

Trade Bill

COMMONS REASONS AND AMENDMENTS TO CERTAIN LORDS AMENDMENTS

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

After Clause 2

LORDS AMENDMENT 1

1 Insert the following new Clause –

“Parliamentary approval of trade agreements

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

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

COMMONS REASON

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

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

LORDS AMENDMENT 2

- 2** Insert the following new Clause –

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

- (1) Before publishing the objectives and any initial impact assessments of a proposed trade agreement to be implemented under the Constitutional Reform and Governance Act 2010, the Government must conduct a risk assessment which considers whether the agreement would comply with the United Kingdom’s international treaties and other obligations, with particular reference to human rights, and examines serious violations committed, or alleged to have been committed, by the state or states who will be signatory to the proposed trade agreement.
- (2) The risk assessment under subsection (1) must be presented to the relevant Committees in both Houses of Parliament.
- (3) Before a trade agreement can be laid before Parliament under section 20(1) of the Constitutional Reform and Governance Act 2010 (“the CRAG procedure”), Ministers of the Crown must determine whether the trade agreement, if ratified, would be compliant with the United Kingdom’s international obligations, with particular reference to human rights, and whether serious violations have been committed by the state or states of the signed trade agreement. Such a determination must be published and made available to the relevant Committees at the same time as they are requested to consider a signed trade agreement.
- (4) The Government must present an annual report to the relevant Committees in both Houses of Parliament on the continuing compliance of trade agreements with the United Kingdom’s international obligations, with particular reference to human rights, and which examines serious violations committed or alleged to have been committed by the state or states who are signatory to the trade agreement since it was signed. If breaches of the United Kingdom’s international obligations or serious violations have taken place, Ministers of the Crown must make a determination on the continuation of a trade agreement.
- (5) In this section, “serious violations” include an activity by a state which would violate an individual’s –
 - (a) right to life, including but not limited to genocide;
 - (b) right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment;
 - (c) right to be free from slavery and not to be held in servitude or required to perform forced or compulsory labour;or other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.

- (6) In this section, “trade agreement” refers to any agreement between the United Kingdom and one or more partners that includes components that facilitate the trade of goods, services or intellectual property, including but not limited to—
- (a) free trade agreements as defined by section 4;
 - (b) Interim Association Agreements and Association Agreements;
 - (c) Economic Partnership Agreements;
 - (d) Interim Partnership Agreements;
 - (e) Stabilisation and Association Agreements;
 - (f) Global Agreements;
 - (g) Economic Area Agreements;
 - (h) Cooperation Agreements;
 - (i) Comprehensive Economic and Trade Agreements;
 - (j) Association Agreements with strong trade component;
 - (k) Transatlantic Trade and Investment Partnerships; and
 - (l) Investment Protection Agreements.”

COMMONS REASON

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

- 2A** *Because it is unnecessary in light of existing international obligations.*

LORDS AMENDMENT 3

- 3** Insert the following new Clause—

“Agreements with states accused of committing genocide

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

COMMONS REASON

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

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

LORDS AMENDMENT 4

4 Insert the following new Clause—

“International trade agreements: health, care or publicly funded data processing services and IT systems in connection with the provision of health and care

- (1) Regulations under section 2(1) may make provision for the purpose of implementing an international trade agreement only if the conditions in subsections (2), (3) and (4) are met in relation to the application of that agreement in any part of the United Kingdom.
- (2) The condition in this subsection is that no provision of that international trade agreement in any way undermines or restricts the ability of an appropriate authority—
 - (a) to provide a comprehensive publicly funded health service free at the point of delivery,
 - (b) to protect the employment rights or terms and conditions of employment for public sector employees and those working in publicly funded health or care sectors,
 - (c) to regulate and maintain the quality and safety of health or care services,
 - (d) to regulate and maintain the quality and safety of medicines and medical devices,
 - (e) to regulate and control the pricing and reimbursement systems for the purchase of medicines or medical devices,
 - (f) to provide health data processing services and IT systems for commissioners, analysts and clinicians in relation to patient data, public health data and publicly provided social care data relating to UK citizens, or
 - (g) to regulate and maintain the level of protection afforded in relation to patient data, public health data and publicly provided social care data relating to UK citizens.
- (3) The condition in this subsection is that the agreement—
 - (a) explicitly excludes application of any provision within that agreement to publicly funded health or care services,
 - (b) explicitly excludes provision for any Investor-State Dispute Settlement (ISDS) clause that provides, or is related to, the delivery of public services, health care, care or public health,
 - (c) explicitly excludes provision for any ISDS clause regarding data access and processing in relation to patient and public health data for the purposes of research, planning and innovation,
 - (d) explicitly excludes the use of any negative listing, standstill or ratchet clause that provides, or is related to, the delivery of public services, health care, care or public health,
 - (e) contains explicit recognition that an appropriate authority (within the meaning of section 4) has the right to enact policies, legislation and regulation which protect and promote health, public health, social care and public safety in health or care services, and
 - (f) prohibits the sale of patient data, public health data and publicly provided social care data, except where all proceeds are explicitly ring-fenced for reinvestment in the UK’s health and care system.

- (4) The condition in this subsection is that the agreement explicitly allows, in the case of any traded algorithm or data-driven technology which could be deployed as a medical device, for the methodology for processing sensitive data to be independently audited or scrutinised for potential harm by an appropriate regulatory body in the United Kingdom where it relates to trade in medical algorithms, technology or devices.
- (5) For the purposes of this section –
- “negative listing” means a listing only of exceptions, exclusions or limits to commitments made by parties to the agreement;
 - “ratchet” in relation to any provision in an agreement means any provision whereby a party, if (after the agreement has been ratified) it has unilaterally removed a barrier in an area where it had made a commitment before the agreement was ratified, may not reintroduce that barrier; and
 - “standstill” in relation to any provision in an agreement means any provision by which parties list barriers which are in force at the time that they sign the agreement and undertake not to introduce any new barriers.”

COMMONS REASON

The Commons disagree to Lords Amendment 4 for the following Reason –

- 4A** *Because Parliamentary scrutiny of trade agreements is ensured by existing measures, and regulations under clause 2 are subject to the affirmative procedure in any event.*

LORDS AMENDMENT 5

- 5** Insert the following new Clause –

“Ratification of international trade agreements and treaties

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

COMMONS REASON

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

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

LORDS AMENDMENT 6

- 6** Insert the following new Clause –

“Standards affected by international trade agreements

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

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

COMMONS REASON

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

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

LORDS AMENDMENT 7

- 7** Insert the following new Clause –

“Protection of children online

- (1) The United Kingdom may only become a signatory to an international trade agreement if the conditions in subsection (2) are satisfied.
- (2) International trade agreements must be consistent with –
 - (a) other international treaties to which the United Kingdom is a party, and the domestic law of England and Wales (including any changes to the law after the trade agreement is signed), regarding the protection of children and other vulnerable user groups using the internet;
 - (b) the provisions on data protection for children, as set out in the age appropriate design code under section 123 of the Data Protection Act 2018 (age-appropriate design code) and other provisions of that Act which impact children; and
 - (c) online protections provided for children in the United Kingdom that the Secretary of State considers necessary.
- (3) In this section a “child” means any person under the age of 18.”

COMMONS REASON

The Commons disagree to Lords Amendment 7 for the following Reason –

- 7A** *Because it is not an effective means of ensuring the protection of children online.*

LORDS AMENDMENT 8

8 Insert the following new Clause—

“Northern Ireland: non-discrimination in goods and services

- (1) Any trade agreement between the United Kingdom and any other party that is subject to sections 20 to 25 of the Constitutional Reform and Governance Act 2010 is not to be ratified if anything in the agreement prevents the United Kingdom from ensuring unfettered market access for—
 - (a) goods moving between Northern Ireland and other parts of the United Kingdom’s internal market,
 - (b) services provided by a service provider in Northern Ireland to customers in other parts of the United Kingdom, and
 - (c) services provided by a service provider in another part of the United Kingdom to customers in Northern Ireland.
- (2) Regulations under section 2(1) may not impose any tariffs or any requirement of customs procedures for goods originating in Northern Ireland which are entering Great Britain, or discriminate, either directly or in effect, in relation to such goods entering Great Britain as compared to other goods being traded within the United Kingdom.”

COMMONS REASON

The Commons disagree to Lords Amendment 8 for the following Reason—

8A *Because unfettered access to the UK market is addressed by the United Kingdom Internal Market Act 2020.*

After Clause 6

LORDS AMENDMENT 9

9 Insert the following new Clause—

“PART 2A
THE TRADE AND AGRICULTURE COMMISSION

Trade and Agriculture Commission

- (1) The Secretary of State may appoint members to a committee to be known as the Trade and Agriculture Commission (the “TAC”).
- (2) The TAC’s purpose is to provide advice under section 42 of the Agriculture Act 2020 (reports relating to free trade agreements).
- (3) When appointing members to the TAC, the Secretary of State must have regard to the desirability of appointing members who, between them, have expertise in—
 - (a) United Kingdom animal and plant health standards,
 - (b) United Kingdom animal welfare standards,
 - (c) United Kingdom environmental standards as they relate to agricultural products,
 - (d) international trade law and policy, and
 - (e) public health and health inequalities.

14

15

16

- (4) In subsection (3)(c), “agricultural products” has the meaning given in section 42 of the Agriculture Act 2020.”

COMMONS AGREEMENT AND AMENDMENTS TO THE LORDS AMENDMENT

The Commons agree with the Lords in their Amendment 9 and propose Amendments 9A and 9B as amendments thereto –

- 9A** Line 14, after “products,” insert “and”
9B Line 15, leave out from “policy,” to end of line 16

LORDS AMENDMENT 10

- 10** Insert the following new Clause –

“Trade and Agriculture Commission: advisory functions

- (1) Section 42 of the Agriculture Act 2020 is amended as follows.
- (2) After subsection (4), insert –
- 6 “(4A) In preparing the report, the Secretary of State must –
- (a) request advice from the Trade and Agriculture Commission on the matters referred to in subsection (2), and
- (b) publish the request, together with any associated terms of reference or guidance.
- (4B) Before laying the report, the Secretary of State must lay before Parliament any advice received in response to a request under subsection (4A).”
- (3) In subsection (5) –
- (a) after “report” insert “or advice received in response to a request under subsection (4A)”;
- (b) omit “of it”;
- (c) in paragraph (d) after “report” insert “or advice”.
- (4) After subsection (6), insert –
- “(6A) On or before the third anniversary of IP completion day and at least once every three years thereafter, the Secretary of State must review the operation of subsections (4A) and (4B) and consider whether to make regulations under subsection (6B).
- (6B) The Secretary of State may by regulations repeal subsections (4A), (4B) and (6A), and amend subsection (5) to remove reference to advice requested in accordance with subsection (4A).
- (6C) Regulations under subsection (6B) are subject to the affirmative resolution procedure and may not come into force before the third anniversary of IP completion day.””

COMMONS AGREEMENT AND AMENDMENT TO THE LORDS AMENDMENT

The Commons agree with the Lords in their Amendment 10 and propose Amendment 10A as an amendment thereto –

- 10A** Line 6, after “subsection (2)” insert “except insofar as they relate to human life or health”

Trade Bill

COMMONS REASONS AND AMENDMENTS TO CERTAIN LORDS AMENDMENTS

20th January 2021

PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS