

# Trade Bill

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for International Trade, have been ordered to be published as HL Bill 128 – EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Lord Grimstone of Boscobel has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Trade Bill are compatible with the Convention rights.



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Make provision about the implementation of international trade agreements; to make provision establishing the Trade Remedies Authority and conferring functions on it; and to make provision about the collection and disclosure of information relating to trade.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**PART 1**

IMPLEMENTATION OF INTERNATIONAL TRADE AGREEMENTS

**1 Implementation of the Agreement on Government Procurement**

- (1) An appropriate authority may by regulations make such provision as the authority considers appropriate— 5
- (a) for the purpose of implementing the Agreement on Government Procurement signed at Marrakesh on 15 April 1994, as amended on or before the United Kingdom’s accession (“the GPA”), or
  - (b) in consequence of— 10
    - (i) the accession of another party to, or the withdrawal of a party from, the GPA,
    - (ii) a dispute between the United Kingdom and another party to the GPA,
    - (iii) a modification of another party’s Appendix I to the GPA, or
    - (iv) a modification of the list of central government entities in Annex 1 to the United Kingdom’s Appendix I to the GPA. 15
- (2) Regulations under subsection (1) may not come into force before—
- (a) in the case of regulations under subsection (1)(a), the day the United Kingdom accedes to the GPA;
  - (b) in the case of regulations under subsection (1)(b)(i), the day the other party accedes to or, as the case may be, withdraws from, the GPA; 20
  - (c) in the case of regulations under subsection (1)(b)(iii) or (iv), the day the modification becomes effective.

- (3) Regulations under subsection (1) may make provision modifying retained direct principal EU legislation.
- (4) In this section, a “dispute” means a matter in respect of which the United Kingdom or another party is entitled to have recourse to the Understanding on Rules and Procedures Governing the Settlement of Disputes under Article XX of the GPA. 5

## 2 Implementation of international trade agreements

- (1) An appropriate authority may by regulations make such provision as the authority considers appropriate for the purpose of implementing an international trade agreement to which the United Kingdom is a signatory. 10
- (2) An “international trade agreement” means—
- (a) a free trade agreement, or
  - (b) an international agreement that mainly relates to trade, other than a free trade agreement.
- (3) Regulations under subsection (1) may make provision for the purpose of implementing a free trade agreement only if the other signatory (or each other signatory) and the European Union were signatories to a free trade agreement immediately before exit day. 15
- (4) Regulations under subsection (1) may make provision for the purpose of implementing an international trade agreement other than a free trade agreement only if the other signatory (or each other signatory) and the European Union were signatories to an international trade agreement immediately before exit day. 20
- (5) Regulations under subsection (1) may not make provision that could be made by regulations under section 9 of the Taxation (Cross-border Trade) Act 2018. 25
- (6) Regulations under subsection (1) may, among other things, make provision—
- (a) modifying retained direct principal EU legislation or primary legislation that is retained EU law;
  - (b) conferring functions on the Secretary of State or any other person, including conferring a discretion but not including a power to make subordinate legislation; 30
  - (c) for the delegation of functions;
  - (d) for civil penalties for failing to comply with the regulations.
- (7) No regulations may be made under subsection (1) after the end of—
- (a) the period of five years beginning with IP completion day (“the initial five year period”), or 35
  - (b) such other period or periods as are specified in regulations made by the Secretary of State in accordance with subsection (8).
- (8) Regulations under subsection (7)(b) may not extend the initial five year period, or a further period specified in regulations under that subsection, by more than five years. 40

## 3 Regulations: devolved authorities and general provision

- (1) Regulations under section 1(1) or 2(1) may—
- (a) make different provision for different purposes or areas;

- (b) make provision generally or only in relation to specified cases;
    - (c) make incidental, supplementary or consequential provision;
    - (d) make transitional, transitory or saving provision.
  - (2) Schedule 1 contains restrictions on the exercise of the powers in sections 1(1) and 2(1) by devolved authorities. 5
  - (3) Schedule 2 contains provision about the making of regulations under sections 1(1) and 2.
  - (4) Schedule 3 contains exceptions to restrictions in the devolution settlements for regulations made under section 1(1) or 2(1).
- 4 Interpretation of Part 1** 10
- (1) In this Part –
    - “appropriate authority” means –
      - (a) a Minister of the Crown, or
      - (b) a devolved authority;
    - “devolved authority” means – 15
      - (a) the Scottish Ministers,
      - (b) the Welsh Ministers, or
      - (c) a Northern Ireland department;
    - “free trade agreement” means an agreement that is or was notifiable under – 20
      - (a) paragraph 7(a) of Article XXIV of GATT, or
      - (b) paragraph 7(a) of Article V of GATS;
    - “GATS” means the General Agreement on Trade in Services, part of Annex 1B to the WTO Agreement (as modified from time to time);
    - “GATT” means the General Agreement on Tariffs and Trade, part of Annex 1A to the WTO Agreement (as modified from time to time); 25
    - “primary legislation” means –
      - (a) an Act of Parliament,
      - (b) an Act of the Scottish Parliament,
      - (c) a Measure or Act of Senedd Cymru, or 30
      - (d) Northern Ireland legislation;
    - “subordinate legislation” has the meaning given in section 20(1) of the European Union (Withdrawal) Act 2018;
    - “the WTO Agreement” means the agreement establishing the World Trade Organisation signed at Marrakesh on 15 April 1994. 35
  - (2) In this Part a reference to being a signatory to an international trade agreement includes a reference to –
    - (a) exchanging instruments, where the exchange constitutes the agreement;
    - (b) acceding to the agreement. 40
  - (3) References in this Part to anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 include references to any modifications, made by or under that Act or by other domestic law from time to time, of the rights, powers, liabilities, obligations, restrictions, remedies or procedures concerned. 45

- (4) In this section, “domestic law” means the law of England and Wales, Scotland or Northern Ireland.

## PART 2

### THE TRADE REMEDIES AUTHORITY

- 5 The Trade Remedies Authority** 5
- (1) A body corporate called the Trade Remedies Authority (“the TRA”) is established.
- (2) Schedule 4 contains further provision about the TRA.
- (3) Schedule 5 contains provision about schemes for the transfer of staff in connection with the establishment of the TRA. 10
- 6 Provision of advice, support and assistance by the TRA**
- (1) The TRA must provide the Secretary of State with such advice, support and assistance as the Secretary of State requests in connection with –
- (a) the conduct of an international trade dispute,
  - (b) functions of the Secretary of State relating to trade, and 15
  - (c) functions of the TRA.
- (2) Advice, support and assistance requested under subsection (1) may include, among other things –
- (a) analysis of trade remedy measures imposed in countries or territories other than the United Kingdom, and 20
  - (b) analysis of the impact of such measures on producers and exporters in the United Kingdom.
- (3) Before making a request under subsection (1), the Secretary of State must –
- (a) consult the TRA, and
  - (b) have regard to the expertise of the TRA and to the need to protect – 25
    - (i) its operational independence, and
    - (ii) its ability to make impartial assessments when performing its functions.
- (4) The TRA may otherwise provide such advice, support and assistance as it considers appropriate in relation to – 30
- (a) international trade, and
  - (b) trade remedies.

## PART 3

### TRADE INFORMATION

- 7 Collection of exporter information by HMRC** 35
- (1) Her Majesty’s Revenue and Customs may request any person to provide information for the purpose of assisting the Secretary of State to establish the number and identity of persons exporting goods and services from the United Kingdom in the course of a trade, business or profession.



- (2) For the purposes of subsection (1) goods or services are exported from the United Kingdom if they are supplied to a person who is outside the United Kingdom.
- (3) The Treasury may by regulations made by statutory instrument make provision about— 5
  - (a) the types of information that may be requested under subsection (1), and
  - (b) how the request is to be made.
- (4) Regulations under subsection (3) may, among other things, modify an Act of Parliament. 10
- (5) A statutory instrument containing (whether alone or with other provision) regulations under subsection (3) that amend or repeal an Act of Parliament may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (6) Any other statutory instrument containing regulations under subsection (3) is subject to annulment in pursuance of a resolution of either House of Parliament. 15

## 8 Disclosure of information by HMRC

- (1) Her Majesty’s Revenue and Customs (or anyone acting on their behalf) may disclose information for the purpose of— 20
  - (a) facilitating the exercise by a Minister of the Crown of the Minister’s functions relating to trade, or
  - (b) facilitating the exercise by an international organisation or authority, or by any other body, of its public functions relating to trade.
- (2) Those functions include, among other things, functions relating to— 25
  - (a) the analysis of the flow of traffic, goods and services into and out of the United Kingdom;
  - (b) the analysis of the impact, or likely impact, of measures or practices relating to imports, exports, border security and transport on such flow; 30
  - (c) the design, implementation and operation of such measures or practices.
- (3) A person who receives information as a result of this section may not— 35
  - (a) use the information for a purpose other than one mentioned in subsection (1), or
  - (b) further disclose the information,  
except with the consent of the Commissioners for Her Majesty’s Revenue and Customs (which may be general or specific).
- (4) If a person discloses information in contravention of subsection (3)(b) which relates to a person whose identity— 40
  - (a) is specified in the disclosure, or
  - (b) can be deduced from it,  
section 19 of the Commissioners for Revenue and Customs Act 2005 (offence of wrongful disclosure) applies in relation to that disclosure as it applies in relation to a disclosure of information in contravention of section 20(9) of that Act. 45

- (5) This section does not limit the circumstances in which information may be disclosed under section 18(2) of the Commissioners for Revenue and Customs Act 2005 or under any other enactment or rule of law.
- (6) Nothing in this section authorises the making of a disclosure which—
- (a) contravenes the data protection legislation (save that the powers conferred by this section are to be taken into account in determining whether a disclosure contravenes that legislation), or
  - (b) is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.
- (7) In this section “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).

## 9 Disclosure of information by other authorities

- (1) A public authority specified in subsection (3) may disclose information for the purpose of facilitating the exercise by a Minister of the Crown of the Minister’s functions relating to trade.
- (2) Those functions include, among other things, functions relating to—
- (a) the analysis of the flow of traffic, goods and services into and out of the United Kingdom;
  - (b) the analysis of the impact, or likely impact, of measures or practices relating to imports, exports, border security and transport on such flow;
  - (c) the design, implementation and operation of such measures or practices.
- (3) The specified public authorities are—
- (a) the Secretary of State;
  - (b) the Minister for the Cabinet Office;
  - (c) a strategic highways company appointed under section 1 of the Infrastructure Act 2015;
  - (d) a port health authority constituted under section 2 of the Public Health (Control of Disease) Act 1984.
- (4) A person who receives information as a result of this section may only use the information for the purpose of facilitating the exercise by a public authority of the authority’s functions relating to trade (which include, among other things, functions of a kind referred to in subsection (2)).
- (5) A person who receives information as a result of this section may further disclose the information, but only with the consent of the public authority that disclosed the information under subsection (1) (which may be general or specific).
- (6) This section does not limit the circumstances in which the information may be disclosed under any other enactment or rule of law.
- (7) A disclosure under this section does not breach—
- (a) any obligation of confidence owed by the person disclosing the information, or
  - (b) any other restriction on the disclosure of information (however imposed).

- (8) But nothing in this section authorises the making of a disclosure which—
- (a) contravenes the data protection legislation (save that the powers conferred by this section are to be taken into account in determining whether a disclosure contravenes that legislation), or
  - (b) is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016. 5
- (9) A Minister of the Crown may by regulations made by statutory instrument amend this section for the purpose of specifying a public authority in, or removing a public authority from, subsection (3).
- (10) A statutory instrument containing regulations under subsection (9) (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament. 10
- (11) In this section—
- “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);
  - “public authority” means an authority exercising functions of a public nature. 15

## 10 Offence relating to disclosure under section 9

- (1) If a person discloses information in contravention of section 9 which relates to a person whose identity—
- (a) is specified in the disclosure, or
  - (b) can be deduced from it,
- the person who disclosed the information commits an offence. 20
- (2) It is a defence for a person charged with an offence under this section to prove that the person reasonably believed—
- (a) that the disclosure was lawful, or
  - (b) that the information had already lawfully been made available to the public. 25
- (3) A prosecution for an offence under this section—
- (a) may be brought in England and Wales only with the consent of the Director of Public Prosecutions;
  - (b) may be brought in Northern Ireland only with the consent of the Director of Public Prosecutions for Northern Ireland. 30
- (4) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
  - (b) on summary conviction—
- (i) in England and Wales, to imprisonment for a term not exceeding 12 months, to a fine or to both; 40
  - (ii) in Scotland, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both;
  - (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, to a fine not exceeding the statutory maximum or to both. 45

**PART 4**

## GENERAL

**11 Interpretation**

In this Act –

- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975; 5
- “modify” includes amend, repeal or revoke (and related expressions are to be read accordingly).

**12 Extent**

- (1) Subject to subsection (2), this Act extends to England and Wales, Scotland and Northern Ireland. 10
- (2) Any provision of this Act which amends an enactment has the same extent as the enactment amended.

**13 Commencement**

- (1) This Part comes into force on the day on which this Act is passed. 15
- (2) The remaining provisions of this Act come into force on such day as a Minister of the Crown may by regulations made by statutory instrument appoint; and different days may be appointed for different purposes.
- (3) The power of a Minister of the Crown to appoint a day under subsection (2) includes a power to appoint a time on a day if the Minister considers it appropriate to do so (including a time that has effect by reference to the coming into force of any other enactment). 20
- (4) Regulations under subsection (2) may make transitional, transitory or saving provision.

**14 Short title**

This Act may be cited as the Trade Act 2020. 25

## SCHEDULES

### SCHEDULE 1

Section 3(2)

#### RESTRICTIONS ON DEVOLVED AUTHORITIES

##### *No power to make provision outside devolved competence*

- 1 (1) No provision may be made by a devolved authority under section 1(1) or 2(1) unless the provision is within the devolved competence of the devolved authority. 5
- (2) See paragraphs 6 to 8 for the meaning of “devolved competence”.

##### *Requirement for consultation in certain circumstances*

- 2 (1) No regulations may be made by a devolved authority acting alone under section 2(1) so far as the regulations are to come into force before IP completion day, unless the regulations are, to that extent, made after consulting with a Minister of the Crown. 10
- (2) No regulations may be made by a devolved authority acting alone under section 2(1) so far as the regulations make provision about any quota arrangements or are incompatible with any such arrangements, unless the regulations are, to that extent, made after consulting with a Minister of the Crown. 15
- (3) In sub-paragraph (2) “quota arrangements” means any arrangements for, or in connection with, the division of responsibility within the United Kingdom or an area including the United Kingdom for – 20
- (a) an international obligation, or
- (b) any right or other benefit arising from such an obligation, 25
- where the obligation is to achieve a result defined by reference to a quantity (whether expressed as an amount, proportion or ratio or otherwise) or (as the case may be) the benefit is so defined.

##### *Requirement for consent where it would otherwise be required*

- 3 (1) The consent of a Minister of the Crown is required before any provision is made by the Welsh Ministers acting alone in regulations under section 1(1) or 2(1) so far as that provision, if contained in an Act of Senedd Cymru, would require the consent of a Minister of the Crown. 30
- (2) The consent of the Secretary of State is required before any provision is made by a Northern Ireland department acting alone in regulations under section 1(1) or 2(1) so far as that provision, if contained in an Act of the Northern Ireland Assembly, would require the consent of the Secretary of State. 35
- (3) Sub-paragraph (1) or (2) does not apply if –

- 
- (a) the provision could be contained in subordinate legislation made otherwise than under this Act by the Welsh Ministers acting alone or (as the case may be) a Northern Ireland devolved authority acting alone, and
- (b) no such consent would be required in that case. 5
- (4) The consent of a Minister of the Crown is required before any provision is made by a devolved authority acting alone in regulations under section 1(1) or 2(1) so far as that provision, if contained in—
- (a) subordinate legislation made otherwise than under this Act by the devolved authority, or 10
- (b) subordinate legislation not falling within paragraph (a) and made otherwise than under this Act by (in the case of Scotland) the First Minister or Lord Advocate acting alone or (in the case of Northern Ireland) a Northern Ireland devolved authority acting alone, would require the consent of a Minister of the Crown. 15
- (5) Sub-paragraph (4) does not apply if—
- (a) the provision could be contained in—
- (i) an Act of the Scottish Parliament, an Act of Senedd Cymru or (as the case may be) an Act of the Northern Ireland Assembly, or 20
- (ii) different subordinate legislation of the kind mentioned in sub-paragraph (4)(a) or (b), and
- (b) the consent of a Minister of the Crown would not be required in that case.
- Requirement for joint exercise where it would otherwise be required* 25
- 4 (1) No regulations may be made under section 1(1) or 2(1) by the Scottish Ministers, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by—
- (a) the Scottish Ministers acting jointly with a Minister of the Crown, or 30
- (b) the First Minister or Lord Advocate acting jointly with a Minister of the Crown,
- unless the regulations are, to that extent, made jointly with the Minister of the Crown.
- (2) No regulations may be made under section 1(1) or 2(1) by the Welsh Ministers, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by the Welsh Ministers acting jointly with a Minister of the Crown, unless the regulations are, to that extent, made jointly with the Minister of the Crown. 40
- (3) No regulations may be made under section 1(1) or 2(1) by a Northern Ireland department, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by—
- (a) a Northern Ireland department acting jointly with a Minister of the Crown, or 45
- (b) another Northern Ireland devolved authority acting jointly with a Minister of the Crown,

unless the regulations are, to that extent, made jointly with the Minister of the Crown.

(4) Sub-paragraph (1), (2) or (3) does not apply if the provision could be contained in—

(a) an Act of the Scottish Parliament, an Act of Senedd Cymru or (as the case may be) an Act of the Northern Ireland Assembly without the need for the consent of a Minister of the Crown, or 5

(b) different subordinate legislation made otherwise than under this Act by—

(i) the Scottish Ministers, the First Minister or the Lord Advocate acting alone, 10

(ii) the Welsh Ministers acting alone, or

(iii) (as the case may be), a Northern Ireland devolved authority acting alone.

*Requirement for consultation where it would otherwise be required* 15

5 (1) No regulations may be made under section 1(1) or 2(1) by the Welsh Ministers acting alone, so far as they contain provision which, if contained in an Act of Senedd Cymru, would require consultation with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown. 20

(2) No regulations may be made under section 1(1) or 2(1) by the Scottish Ministers acting alone, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by the Scottish Ministers, the First Minister or the Lord Advocate after consulting with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown. 25

(3) No regulations may be made under section 1(1) or 2(1) by the Welsh Ministers acting alone, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by the Welsh Ministers after consulting with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown. 30

(4) No regulations may be made under section 1(1) or 2(1) by a Northern Ireland department acting alone, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under this Act is exercisable by a Northern Ireland devolved authority after consulting with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown. 35 40

(5) Sub-paragraph (2), (3) or (4) does not apply if—

(a) the provision could be contained in an Act of the Scottish Parliament, an Act of Senedd Cymru or (as the case may be) an Act of the Northern Ireland Assembly, and

(b) there would be no requirement for the consent of a Minister of the Crown, or for consultation with a Minister of the Crown, in that case. 45

(6) Sub-paragraph (2), (3) or (4) does not apply if—

- 
- (a) the provision could be contained in different subordinate legislation made otherwise than under this Act by –
- (i) the Scottish Ministers, the First Minister or the Lord Advocate acting alone,
  - (ii) the Welsh Ministers acting alone, or
  - (iii) (as the case may be), a Northern Ireland devolved authority acting alone, and
- (b) there would be no requirement for the consent of a Minister of the Crown, or for consultation with a Minister of the Crown, in that case. 5
- Meaning of devolved competence* 10
- 6 A provision is within the devolved competence of the Scottish Ministers if –
- (a) it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament (ignoring section 29(2)(d) of the Scotland Act 1998 so far as relating to EU law and retained EU law), or
  - (b) it is provision which could be made in other subordinate legislation by the Scottish Ministers, the First Minister or the Lord Advocate (ignoring section 57(2) of the Scotland Act 1998 so far as relating to EU law and section 57(4) of that Act). 15
- 7 A provision is within the devolved competence of the Welsh Ministers if –
- (a) it would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (ignoring section 108A(2)(e) of the Government of Wales Act 2006 so far as relating to EU law and retained EU law but including any provision that could be made only with the consent of a Minister of the Crown), or
  - (b) it is provision which could be made in other subordinate legislation by the Welsh Ministers (ignoring section 80(8) of the Government of Wales Act 2006). 20 25
- 8 A provision is within the devolved competence of a Northern Ireland department if –
- (a) the provision, if it were contained in an Act of the Northern Ireland Assembly –
    - (i) would be within the legislative competence of the Assembly (ignoring section 6(2)(d) of the Northern Ireland Act 1998), and
    - (ii) would not require the consent of the Secretary of State,
  - (b) the provision –
    - (i) amends or repeals Northern Ireland legislation, and
    - (ii) would, if it were contained in an Act of the Northern Ireland Assembly, be within the legislative competence of the Assembly (ignoring section 6(2)(d) of the Northern Ireland Act 1998) and require the consent of the Secretary of State, or
  - (c) the provision is provision which could be made in other subordinate legislation by any Northern Ireland devolved authority (ignoring section 24(1)(b) and (3) of the Northern Ireland Act 1998). 30 35 40 45



*Meaning of “Northern Ireland devolved authority”*

- 9 In this Schedule, a “Northern Ireland devolved authority” means the First Minister and deputy First Minister in Northern Ireland acting jointly, a Northern Ireland Minister or a Northern Ireland department.

SCHEDULE 2

Section 3(3)

5

REGULATIONS UNDER PART 1

PART 1

STATUTORY INSTRUMENTS AND STATUTORY RULES

- 1 (1) Any power to make regulations under Part 1 of this Act –
- (a) so far as exercisable by a Minister of the Crown acting alone or by a Minister of the Crown acting jointly with a devolved authority, is exercisable by statutory instrument, 10
  - (b) so far as exercisable by the Welsh Ministers acting alone, is exercisable by statutory instrument, and
  - (c) so far as exercisable by a Northern Ireland department acting alone, is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (SI 1979/1573 (NI 12)) (and not by statutory instrument). 15
- (2) For regulations made under Part 1 of this Act by the Scottish Ministers acting alone, see also section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) (Scottish statutory instruments). 20

PART 2

SCRUTINY OF REGULATIONS UNDER SECTION 1(1)

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

- 2 (1) A statutory instrument containing regulations of a Minister of the Crown acting alone under section 1(1) is subject to annulment in pursuance of a resolution of either House of Parliament. 25
- (2) Regulations of the Scottish Ministers acting alone under section 1(1) are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010). 30
- (3) A statutory instrument containing regulations of the Welsh Ministers acting alone under section 1(1) is subject to annulment in pursuance of a resolution of Senedd Cymru.
- (4) Regulations of a Northern Ireland department acting alone under section 1(1) are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 as if they were a statutory instrument within the meaning of that Act. 35

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

- 3 (1) This paragraph applies to regulations of a Minister of the Crown acting jointly with a devolved authority under section 1(1).
- (2) The procedure provided for by sub-paragraph (3) applies in relation to regulations to which this paragraph applies as well as any other procedure provided for by this paragraph which is applicable in relation to the regulations concerned. 5
- (3) A statutory instrument containing regulations to which this paragraph applies is subject to annulment in pursuance of a resolution of either House of Parliament. 10
- (4) Regulations to which this paragraph applies which are made jointly with the Scottish Ministers are subject to the negative procedure.
- (5) Sections 28(2), (3) and (8) and 31 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) (negative procedure etc.) apply in relation to regulations to which sub-paragraph (4) applies and which are subject to the negative procedure as they apply in relation to devolved subordinate legislation (within the meaning of Part 2 of that Act) which is subject to the negative procedure (but as if references to a Scottish statutory instrument were references to a statutory instrument). 15
- (6) Section 32 of the Interpretation and Legislative Reform (Scotland) Act 2010 (laying) applies in relation to the laying before the Scottish Parliament of a statutory instrument containing regulations to which sub-paragraph (4) applies as it applies in relation to the laying before that Parliament of a Scottish statutory instrument (within the meaning of Part 2 of that Act). 20
- (7) A statutory instrument containing regulations to which this paragraph applies which are made jointly with the Welsh Ministers is subject to annulment in pursuance of a resolution of Senedd Cymru. 25
- (8) Regulations to which this paragraph applies which are made jointly with a Northern Ireland department are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 as if they were a statutory instrument within the meaning of that Act. 30
- (9) If in accordance with this paragraph –
- (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument be annulled, or
- (b) a relevant devolved legislature resolves that an instrument be annulled, 35
- nothing further is to be done under the instrument after the date of the resolution and Her Majesty may by Order in Council revoke the instrument.
- (10) In sub-paragraph (9) “relevant devolved legislature” means –
- (a) in the case of regulations made jointly with the Scottish Ministers, the Scottish Parliament, 40
- (b) in the case of regulations made jointly with the Welsh Ministers, Senedd Cymru, and
- (c) in the case of regulations made jointly with a Northern Ireland department, the Northern Ireland Assembly. 45

- (11) Sub-paragraph (9) does not affect the validity of anything previously done under the instrument or prevent the making of a new instrument.
- (12) Sub-paragraphs (9) to (11) apply in place of provision made by any other enactment about the effect of such a resolution.
- (13) In this paragraph, “enactment” includes an enactment contained in, or in an instrument made under – 5
- (a) an Act of the Scottish Parliament,
  - (b) a Measure or Act of Senedd Cymru, or
  - (c) Northern Ireland legislation.

PART 3 10

SCRUTINY OF REGULATIONS UNDER SECTION 2(1)

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

- 4 (1) A statutory instrument containing regulations of a Minister of the Crown acting alone under section 2(1) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 15
- (2) Regulations of the Scottish Ministers acting alone under section 2(1) are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).
- (3) A statutory instrument containing regulations of the Welsh Ministers acting alone under section 2(1) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, Senedd Cymru. 20
- (4) Regulations of a Northern Ireland department acting alone under section 2(1) may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly. 25

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

- 5 (1) This paragraph applies to regulations of a Minister of the Crown acting jointly with a devolved authority under section 2(1).
- (2) The procedure provided for by sub-paragraph (3) applies in relation to regulations to which this paragraph applies as well as any other procedure provided for by this paragraph which is applicable in relation to the regulations concerned. 30
- (3) A statutory instrument which contains regulations to which this paragraph applies may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 35
- (4) Regulations to which this paragraph applies which are made jointly with the Scottish Ministers are subject to the affirmative procedure.
- (5) Section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) (affirmative procedure) applies in relation to regulations to which sub-paragraph (4) applies as it applies in relation to devolved subordinate legislation (within the meaning of Part 2 of that Act) which is subject to the affirmative procedure (but as if references to a Scottish statutory instrument were references to a statutory instrument). 40

- (6) Section 32 of the Interpretation and Legislative Reform (Scotland) Act 2010 (laying) applies in relation to the laying before the Scottish Parliament of a statutory instrument containing regulations to which sub-paragraph (4) applies as it applies in relation to the laying before the Scottish Parliament of a Scottish statutory instrument (within the meaning of Part 2 of that Act). 5
- (7) A statutory instrument containing regulations to which this paragraph applies which are made jointly with the Welsh Ministers may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, Senedd Cymru.
- (8) Regulations to which this paragraph applies which are made jointly with a Northern Ireland department may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly. 10

#### PART 4

#### SCRUTINY OF REGULATIONS UNDER SECTION 2(7)(B) 15

- 6 A statutory instrument containing regulations of the Secretary of State under section 2(7)(b) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

#### SCHEDULE 3

Section 3(4)

#### EXCEPTIONS TO RESTRICTIONS IN THE DEVOLUTION SETTLEMENTS 20

##### *Scotland Act 1998*

- 1 In section 57 of the Scotland Act 1998 (EU law and Convention rights) in subsection (5)(b), omit the “or” at the end of sub-paragraph (ii) and, at the end of sub-paragraph (iii), insert “, or  
 (iv) section 1(1) or 2(1) of the Trade Act 2020.” 25

##### *Government of Wales Act 2006*

- 2 In section 80 of the Government of Wales Act 2006 (EU law) in subsection (8A)(b), omit the “or” at the end of sub-paragraph (ii) and, at the end of sub-paragraph (iii), insert “, or  
 (iv) section 1(1) or 2(1) of the Trade Act 2020.” 30

##### *Northern Ireland Act 1998*

- 3 In section 24 of the Northern Ireland Act 1998 (EU law, Convention rights etc.) in subsection (4)(b), omit the “or” at the end of sub-paragraph (ii) and, at the end of sub-paragraph (iii), insert “, or  
 (iv) section 1(1) or 2(1) of the Trade Act 2020.” 35

##### *Transitional exception*

- 4 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, so far

as relating to EU law, do not apply to the making of regulations under section 1(1) or 2(1).

SCHEDULE 4

Section 5(2)

THE TRADE REMEDIES AUTHORITY

<i>Status</i>		5
1	(1) The TRA is not to be regarded – (a) as the servant or agent of the Crown, or (b) as enjoying any status, immunity or privilege of the Crown.	
	(2) The TRA’s property is not to be regarded – (a) as the property of the Crown, or (b) as property held on behalf of the Crown.	10
<i>Membership</i>		
2	(1) The TRA is to consist of – (a) a Chair appointed by the Secretary of State, (b) other non-executive members appointed by the Secretary of State, (c) a chief executive appointed by the Chair with the approval of the Secretary of State or, if the first Chair has not been appointed, by the Secretary of State, and (d) other executive members appointed by the Chair.	15
	(2) The total number of members must not exceed nine.	20
	(3) The Secretary of State must consult the Chair before appointing the other non-executive members.	
	(4) The Secretary of State and the Chair must ensure, so far as practicable, that the number of non-executive members is at all times greater than the number of executive members.	25
<i>Terms of appointment and tenure of members</i>		
3	A person holds and vacates office as a member of the TRA in accordance with the terms and conditions of the person’s appointment.	
4	The terms and conditions of a person’s appointment as a non-executive member of the TRA are to be determined by the Secretary of State; but that is subject to the following provisions of this Schedule.	30
5	The terms and conditions of a person’s appointment as an executive member of the TRA are to be determined by the Chair with the approval of the Secretary of State; but that is subject to the following provisions of this Schedule.	35
6	The terms and conditions of a person’s appointment may cover, among other things – (a) the period for which the person is to hold office; (b) the person’s eligibility for re-appointment;	

- (c) circumstances in which a person’s membership may be suspended.
- 7 A person may resign from office as a non-executive member of the TRA by notifying the Secretary of State.
- 8 A person may resign from office as an executive member of the TRA by notifying the Chair. 5
- 9 The Secretary of State may remove a person from office as a non-executive member of the TRA if, in the opinion of the Secretary of State, the person is unable or unfit to carry out the functions of the office.
- 10 The Chair may remove a person from office as an executive member of the TRA if, in the opinion of the Chair, the person is unable or unfit to carry out the functions of the office. 10

*Remuneration of members*

- 11 The TRA must pay to non-executive members of the TRA such remuneration as the Secretary of State may determine.
- 12 The TRA must pay to executive members of the TRA such remuneration as the Chair may determine with the approval of the Secretary of State. 15
- 13 The TRA must pay, or make provision for paying, to or in respect of any person who is or has been a non-executive member of the TRA, such sums as the Secretary of State may determine in respect of allowances, expenses and gratuities. 20
- 14 The TRA must pay, or make provision for paying, to or in respect of any person who is or has been an executive member of the TRA, such sums as the Chair may determine with the approval of the Secretary of State in respect of pension, allowances, expenses and gratuities.
- 15 If a person ceases to be a non-executive member of the TRA and the Secretary of State determines that the person should be compensated because of special circumstances, the TRA must pay compensation of such amount as the Secretary of State may determine. 25
- 16 If a person ceases to be an executive member of the TRA and the Chair determines with the approval of the Secretary of State that the person should be compensated because of special circumstances, the TRA must pay compensation of such amount as the Chair may, with the approval of the Secretary of State, determine. 30

*A chief executive appointed by the Secretary of State*

- 17 Paragraphs 18 to 23 apply in respect of a person who is appointed as chief executive by the Secretary of State under paragraph 2(1)(c). 35
- 18 The terms and conditions of a person’s appointment as chief executive are to be determined by the Secretary of State; but that is subject to the other provisions of this Schedule.
- 19 If the first Chair has not been appointed, a person appointed as chief executive may resign from office by notifying the Secretary of State. 40
- 20 The Secretary of State may remove a person from office as the chief executive if –

- 
- (a) the first Chair has not been appointed, and  
(b) in the opinion of the Secretary of State, the person is unable or unfit to carry out the functions of the office.
- 21 The TRA must pay to a person appointed as chief executive – 5  
(a) such remuneration as the Secretary of State may determine, or  
(b) following the appointment of the first Chair, such remuneration as the Chair may determine with the approval of the Secretary of State.
- 22 The TRA must pay, or make provision for paying, to or in respect of a person who is or has been the chief executive – 10  
(a) such sums in respect of pension, allowances, expenses and gratuities as the Secretary of State may determine, or  
(b) following appointment of the first Chair, such sums in respect of pension, allowances, expenses and gratuities as the Chair may determine with the approval of the Secretary of State.
- 23 If a person ceases to be the chief executive of the TRA at a time when the first Chair has not been appointed and the Secretary of State determines that the person should be compensated because of special circumstances, the TRA must pay compensation of such amount as the Secretary of State may determine. 15
- Staffing of the TRA* 20
- 24 (1) The TRA may –  
(a) appoint employees, and  
(b) make such other arrangements for the staffing of the TRA as it considers appropriate.
- (2) The terms and conditions of appointment as an employee are to be determined by the TRA. 25
- (3) The TRA may pay its employees such remuneration as the TRA may determine.
- (4) The TRA may pay, or make provision for paying, to or in respect of any person who is or has been an employee of the TRA, such sums as the TRA may determine in respect of pension, allowances, expenses or gratuities. 30
- (5) In the Superannuation Act 1972 (“the 1972 Act”), in Schedule 1 (kinds of employment to which a scheme under section 1 of the 1972 Act can apply), in the list of “Other Bodies”, at the appropriate place insert – 35  
“Trade Remedies Authority.”
- (6) The TRA must pay to the Minister for the Civil Service, at such times as the Minister may direct, such sums as the Minister may determine in respect of any increase attributable to sub-paragraph (5) in the sums payable out of money provided by Parliament under the 1972 Act.
- (7) Sub-paragraphs (1) to (4) apply in respect of employees that are not executive members of the TRA. 40
- Committees*
- 25 (1) The TRA may establish committees, and any committee so established may establish sub-committees.

- (2) A committee or sub-committee so established is referred to in this Schedule as a “TRA committee”.
- (3) A TRA committee may consist of or include persons who are neither members, nor employees, of the TRA.
- (4) The TRA must pay such allowances as it may determine to any person who – 5
- (a) is a member of a TRA committee, but
  - (b) is neither a member, nor an employee, of the TRA.
- (5) The TRA must keep under review – 10
- (a) the structure of the TRA committees, and
  - (b) the scope of each committee’s activities.

*Procedure*

- 26 The TRA may determine its own procedure and the procedure of any TRA committee (including quorum).
- 27 The validity of any proceedings of the TRA is not affected by a vacancy or defective appointment. 15

*Delegation of functions*

- 28 (1) The TRA may delegate any of its functions to – 20
- (a) a member of the TRA,
  - (b) an employee, or other member of staff, authorised for that purpose, or
  - (c) a TRA committee.
- (2) But a function may not be delegated to a committee that includes a person who is neither a member, nor an employee, of the TRA insofar as the function could be exercised in relation to a specific trade remedies investigation. 25
- (3) Otherwise, a function is delegated under this paragraph to the extent, and on the terms, that the TRA determines.
- (4) In this Schedule “trade remedies investigation” means an investigation by the TRA under provision made by or under Part 1 of the Taxation (Cross-border Trade) Act 2018. 30

*Funding*

- 29 The Secretary of State must pay to the TRA such sums as the Secretary of State considers appropriate for the purpose of enabling the TRA to perform its functions. 35

*Accounts and audit*

- 30 (1) The TRA must –
- (a) keep proper accounts and proper records in relation to them, and
  - (b) prepare a statement of accounts in respect of each financial year.



- (2) The statement of accounts must comply with any directions given by the Secretary of State with the approval of the Treasury as to –
  - (a) its content and form;
  - (b) the methods and principles to be applied in preparing it;
  - (c) the additional information (if any) which is to be provided for the information of Parliament.5
- (3) The TRA must send a copy of the statement of accounts to the Secretary of State and the Comptroller and Auditor General as soon as reasonably practicable after the end of the financial year to which it relates.
- (4) The Comptroller and Auditor General must – 10
  - (a) examine, certify and report on each statement of accounts, and
  - (b) send a copy of each report and certified statement to the Secretary of State.
- (5) The Secretary of State must lay before Parliament a copy of each such report and certified statement. 15
- (6) The chief executive of the TRA is to be its accounting officer.
- (7) In this Schedule “financial year” means –
  - (a) the period beginning with the date on which the TRA is established and ending with the second 31 March following that date, and
  - (b) each successive period of 12 months.20

*Annual report*

- 31 (1) The TRA must prepare a report on the performance of its functions during each financial year.
  - (2) The report must include the statement of accounts in respect of that year.
  - (3) The report must be prepared as soon as reasonably practicable after the end of the financial year to which it relates. 25
  - (4) The TRA must send the report to the Secretary of State.
  - (5) The Secretary of State must lay the report before Parliament.

*Seal and evidence*

- 32 (1) The application of the TRA’s seal must be authenticated by the signature of – 30
  - (a) a member of the TRA, or
  - (b) an employee of the TRA authorised for that purpose.
- (2) A document purporting to be duly executed under the TRA’s seal or signed on its behalf –
  - (a) is to be received in evidence, and
  - (b) is to be taken to be executed or signed in that way, unless the contrary is shown. 35
- (3) This paragraph does not apply to Scotland.

*Supplementary powers*

- 33 (1) The TRA may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with, the performance of its functions.
- (2) Under sub-paragraph (1), the TRA may among other things –
- (a) acquire and dispose of land and other property, 5
  - (b) enter into contracts, and
  - (c) accept gifts of money, land or other property.

*Guidance*

- 34 (1) In performing its functions, the TRA must have regard to guidance published by the Secretary of State. 10
- (2) Sub-paragraph (1) does not apply in respect of an ongoing trade remedies investigation if the guidance is published during that investigation.
- (3) Before publishing guidance, the Secretary of State must –
- (a) consult the TRA, and
  - (b) have regard to the expertise of the TRA and to the need to protect – 15
    - (i) its operational independence, and
    - (ii) its ability to make impartial assessments when performing its functions.
- (4) In particular, the Secretary of State may not publish guidance in relation to a specific trade remedies investigation. 20

*Public records*

- 35 In Part 2 of the Table in paragraph 3 of Schedule 1 to the Public Records Act 1958 (definition of public records), at the appropriate place insert –  
“Trade Remedies Authority.”

*Investigation by the Parliamentary Commissioner* 25

- 36 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments subject to investigation), at the appropriate place insert –  
“Trade Remedies Authority.”

*House of Commons disqualification*

- 37 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which members are disqualified), at the appropriate place insert – 30  
“The Trade Remedies Authority.”

*Northern Ireland Assembly disqualification*

- 38 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which members are disqualified), at the appropriate place insert – 35  
“The Trade Remedies Authority.”

*Freedom of information*

- 39 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public authorities to which this Act applies), at the appropriate place insert –  
“The Trade Remedies Authority.”

*Public sector equality duty*

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- 40 In Part 1 of Schedule 19 to the Equality Act 2010 (authorities subject to the public sector equality duty), in the group of entries under the heading “Industry, Business, Finance etc”, at the appropriate place insert –  
“The Trade Remedies Authority.”

SCHEDULE 5

Section 5(3)

10

TRANSFER SCHEMES

- 1 (1) The Secretary of State may make one or more staff transfer schemes in connection with the establishment of the TRA by this Act.
- (2) A “staff transfer scheme” is a scheme providing for the transfer from the Secretary of State to the TRA of any rights or liabilities under or in connection with a contract of employment. 15
- 2 (1) A staff transfer scheme may, among other things, make provision –
- (a) for the transfer of rights and liabilities that could not otherwise be transferred;
  - (b) for the transfer of rights and liabilities arising after the making of the scheme; 20
  - (c) which is the same as or similar to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246);
  - (d) creating rights, or imposing liabilities, in relation to rights or liabilities transferred; 25
  - (e) about the continuing effect of things done by the Secretary of State in respect of any rights or liabilities transferred;
  - (f) about the continuation of things (including legal proceedings) in the process of being done by, or on behalf of, or in relation to, the Secretary of State in respect of any rights or liabilities transferred; 30
  - (g) for references to the Secretary of State in an instrument or other document in respect of any rights or liabilities transferred to be treated as references to the TRA;
  - (h) that is supplementary, incidental, transitional or consequential.
- (2) A staff transfer scheme may provide – 35
- (a) for the scheme to be modified by agreement after it comes into effect, and
  - (b) for any such modifications to have effect from the date when the original scheme comes into effect.
- 3 For the purposes of this Schedule – 40

- (a) an individual who holds employment in the civil service of the State is to be treated as employed by virtue of a contract of employment, and
- (b) the terms of the individual's employment in the civil service of the State are to be regarded as constituting the terms of the contract of employment.



# Trade Bill

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A

# B I L L

To make provision about the implementation of international trade agreements; to make provision establishing the Trade Remedies Authority and conferring functions on it; and to make provision about the collection and disclosure of information relating to trade.

*Brought from the Commons on 21st July 2020*

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