



## **Trade Bill Briefing for Lords Second Reading - 11<sup>th</sup> September 2018**

Liberty and Amnesty International recognise the importance of the Trade Bill in allowing the UK to shape its own trade and investment agenda once we leave the EU. However, the Bill as currently framed, makes it possible to alter human rights and equality protections using secondary legislation, in order to comply with renegotiated trade deals.

Such powers should not be necessary if existing EU trade agreements, which are the subject of the Trade Bill, are to be rolled over primarily to ensure continuity, as claimed by the government.<sup>1</sup>

Although the Bill's purpose is to roll over EU trade deals as closely as possible, they will actually be legally distinct agreements. If these agreements are to closely resemble current trade agreements there should be no need to reserve broad powers to amend legislation that was enacted to protect human rights. The government has not provided any rationale for these powers or examples of where they would be necessary. The Foreign & Commonwealth Office has at least been clear that trade will not come at the expense of human rights.<sup>2</sup> Presumably the Department for International Trade agrees and so limiting these powers would be in keeping with the government's stated approach.

As currently drafted, the Bill:

- **Grants extraordinarily wide powers to ministers** to amend retained primary EU law – including the Equality Act 2010, the Modern Slavery Act 2015 and the Data Protection Act 2018 – leaving domestic rights protections open to alteration.
- **Lacks real parliamentary scrutiny and accountability** throughout negotiations. This is essential because of the complexity and far-reaching implications of trade agreements for business and public policy. Unlike the US and the EU, the UK looks set to conduct major elements of trade negotiations without any oversight role or negotiating mandate from Parliament.

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<sup>1</sup> Secretary of State for Department of International Trade, Dr Liam Fox MP, 3<sup>rd</sup> Reading Trade Bill, 17 July 2018, Hansard, Vol. 645, Col.395

<sup>2</sup> Minister of State, Alistair Burt MP, 12 March 2018, Hansard, Overseas Trade: Written question - 131573

- **Underplays the consequences of trade deals for public policy**, including areas like health, transport, food safety, employment, energy, the environment and justice system. Future governments can be constrained from regulating in the public interest and from taking measures to advance our rights. Such scenarios become much more likely if these agreements are reached without adequate scrutiny.
- **Undermines an evidence-based approach** by not requiring the impact assessments, consultation and transparency that are essential to ensure trade agreements are robust, fair and compatible with the UK's domestic commitments in other policy and regulatory spheres, and with the UK's international obligations in other areas of law.

### **Grants extraordinarily wide powers to ministers**

To allow 'maximum flexibility', Clause 2 provides ministers with the authority to make regulations they consider appropriate for the purpose of implementing a trade agreement, including modifying primary legislation that is retained EU law.<sup>3</sup> Retained EU law includes, for example, the Equality Act 2010 and the Modern Slavery Act 2015.<sup>4</sup>

There is no rationale for such broad powers, in so far as the government has not provided any examples of retained primary legislation relating to rights and equalities that might require amendment to implement trade deals. The Business Disability Forum asked the Department for International Trade for such examples earlier this year, but none were provided. Instead, a "clear commitment" was given that existing standards would be maintained during the incorporation into UK law of EU trade agreements.<sup>5</sup> If the government cannot justify the need for such powers, then they should not be legislated for.

These powers have even confused the Department for International Trade, with the Secretary of State claiming they could only be used to amend secondary legislation.<sup>6</sup> Yet Clause 2(6) of the Bill states: "Regulations made under subsection (1) may, among other things, make provision... [to] modify primary legislation that is retained EU law".

The Bill also contains very few safeguards that could realistically provide scrutiny or oversight of these powers. Amendments introduced at Report Stage by the government ensure that the powers must be accompanied by a form of reporting on the changes, normally prior to them coming into force. The powers will also now be subject to affirmative resolution procedures.

<sup>3</sup> HM Government, '[Trade Bill: Delegated Powers – Memorandum by the Department for International Trade](#)' (November 2017), accessed on 17 August 2018.

<sup>4</sup> For example, the Equality Act gives effect to four important EU law mandates; the Race Equality Directive (2000), Equal Treatment Directive (2000), Equal Treatment in Goods and Services Directive (2004) and the Equal Treatment (Recast) Directive (2006).

<sup>5</sup> Letter from Greg Hands to Diane Lightfoot (16 April 2018). Available upon request.

<sup>6</sup> Liam Fox, '[No 'Henry VIII powers' in trade bill](#)' The Guardian (November 2017), accessed on 17 August 2018.

Whilst this is an improvement, it still means Parliament is side-lined – unable to input into the UK’s negotiating position, oversee the progress of negotiations, or formally debate and vote on the outcome. Instead, ministers will be able to make changes to domestic legislation in order to enact deals negotiated behind closed doors, which will in practice be nodded through by MPs – no Statutory Instrument has been annulled in the Commons since 1979.<sup>7</sup> This is a dangerous way to treat existing laws that Parliament has been involved in scrutinising and approving.

As the Bill is currently drafted, Ministers could modify primary legislation (if retained EU law) to implement an international trade agreement, without proper scrutiny, even if this undermines human rights protections. For example, the government could reach an agreement with a foreign state on the provision of services, such as transport, which would require changes to the Equality Act in order to implement. This could include removing the duty on service providers to make reasonable adjustments for people with disabilities, potentially making access to transport more difficult for 1 in 5 of the UK’s population.

Key questions:

- Why does the government need the power to amend laws, like the Equality Act, when rolling-over existing trade agreements?
- Can the Minister provide an example of primary retained EU law that will need to be amended or modified?
- Will the government incorporate into the Bill its “clear commitment” on maintaining standards, so that powers contained in the legislation will not be used to reduce equality and rights protections?

### **Avoids Parliamentary scrutiny and accountability**

In recent times, most of the scrutiny and ratification powers over trade deals have been held by EU institutions.<sup>8</sup> After leaving the EU these functions will be transferred directly to the UK government itself. From having clear, public negotiating principles, the government will instead set the parameters and conduct trade negotiations and deals behind closed doors. This lack of scrutiny is concerning given the ability of the government to amend primary legislation and because of the far-reaching impacts of trade deals on public policy.

We are calling on Peers to consider amending the Bill to require increased transparency and consultation on the UK’s negotiating principles and approach. This would bring the UK up to date with many other modern and successful trading nations, including the US and Canada.

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<sup>7</sup> House of Commons Library, [‘Statutory Instruments’](#) (December 2016), accessed on 17 August 2018.

<sup>8</sup> EU Director General for External Policies, [‘The European Parliament’s role in relation to human rights in trade and investment agreements’](#) (2014), accessed on 17 August 2018.

The EU's framework for assessing the impacts of trade agreements actually has specific requirements to take into account human rights, environmental and economic perspectives across all agreements. Negotiating outside the EU is likely to mean that the UK will come under increased pressure to accept conditions required by other states, including those that might seek to benefit from lower standards in areas ranging from food and product safety to workers' rights. It is therefore critical to specify in advance human rights elements and values that will be central to UK trade policy and that are non-negotiable. Greater transparency can also improve the UK's negotiating position. Public consultation and parliamentary scrutiny will make it much more difficult for other parties to insist on the inclusion of clauses that they know would be unpopular or unpalatable, especially those that are unbalanced or that subvert the values, standards and human rights protections that we are used to and benefit from.

The government has said it does not intend to see a reduction in standards. If this is the case, then making such a commitment in this Bill would demonstrate that the UK is both open for business and that it will not compromise on rights and equalities protections.

Key questions:

- Why has the UK not replicated the model of major trading competitors, including the US, and included a role for Parliament in determining negotiating mandates for trade discussions, monitoring progress, and voting on the final agreement?
- Can the Minister explain whether the EU's model for assessing the impacts of trade agreements will be replicated or whether the UK has an alternative model?

### **Underplays the consequences of trade deals for public policy**

Modern trade deals cover many areas of public policy that would normally be reserved for Parliament – from food standards to working conditions to the provision of healthcare. They can undermine the space that is necessary for governments to pursue programmes they consider to be in the public interest. They can also make it more difficult for governments to fulfil their international human rights obligations, such as the Right to Health.<sup>9</sup>

These agreements can have an impact on most aspects of our lives, from the way our public services are managed to the wages and working conditions we receive, to our access to medicine and healthcare. There is a real possibility that other states and corporate lobbyists will take advantage of the UK's weak institutional trade policy framework to pursue their own objectives, such as opening education, transport or health to unscrupulous operators in

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<sup>9</sup> [Office of the UN High Commissioner for Human Rights](#) (2015), accessed on 17 August 2018.

the private sector, and in doing so, hamper legitimate regulation in the public interest or the safeguarding of rights.<sup>10</sup>

There is also nothing in the Trade Bill to ensure the compatibility of trade agreements with the UK's commitments in other policy spheres and the UK's obligations under international law. This is essential not only to avoid policy incoherence, but also to ensure that the UK honours all its international agreements.

For example, the EU's and India Cooperation Agreement<sup>11</sup> states in Article 1 that 'Respect for human rights and democratic principles is the basis of cooperation between the Contracting Parties.....and constitutes an essential element of the agreement'. If, for example, India was able to water down or remove this clause from its trade agreement with the UK, or to use a prospective trade agreement as leverage to ensure that the UK does not enact specific legislation on Caste Discrimination (as mooted in a recent consultation document), it could lead to policy incoherence.<sup>12</sup>

Similarly, the fulfilment of the UK's international obligations may be subject to pressure in renegotiations. For example, the EU's Association Agreement with Israel does not grant tariff preferences to goods sourced from Israeli settlements in Occupied Palestinian Territories on account of their internationally recognised illegality. It is unclear what would happen if Israel were to insist that its trade agreement with the UK should offer the same preferential terms to goods originating from its settlements as to goods from Israel.

Liberty and Amnesty International believe that governments must retain the means to respect, protect and fulfil human rights in keeping with their international obligations. In particular, they have to retain the ability to regulate service providers without falling foul of the provisions of trade agreements and risking hefty penalties in the process. While governments may contract out the provision of public services to the private sector, they must not contract out of their human rights obligations.

Key questions:

- How will the Government ensure that trade deals will not constrict future governments from raising standards and rights protections in the public interest?

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<sup>10</sup> Corporate Europe Observatory (2015), ['Public Services Under Attack through TTIP and CETA Atlantic Trade Deals'](#), accessed on 17 August 2018.

<sup>11</sup> [Cooperation Agreement between the European Community and the Republic of India on partnership and development, 1994](#). Access 21 August 2018.

<sup>12</sup> [Caste in Great Britain and Equality Law Consultation](#), Government Equalities Office, July 2018. Accessed 21 August 2018

- In the absence of any requirement for comprehensive impact assessments, how will the government ensure new trade deals will be compatible with the UK's policy commitments and international law obligations?

### **Undermines an evidence-based approach**

Modern trade agreements include a range of obligations relating to investor protection, intellectual property, government procurement and regulation of service industries. These commitments can have diverse and varied social impacts. A 2017 report by the IMF, World Bank and WTO concluded that “adjustment to trade can bring a human and economic downside that is frequently concentrated, sometimes harsh, and has too often become prolonged.”<sup>13</sup>

It is therefore vital that the broader social and economic impacts of trade agreements are considered, including on human rights, labour standards and equalities. Action must be taken to avoid or to address impacts identified, particularly on disadvantaged groups.

The EU conducts ‘sustainability impact assessments’ (SIAs) of all new trade agreements.<sup>14</sup> SIAs assess the economic, environmental and social impact of trade agreements, including on human rights and labour standards. Once in force, EU agreements include a commitment to assess the effects of the agreement on sustainable development. While these SIAs could have gone further in terms of detailed, sector-specific impact assessments on human rights or labour standards, they nevertheless provide a clear commitment to human rights and labour standards that the UK should replicate and improve upon.

There is no provision in the Bill for undertaking social and environmental impact assessments of prospective trade agreements, or for conducting related studies and surveys. Decision-makers will be operating without the evidence-base to take informed decisions on complex instruments that will bind the UK for many years. Methodologies for this are well developed and the government should commit to undertake these in legislation and to make these public.<sup>15</sup>

The Trade Remedies Authority (TRA), established by the Bill, could be required to undertake such impact assessments. More appropriately, they would be undertaken by a credible body independent of the government and become a precondition for Parliamentary consent. Such assessments would help the Secretary of State avoid future trade disputes by identifying potential conflict with rights or equalities before they arise.

Key questions:

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<sup>13</sup> International Monetary Fund (March 2017), The World Bank, World Trade Organization, [‘Making Trade an Engine of Growth for All’](#), discussion paper for G20 meeting, accessed on 17 August 2018.

<sup>14</sup> European Commission, [‘Sustainability Impact Assessments’](#), accessed on 17 August 2018.

<sup>15</sup> World Trade Institute, [‘Improving the methodology for measuring social and human rights impacts of trade agreements’](#), Elisabeth Bürgi Bonanomi, accessed on 17 August 2018.

- How will trade negotiators and decision-makers be able to draw on an adequate evidence-base, including the impacts on those that might be disadvantaged as a result, without comprehensive impact assessments to make informed decisions?
- How will the government determine at an early stage who will gain and who will lose out from a prospective trade agreement without engaging in full public consultation?
- To what extent will the lack of public consultation force the government into mitigating the adverse impacts of trade agreements and disputes arising from them, rather than anticipating these in advance?

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