



## Trade Bill Briefing for Commons Report Stage

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 currently risks a reduction of human rights and equality protections, as well as constraining the UK government from fulfilling its obligations under international human rights law.

The purpose of the Bill – to roll over existing trade agreements that the UK is party to via EU membership – should be tightly circumscribed. In practice, these deals will actually be legally distinct and are, to all intents and purposes, new, unscrutinised versions of agreements.

The Bill also presents an opportunity for parliamentarians to positively shape the UK's post-Brexit approach to trade, which would require them to press for greater scrutiny and involvement in the process of negotiating and ratifying international trade agreements.

As currently drafted, the Bill:

- **Grants extraordinarily wide powers to ministers** to amend 'retained' EU law – including the Equality Act 2010, the Modern Slavery Act 2005 and the Data Protection Act 2018 – placing domestic rights protections at risk.
- **Lacks real parliamentary scrutiny and accountability** at any point in negotiations. This is essential because of the complexity and far-reaching implications of trade agreements for business and public policy, including industry, transport, health, food safety, employment, energy, and the environment, that can all be affected.
- **Underplays the consequences of trade deals for public policy** that parliamentarians usually have oversight of, including the above-mentioned areas, and that may constrain future governments from regulating in the public interest and to advance our rights.
- **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.

## **Extraordinarily wide powers to Ministers**

To allow ‘maximum flexibility’<sup>1</sup>, Clause 2 provides Ministers with the authority to make regulations they “consider [appropriate] for the purpose of implementing an international trade agreement,” including those that “make provision [for] modifying primary legislation that is retained EU law”. Retained EU law includes primary legislation, such as the Equality Act 2010, the Energy Act 2013 and the Modern Slavery Act 2015.<sup>2</sup> The Bill contains no safeguards preventing Ministers from using powers to erode rights voted for by Parliament.

The government has not provided any examples of retained primary legislation that will require amendment to implement a future trade agreement. Indeed, the Business Disability Forum asked the Department for International Trade for such examples earlier this year. In response the Minister of State for Trade Policy failed to answer this and instead gave only a “clear commitment” that existing standards would be maintained during the incorporation of EU trade agreements.<sup>3</sup> If the intention is not to use the Clause 2 power to reduce rights protections, the government should allay concerns with such a commitment in the Bill.

It is understandable that technical changes may need to be made to provisions in primary legislation that, for example, relate to tariffs. However, modern trade agreements address policy issues far beyond tariffs, which can affect many areas of public policy and law. It should not be possible to so easily make substantive changes to fundamental rights.

There is also confusion in the trade department with the International Trade Secretary claiming these powers could only be used to amend secondary legislation.<sup>4</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 [emphasis added]”.

As the Bill is currently drafted, therefore, ministers could modify retained primary legislation (if retained EU law), that they consider appropriate, to implement an international trade agreement affecting rights protections without proper scrutiny. For example, the government could reach an agreement with a foreign state on the provision of services, such as transport, and which would require changes to the Equality Act in order to implement. This could include removing the duty on service providers to make reasonable

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<sup>1</sup> HM Government, ‘[Trade Bill: Delegated Powers – Memorandum by the Department for International Trade](#)’ (November 2017), accessed 4 June 2018.

<sup>2</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>3</sup> Letter from Greg Hands to Diane Lightfoot (16 April 2018). Available upon request.

<sup>4</sup> Liam Fox, ‘[No ‘Henry VIII powers’ in trade bill](#)’ The Guardian (November 2017), accessed 4 June 2018.

adjustments for people with disabilities, making access to transport more difficult for 1 in 5 of the UK's population.

This issue cuts beyond the realm of human rights protections and touches on the rule of law and the role of Parliament. Along with the flawed Withdrawal Bill, the Trade Bill risks setting a dangerous precedent for how retained EU law will be treated after Brexit: as dispensable laws to be chopped, traded and changed by ministers. This is a dangerous way to treat laws that Parliament has been involved in scrutinising and approving, let alone those which protect our human rights such as freedom from discrimination.

Speaking points:

- Why does the government need the power to amend the likes of 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 enshrine in the Bill the "clear commitment" that powers contained in the Trade Bill would not be used to reduce equality rights protections given to the Business Disability Forum earlier this year?

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

Until now, most of the scrutiny and ratification powers over trade deals have been held by EU institutions.<sup>5</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 now set the parameters and conduct trade negotiations and deals behind closed doors.

We are calling for amendments in this Bill to give Parliament the powers to scrutinise and approve trade deals, as is common practice amongst many of our major trading partners.

The EU's framework for assessing the impacts of trade agreements from human rights, environmental and economic perspectives is currently applied across all agreements. We want to see these safeguards maintained. Outside the EU, the UK will be negotiating from a relatively weaker market position than before. This means that the UK could come under increased pressure, particularly in negotiations with larger economies, to accept conditions imposed by other states, who may seek to benefit from lower standards in areas ranging

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<sup>5</sup> EU Director General for External Policies, ['The European Parliament's role in relation to human rights in trade and investment agreements'](#) (2014), accessed 6 June 2018.

from food and product safety to workers' rights. There is therefore a critical need to specify in advance human rights elements and values that will be central to UK trade policy.

Greater transparency can also increase 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 unacceptable, especially those that are unbalanced or that subvert the values, standards and human rights protections that we are used to and benefit from. A trade governance model that revolves around secrecy and unfettered ministerial discretion is one that is unlikely to serve the public interest.

Speaking points:

- Why does the UK government take a different view to many of our trading competitors, including the US, which involve their elected representatives in determining negotiating mandates for trade discussions, monitoring the progress of negotiations 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?
- In the absence of public impact assessments, will trade negotiations still proceed?

### **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>6</sup>

There is 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.

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.

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<sup>6</sup> [Office of the UN High Commissioner for Human Rights](#) (2015), accessed on 6 June 2018.

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 the private sector, and in doing so, hampering legitimate regulation in the public interest or safeguarding rights.<sup>7</sup>

Speaking points:

- How will the government ensure that trade negotiators don't undermine the ability of future governments to determine how public services are delivered in the public interest?
- 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 World Trade Organisation 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>8</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 marginalised and disadvantaged groups and individuals.

The EU conducts 'sustainability impact assessments' (SIAs) of all new trade agreements.<sup>9</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 have been criticised for not including detailed, sector-specific impact assessments on human rights or labour standards, they provide clear evidence of a commitment to human rights and labour standards that the UK should replicate and build on.

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<sup>7</sup> Corporate Europe Observatory (2015), '[Public Services Under Attack through TTIP and CETA Atlantic Trade Deals](#)', accessed on 6 June 2018.

<sup>8</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

<sup>9</sup> European Commission, '[Sustainability Impact Assessments](#)', accessed on 6 June 2018.

There is no provision in the Trade Bill for undertaking impact assessments of prospective trade agreements, or for conducting studies and surveys that will provide useful information on all aspects of a trade agreement. Methodologies for this are well developed.<sup>10</sup>

Decision-makers will be operating in a vacuum without the evidence-base to take informed decisions on complex instruments that will bind the UK for many years.

The Trade Bill establishes a Trade Remedies Authority (TRA) to provide advice, support and assistance to the Secretary of State in connection with the conduct of international trade disputes. This body does not, however, have a remit to assess the likely impacts of such agreements, and therefore cannot advise the Secretary of State on them, before they are entered in to. The TRA may well end up advising on disputes they could have prevented.

Speaking points:

- In the absence of any requirement for a process of public consultation and impact assessments, 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, 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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<sup>10</sup> World Trade Institute, '[Improving the methodology for measuring social and human rights impacts of trade agreements](#)', Elisabeth Bürgi Bonanomi, accessed on 6 June 2018.