implemented using of this power will be legally distinct from the original EU-partner country agreements on which they are based. It may also be necessary to substantively amend the text of the previous EU agreements, for example so that the new agreements can work in a UK legal context.
- 57 The effect of subsection (2) 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 exit day. Subsection (3) extends this approach to international trade agreements not falling within the definition of “free trade agreement”. Clause 8 (interpretation of Part 1) provides the definition of “free trade agreement”.
- 58 As previously indicated, the Clause 2 power will only be used to implement the non-tariff provisions of trade agreements. Subsection (4) therefore specifically provides that regulations made under subsection (1) may not make provision that could be made by regulations under Clause 9 of the Taxation (Cross-Border Trade) Act 2018. That section allows regulations to be made to give effect to preferential rate arrangements between the UK and the government of a country or territory outside the United Kingdom.
- 59 Subsection (5) 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 (5) 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.
- 60 Subsections (7) and (8) make the power in subsection (1) subject to a sunset requirement. This means that after three years after exit day the power will cease to have effect. However,

subsections (7)(a) and (8) provide that this period can be extended by the Government on review, with the approval of both Houses of Parliament, for further periods of up to 3 years at a time.

Clause 3: Report on proposed free trade agreements

- 61 Clause 3 requires a Minister of the Crown to lay a report in Parliament, prior to ratifying a free trade agreement with one of the EU's pre-exit day free trade agreement partners (i.e. states that have signed a free trade agreement with the EU before exit day). The report must give details of significant changes to UK free trade agreements as compared to the EU's pre-exit day agreement with the relevant state, and reasons for those changes. Subsection (2) explains that it applies to those free trade agreements that are subject to ratification. What amounts to ratification is defined in Clause 8 (interpretation of Part 1).
- 62 Subsection (3) explains that the report must include information on where the new trade agreement significantly differs from the original EU agreement, and the reasons for those changes. The requirement will allow for comparison to be made between the trade-related elements of the existing EU-partner country free trade agreement and the trade-related elements of the new UK free trade agreement with that partner country.
- 63 Clause 3(4) provides that the pre-ratification report is not required if a report has already been laid under Clause 5 (which requires reports before any regulations under Clause 2(1) are laid). Under Clause 3(5), the reporting obligation will cease to apply when the regulation-making power under Clause 2(1) is no longer available.
- 64 The requirement does not extend to the lesser types of trade agreement (i.e. agreements that mainly relate to trade which do not amount to a free trade agreement). The reports will also not cover non-trade elements of the agreements, such as political commitments.

Clause 4: Reporting requirement not to apply in exceptional cases

- 65 Clause 4 provides that the reporting requirement does not apply if a Minister takes the view that, exceptionally, the agreement should be ratified without the reporting requirement being met. In those circumstances the Minister must, as soon as practicable after the agreement is ratified, lay the report along with a statement explaining the Minister's view that the reporting requirement should not have been met before ratification.

Clause 5 Report to be laid with regulations under section 2(1)

- 66 Clause 5 requires a Minister of the Crown to lay a report in Parliament, at least 10 Commons sitting days (days on which the House of Commons is sitting) before laying regulations in draft under the Clause 2 power. The required contents of the report are the same as for the report under Clause 3 (report on proposed free trade agreement). Clause 5(3) provides that the obligation under this clause does not apply if a report has already been laid, at least 10 Commons sitting days beforehand, under Clause 3(3).
- 67 As with the report under Clause 3, the requirement does not extend to the lesser types of trade agreement (i.e. agreements that mainly relate to trade which do not amount to a free trade agreement). The reports will also not cover non-trade elements of free trade agreements, such as political commitments.

Clause 6: UK participation in the European medicines regulatory network

- 68 Clause 6 imposes an objective on a Minister of the Crown or a devolved authority to take all necessary steps to implement an international trade agreement enabling UK participation in the European medicines regulatory network partnership between the EU, the European Economic Area and the European Medicines Agency.

Clause 7: Regulations: devolved authorities and general provision

- 69 Clause 7(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. Clause 7(2) makes it explicit that regulations modifying retained EU law may be made before exit day, provided they come into force on or after exit day.
- 70 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. The clause also gives effect to Schedules 1, 2 and 3.

Clause 8: Interpretation in Part 1

- 71 Clause 8 sets out how certain terms within Part 1 of the Trade Bill should be interpreted.
- 72 Amongst these definitions, Clause 8(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 qualifying international trade agreements). “Minister of the Crown” is defined in Clause 13 (see paragraph 98 below). Clause 8(1) also defines “devolved authority” as the Scottish Ministers, the Welsh Ministers or a Northern Irish department.
- 73 Clause 8(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.
- 74 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.
- 75 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.
- 76 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).
- 77 Clause 8(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. Subsections (3) and (4) explain that “ratification” means doing an act which establishes consent to be bound by the agreement as a matter of international law.

- 78 Clause 8(5) 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 9: Trade Remedies Authority

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

Clause 10: Provision of advice, support and assistance by the TRA

- 82 This clause sets out the circumstances in which the TRA can apply its expertise more widely in relation to international trade and trade remedies.
- 83 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.
- 84 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 11: Collection of exporter information by HMRC

- 85 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 which export goods and services.
- 86 Clause 11(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.
- 87 Clause 11(2) defines export of goods and services as supply to a person who is outside of the United Kingdom.
- 88 Clause 11(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.
- 89 Clause 11(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 the corporation and personal tax returns to be amended to include the request for exporter information.
- 90 Clause 11(5) provides that any regulations made under subsection (3) which amend or repeal an Act of Parliament are subject to the affirmative procedure. Clause 11(6) confirms that any other regulations made under subsection (3) are subject to the negative procedure.

Clause 12: Disclosure of information by Her Majesty's Revenue and Customs

- 91 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 12 allows HMRC to share data with those bodies in order that they can fulfil those functions.
- 92 This provision is needed in addition to the disclosure of information power in Clause 25 of the Taxation (Cross-Border Trade) Bill because that power is limited to matters related to customs duty purposes, which does not cover the full scope of the Government's activities.
- 93 Clause 12(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 administrations.
- 94 Clause 12(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.
- 95 Clause 12(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.
- 96 Clause 12(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.
- 97 Clause 12(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 13: Interpretation

- 98 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 14: Extent

- 99 This clause provides that this Bill extends to the whole of the UK.

Clause 15: Commencement

- 100 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 16: Short title

101 Clause 16 establishes that the short title of this Bill will be the Trade Act 2018.

Schedules

Schedule 1 – Restrictions on Devolved Authorities

102 The Schedule describes the circumstances in which a devolved authority (defined in Clause 8 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

103 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 7 to 9 of the Schedule (see paragraph 110 below).

No power to modify retained direct EU legislation etc.

104 Sub-paragraphs (1) to (3) of paragraph 2 provide that the devolved authorities may not use the powers to make provision modifying retained direct EU legislation⁶ or anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act. However, this restriction only applies if the provision made by the devolved authorities would be in breach of restrictions provided for in regulations made by a Minister of the Crown as referred to in section 12 of the European Union (Withdrawal) Act 2018, which allows for the retaining of certain restrictions on the amendment of retained EU law.

105 Sub-paragraph (4) prohibits the devolved authorities from using the power in ways that would create inconsistencies with any modifications to retained direct EU legislation and retained EU law (as referred to above) which the Government has made, but only where the provision could not be made by the devolved authority pursuant to sub-paragraphs (1) to (3).

Requirement for consultation in certain circumstances

106 Paragraph 3 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 exit day, 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

107 Paragraph 4 sets out that consent of a Minister of 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.

⁶ "Retained direct EU legislation" is defined in Schedule 1 to the Interpretation Act 1978 (as amended by paragraph 22 of Schedule 8 to the European Union (Withdrawal) Act 2018) by reference to the definition in section 20(1) of the European Union (Withdrawal) Act 2018.

Requirement for joint exercise where it would otherwise be required

108 Paragraph 5 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

109 Paragraph 6 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 kinds of changes in legislation.

Meaning of devolved competence

110 Paragraphs 7 to 9 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

111 Paragraph 10 provides an interpretation of “Northern Ireland devolved authority” for the purpose of the Schedule.

Schedule 2 – Regulations under Part 1

112 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.

113 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

114 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.

115 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

116 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.

117 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).

118 Part 4 of the Schedule provides for scrutiny by the UK Parliament and the devolved legislatures 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

- 119 Schedule 3 modifies the test for executive competence of the devolved authorities.
- 120 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). 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.
- 121 Paragraphs 2 and 3 make equivalent provision in respect of the Government of Wales Act 2006 and the Northern Ireland Act 1998.
- 122 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

- 123 This Schedule sets out further provision on the composition of the TRA, established by Clause 9, and how it is to operate. Much of its content is self-explanatory.
- 124 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.
- 125 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.
- 126 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.
- 127 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.
- 128 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.
- 129 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

- 130 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 in time for the UK's exit from the EU.

Commencement

131 Clause 15 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

132 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. The final amount and timing of any financial implications depend on the outcome of negotiations with the EU and on policy decisions yet to be taken. Further detail on the financial implications of the TRA is set out in the impact assessment on trade remedies accompanying this Bill.

133 The other provision of the Trade Bill that will have immediate financial implications is Clause 2. The power contained in Clause 2 will only be used to ensure that trade agreements that are already in place (or will be at the point that the UK leaves the EU) remain operational for the UK after leaving the EU. As a result, there should be no significant costs to business. However, some costs, such as those associated with familiarisation, may arise as a consequence of the specific changes to secondary legislation. These specific changes will only be determined following further discussions with partner countries on how to transition the agreements effectively.

Compatibility with the European Convention on Human Rights

134 The Government considers that the Trade Bill is compatible with the European Convention on Human Rights (ECHR). Accordingly, the Minister of State for Trade and Export Promotion, Baroness Fairhead, has made a statement under section 19(1)(a) of the Human Rights Act 1998 to this effect.

135 Clauses 11 (collection of exporter information by HMRC) and 12 (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 means of achieving a legitimate aim for the following reasons.

136 Clause 11 permits the collection of personal data relating to natural and/or legal persons. It will allow companies and individuals (i.e. sole traders) to be identified as exporters of goods or services. This is for the purpose of targeting Government trade promotion efforts. The information will be collected from companies and individuals by HMRC on a voluntary basis. The clause is compliant with data protection requirements and is subject to the provisions of the Commissioners of Revenue and Customs Act 2005 which places conditions on the use and disclosure of such data. It is considered that the safeguards, conditions and checks on the data handling ensure that the provision is Article 8 compliant.

137 Clause 12 permits the sharing by HMRC of personal data relating to legal persons. The data shared will be primarily at a level that does not identify legal or natural persons. There may be some instances where legal and natural persons (i.e. companies and sole traders) are identified, for example when information collected by HMRC under Clause 11 is shared to facilitate the exercise of the Secretary of State's functions relating to trade. However, this

disclosure will be subject to the provisions of the Commissioners for Revenue and Customs Act 2005 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 12 by Clause 12(3). It is considered that these safeguards ensure that this provision is Article 8 compliant.

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

Equalities

139. 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.

140. 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.

141. 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.

142. 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

143. 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.⁷

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly of Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Part 1 (Clauses 1-8)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, W, NI)
Part 2 (Clauses 9-10)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 3 (Clauses 11-12)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 4 (Clauses 13-16)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
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

⁷ 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.

TRADE BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Trade Bill as brought from the House of Commons on 18 July 2018 (HL Bill 127).

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