



HOUSE OF LORDS

Select Committee on the Constitution

15th Report of Session 2019–21

Trade Bill

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Select Committee on the Constitution

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[Lord Beith](#)

[Baroness Corston](#)

[Baroness Drake](#)

[Lord Dunlop](#)

[Lord Faulks](#)

[Baroness Fookes](#)

[Lord Hennessy of Nympsfield](#)

[Lord Howarth of Newport](#)

[Lord Howell of Guildford](#)

[Lord Pannick](#)

[Lord Sherbourne of Didsbury](#)

[Baroness Taylor of Bolton](#) (Chair)

[Lord Wallace of Tankerness](#)

Declaration of interests

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Committee staff

The current staff of the committee are Matt Korris (Clerk), Ava Mayer (Policy Analyst) and Dan Weedon (Committee Assistant). Professor Stephen Tierney and Professor Jeff King are the legal advisers to the Committee.

Contact details

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Trade Bill

Introduction

1. The Trade Bill was introduced in the House of Commons on 19 March 2020. It was brought to the Lords on 21 July and had its second reading on 8 September.
2. The Bill provides a legal framework for UK trade policy following withdrawal from the European Union. As one of a series of ‘Brexit Bills’,¹ it should be read alongside the Taxation (Cross-border Trade) Act 2018. While that Act provides for tariff-related issues, the Trade Bill deals with non-tariff barriers.
3. A previous version of the Bill was introduced in the 2017–19 session, considered by both Houses, but did not pass. We reported on that Bill in October 2018.²

Implementation of international trade agreements

4. Clause 2 provides both UK ministers and devolved administrations with wide secondary law-making powers for implementing international trade agreements. In our report on the previous iteration of the Bill we noted that, while the explanatory notes to the Bill said that the power did not allow for “regulations to make or extend criminal offences, charge fees, amend primary legislation other than retained EU law, or create new public bodies”, no such restriction appears in the Bill itself.³ We concluded that these restrictions should be included in the Bill.
5. In the Government’s response to our report, it said “the delegated power within clause 2 of the Trade Bill is drafted in a way so that the presumption is that the power cannot be used to do certain things – such as impose taxes, create new criminal offences or establish new public bodies – unless there is an express provision allowing it to do so.”⁴
6. The present version of the Bill and explanatory notes are unchanged in respect of the clause 2 power.
7. **We are not persuaded by the Government’s position that it is sufficient for the power in clause 2 to be constrained presumptively rather than explicitly. We recommend that the restrictions on the power be included in the text of the Bill.**

Trade Remedies Authority

8. The Trade Remedies Authority (TRA) will be created by clause 5. It will be a new non-departmental body which will take over the anti-dumping functions and other operations relating to subsidies etc. currently performed at EU level, to protect UK businesses from unfair business practices. Clause 6 provides for the operation of the TRA and in particular its relationship with the Secretary of State. The Bill also makes provision for the membership, terms of appointment etc. of the TRA.

1 Constitution Committee, *Brexit legislation: constitutional issues* (6th Report, Session 2019–21, HL Paper 71)

2 Constitution Committee, *Trade Bill* (13th Report, Session 2017–19, HL Paper 193)

3 *Ibid.*, para 10

4 [Letter from Baroness Fairhead to the Chair, Trade Bill, 22 January 2019](#)

9. The Bill has little detail on the functions and powers of the TRA. Instead the Secretary of State is given broad discretion in schedule 4 as to the constitution of this body, the appointment of its members and its operations, including the power to issue guidance which the TRA must have regard to when carrying out its functions. Paragraph 34(1) of schedule 4 states: “In performing its functions, the TRA must have regard to guidance published by the Secretary of State.” There is no further indication of the content of such guidance.⁵
10. In our report on the previous version of the Bill, we concluded:
- “While we recognise the pressing timescales and uncertainties concerning Brexit, in constitutional terms, creating and empowering an important public body in such a manner is inappropriate.”⁶
11. **We remain of the view that the Bill’s skeletal approach to empowering the Trade Remedies Authority is inappropriate.**
12. **We recognise that there continue to be significant uncertainties regarding the UK’s trading relationships at the end of the Brexit transition period. However, it is not clear why, more than two years after the previous version of the Bill was introduced, the functions and powers of the Trade Remedies Authority cannot be set out in more detail in this Bill.**

Devolution

13. The Bill applies to the whole of the United Kingdom. The powers to make regulations under clauses 1 and 2 apply to “appropriate authorities” which includes “devolved authorities”. The UK Government has sought legislative consent for those provisions.
14. The Scottish and Welsh governments did not initially recommend that their respective legislatures consent to the previous version of the Bill,⁷ though the Welsh Government later recommended consent and the National Assembly for Wales passed a legislative consent motion. For the current version of the Bill, both the Scottish and Welsh governments have recommended consent.⁸ The Northern Ireland Executive has not yet brought forward a legislative consent memorandum for the Northern Ireland Assembly to consider.⁹
15. **We recognise that the negotiation regarding legislative consent for bills relating to Brexit has not been straightforward.¹⁰ We welcome the agreement reached on consent to the Trade Bill and hope that this progress can be built on in inter-governmental dialogue on other bills and wider matters.**

5 Though paragraph 34(3) requires the Secretary of State, before publishing guidance, to consult the TRA, and to have regard to the TRA’s expertise and the need to protect its operational independence and ability to make impartial assessments.

6 Constitution Committee, *Trade Bill* (13th Report, Session 2017–19, HL Paper 193), para 12

7 *Ibid.*, para 15

8 Welsh Government, *Legislative Consent Memorandum: Trade Bill*, April 2020, para 10; Scottish Government, *Legislative Consent Memorandum: Trade Bill*, 18 August 2020, para 20

9 Northern Ireland Assembly, *Official Report*, 8 September 2020

10 Constitution Committee, *Brexit legislation: constitutional issues* (6th Report, Session 2019–21, HL Paper 71), paras 54–60

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Beith
 Baroness Corston
 Baroness Drake
 Lord Dunlop
 Lord Faulks
 Baroness Fookes
 Lord Hennessy of Nympsfield
 Lord Howarth of Newport
 Lord Howell of Guildford
 Lord Pannick
 Lord Sherbourne of Didsbury
 Baroness Taylor of Bolton (Chair)
 Lord Wallace of Tankerness

Declarations of interest

Lord Beith
Honorary Bencher of the Middle Temple
 Baroness Corston
No relevant interests
 Baroness Drake
No relevant interests
 Lord Dunlop
No relevant interests
 Lord Faulks
No relevant interests
 Baroness Fookes
No relevant interests
 Lord Hennessy of Nympsfield
No relevant interests
 Lord Howarth of Newport
No relevant interests
 Lord Howell of Guildford
No relevant interests
 Lord Pannick
Represented Ms Gina Miller, in R (Miller) v Secretary of State for Exiting the European Union [2017], and in R (Miller) (Appellant) v The Prime Minister (Respondent) & Cherry and others (Respondents) v Advocate General for Scotland (Appellant) (Scotland) [2019]
 Lord Sherbourne of Didsbury
No relevant interests
 Baroness Taylor of Bolton (Chair)
No relevant interests
 Lord Wallace of Tankerness
No relevant interests

A full list of members' interests can be found in the Register of Lords' Interests:

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Professor Jeff King, University College London, and Professor Stephen Tierney, University of Edinburgh, acted as legal advisers to the Committee. They both declared no relevant interests.