



BRIEFING PAPER

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Trade Bill 2019-21: Lords amendments

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Summary

This briefing summarises amendments made to the Trade Bill 2019-21 in the House of Lords, ahead of amendments coming back to the Commons for the start of ping-pong.

This briefing was written before third reading in the Lords and any amendments that are made at that stage. At the time of writing, only drafting amendments have been proposed for consideration at third reading in the Lords.

Third reading in the Lords is scheduled for Monday 18 January, and the Commons is expected consider Lords amendments the day after, Tuesday 19 January.

The following are the main amendments made in the Lords, all made at Lords report stage:

- **Parliamentary approval of trade agreements:** this would give Parliament a greater statutory role in the scrutiny and approval of trade agreements.
- **Human rights etc – determination on compliance:** this would require ministers to assess whether countries with which the UK was negotiating, or had negotiated, trade agreements had committed serious human rights violations.
- **Genocide:** this would allow the High Court to make a ruling on whether a trade agreement should be revoked, on the grounds that the state with which the UK has the agreement has committed genocide.
- **NHS health and care:** this is intended to protect the NHS and care, including health and care data, from control from outside the UK through trade agreements.
- **Ratification of international trade agreements and treaties:** this would require that Ministers explain and enact domestic implementing legislation before a trade treaty could be ratified.
- **Standards affected by international trade agreements:** this would require ministers take certain steps if a proposed trade agreement would have an impact on certain standards (e.g. for food).
- **Protection of children online:** this is intended to ensure that online safety is not compromised by trade agreements.
- **Northern Ireland: non-discrimination:** this is intended to ensure that free trade agreements do not negatively affect market access for goods and services within the UK internal market.
- **Trade and Agriculture Commission:**
 - **Appointments and purpose:** this government amendment allows for appointments to the Trade and Agriculture Commission (TAC), and sets out its purpose. This amendment was itself amended to add “public health and health inequalities” to the list of areas of expertise which the Secretary of State must take into account when appointing TAC members.
 - **Advisory functions:** this government amendment required the Secretary of State to request advice from the TAC in preparing the report on trade agreements required by section 42 of the Agriculture Act 2020. This amendment was itself amended so that the TAC could take human life or health into account.

Aside from government amendments and the amendment to the government amendment on TAC advisory functions, all of the amendments mentioned above were opposed by the government and were subject to a vote in the Lords.

1. Background

This briefing summarising amendments made to the Trade Bill 2019-21 in the House of Lords, ahead of ping-pong.

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Third Reading in the Lords is scheduled for Monday 18 January, and the Commons is expected consider Lords amendments the day after, Tuesday 19 January – the start of ping-pong.

The final list of Lords amendments for Commons consideration will be published on the [bill pages](#) after Lords third reading.

1.1 Overview of the bill

The Trade Bill 2019-21 would:

- enable the UK to implement obligations arising from acceding to the international Government Procurement Agreement in its own right;
- enable the UK to implement in domestic law obligations arising under international trade agreements the UK signs with countries that had an existing international trade agreement with the EU;
- formally establish a new Trade Remedies Authority;
- enable HM Revenue and Customs (HMRC) to collect information on exporters from the UK; and
- enable data sharing between HMRC and other private and public sector bodies to fulfil public functions relating to trade.

1.2 Further information

Key sources of information on the Trade Bill are:

- [Trade Bill 2019-21](#), 18 May 2020 – Commons Library paper produced ahead of Second Reading in the Commons
- [The Trade Bill 2019-21: Committee Stage Report](#), 15 July 2020 – Commons Library paper produced ahead of Report Stage in the Commons
- [Trade Bill: Briefing for Lords Stages](#), 27 August 2020 – Lords Library paper produced ahead of Second Reading in the Lords

Further information and documents about the bill are available via [new bill pages on the parliament website](#) – this includes links to amendments and debates at each stage, and documents relating to the bill.

¹ [Marshaled list of amendments to be moved on third reading \(HL Bill 60-I\)](#), 13 Jan 2020

2. Parliamentary approval of trade agreements

This amendment² was proposed by Lord Purvis of Tweed. Lord Purvis said that he was seeking to update Parliament's powers in relation to trade agreements so that "we will have a trade policy that is fit for purpose for the 21st century."³ He said that the amendment would not restrict the Government's use of the Royal Prerogative to commence, conduct and conclude trade agreements.

The amendment would require:

- The Government to inform both Houses if it intended to start negotiations for a free trade agreement. Lord Purvis said that the Government had already agreed to this for future trade agreements.
- Negotiations for a trade agreement could only start once the Secretary of State had laid draft negotiating objectives before Parliament and they had been approved by both Houses.
- Before the draft negotiating objectives are laid, the devolved administrations must be consulted and a sustainability impact assessment published.
- The Government must inform both Houses and the relevant Select Committees of developments in the negotiations
- A draft of any agreement must be laid before, and approved by, both Houses before it is signed
- Prior to Parliament being asked for its approval, the devolved administrations must be consulted and an independent impact assessment be laid before Parliament.

Government position

The Government were opposed to this amendment. The Minister, Lord Grimstone of Boscobel said:

In drafting the amendment, I welcome the fact that the noble Lord has tried to address our point at previous stages of the Bill; namely, that the negotiation and making of treaties, including international trade agreements, is a function of the Executive held under the royal prerogative. However, despite the drafting of subsection (1), that

"Nothing in this section restricts the power conferred by Her Majesty's prerogative to commence, conduct negotiations towards and then conclude a trade agreement",

I am afraid that the amendment does exactly that because it places restrictions on the ability of the Government to enter into

² Amendment 6 at Lords report stage

³ [HL Deb 7 December 2020 c980](#)

treaty negotiations and to ratify treaties. With all due respect to the drafters of the amendment, it starts by saying one thing and then it goes on to say another. I am grateful to my noble friends Lord Lansley and Lady Noakes for also spotting that and pointing it out to your Lordships.

Giving Parliament a veto over our negotiating objectives would curtail the royal prerogative, whatever the preamble to the proposed new clause says, and would limit our flexibility to negotiate in the best interests of the UK. I know that noble Lords are aware that the Constitution Committee of this House recommended in its 2019 report on the scrutiny of treaties that mandates for treaties should not be subject to parliamentary approval.

Ultimately, if Parliament is not content with a trade agreement that we have negotiated, it can—like for the majority of all other treaties—raise concerns by resolving against ratification under the statutory CRaG procedure. Under that, as noble Lords will know well, Parliament can delay ratification indefinitely, giving it, in effect, the power to block ratification. The Government are committed to a transparent trade policy with comprehensive engagement with Parliament. We have already demonstrated this and we will continue to do so. The Government have moved a long way in developing comprehensive scrutiny arrangements that are appropriate to our constitutional make-up.⁴

This amendment was agreed by 308 votes to 261.

Further information

The Constitutional Reform and Governance Act (CRaG) sets out that the government must lay most treaties before Parliament for 21 sitting days before it can ratify them, and the Commons can block ratification indefinitely.

However, the limits to Parliament's powers – and to the government's obligations to Parliament – are controversial, and many Members of Parliament have called for more.

In this context, the Government has made a number of commitments in relation to transparency and scrutiny for trade agreements – for a summary, see Secretary of State for International Trade, [Transparency and Scrutiny Arrangements for New Free Trade Agreements](#) (HCWS623), 7 December 2020.

For further information and discussion on parliamentary scrutiny of trade agreements see Section 6 of Commons Library, [Trade Bill 2019-21](#), 18 May 2020.

A number of campaign groups, including [We Own It](#) and [Keep Our NHS Public](#), are running a campaign on the scrutiny of trade deals and

⁴ [HL Deb 7 December 2020 cc999-1000](#)

protecting the NHS – see The National, [Brexit: Call for MPs to act on Tories' secret trade deals](#), 20 December 2020.

3. Human rights etc – determination on compliance

Lord Collins of Highbury proposed an amendment on human rights – “free trade agreements: determination on compliance with international obligations and state actions”.⁵

He said:

all EU trade deals since 2009 have had human rights clauses embedded in them, allowing the EU to suspend a deal, either partially or fully, if the third country is adjudged responsible for human rights abuses. While this power has not been exercised in any case so far, EU representatives say that it is vital, first as a basis for dialogue and progress on human rights issues during the negotiation phase for any new deal and, secondly, to apply ongoing pressure on third countries around these issues.⁶

Lord Collins explained his amendment as follows:

This amendment proposes a triple barrier against trade agreements with countries that abuse human rights. First, Ministers would be obliged to provide an assessment of the human rights record of any overseas state before starting trade negotiations with them, so that this could be examined by the relevant scrutiny committees. Secondly, before seeking to ratify any subsequent trade deal, Ministers would have to publish a determination of whether the state has committed serious violations of human rights, so that this could be considered by MPs and Peers as part of the CRaG process for the scrutiny of new trade agreements. Thirdly, Ministers would be required to produce an annual report on the ongoing compliance of their new trading partner with international human rights laws and determine whether the UK’s trade agreement should continue if serious violations have occurred. Crucially, the determinations made by Ministers at stages two and three would be subject not only to scrutiny by Parliament but could potentially be challenged in the courts by human rights campaign groups, if there was clear and verifiable evidence that the Government were ignoring serious human rights abuses and violations of international law.

The definition of serious human rights violations in the amendment includes references to genocide, torture, servitude and compulsory labour. These are all charges that have been laid against the Communist Party of China’s Government in their treatment of the country’s Uighur population. The purpose of this amendment is to cover the widest possible spectrum of abuses, mirroring the language used by the Government to determine the liability of foreign nationals to the Magnitsky sanctions under the Sanctions and Anti-Money Laundering Act 2018, and to decide

⁵ Amendment 8 at Lords report stage

⁶ HL Deb 7 December 2020 c1033

whether weapons can be sold to overseas Governments under the arms export licensing criteria.⁷

Government position

For the Government, Lord Grimstone said that the Government shares the concerns underlying the amendments. The Government was “clear that more trade does not have to come at the expense of human rights.”⁸

The Government would not support the amendment, however, for the following reasons:

- It would constrain royal prerogative powers to negotiate, ratify and withdraw from treaties
- Including alleged, as well as actual, human rights violations would be problematical. For example, what criteria would be used to decide if an allegation should be included?
- The amendment envisages the termination of trade agreements in certain circumstances but this would lead to significant economic disruption, as well as legal, diplomatic and political risks.⁹

Amendment 8 was agreed on division 297 to 221.¹⁰

⁷ HL Deb 7 December 2020 c1034-35

⁸ HL Deb 7 December 2020 c1052

⁹ HL Deb 7 December 2020 c1053

¹⁰ HL Deb 7 December 2020 c1055

4. Agreements with states accused of committing genocide

Lord Alton introduced this amendment about the revocation of trade agreements with states found to have committed genocide.¹¹ He said:

Amendment 9 straightforwardly asks the House to give the High Court of England and Wales the opportunity to make a predetermination of genocide if it believes that the evidence substantiates the high threshold set out in the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide, to which the United Kingdom is a signatory.¹²

The text of this amendment was as follows:

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.¹³

A wide range of speakers supported the amendment. For example, Baroness Kennedy of the Shaws, said:

The noble Lord, Lord Alton, explained the purposes of this amendment: the genocide amendment. Its purpose is to ensure that there is a preliminary determination by the High Court, not any lower court, as to whether there is genocide. It is pre-emptive: the whole purpose of the Genocide Convention was to prevent genocide by placing a duty on nations to act to prevent it. I will say immediately what this genocide amendment is not: it is not, to use the language of the noble Baroness, Lady Noakes, an effort to swamp the courts. The bar is so high that such a case could not possibly be brought before the High Court of this country and have any serious reception if it were not presented with a whole body of evidence that was highly persuasive and involved eminent lawyers who could testify to the bar having been passed on the definition of genocide.

¹¹ Amendment 9 at Lords report stage

¹² HL Deb 7 December 2020 c1059

¹³ HL Deb 7 December 2020 c1058-59

What else is it not? It is certainly not a breach of the separation of powers—a constitutional issue—because, of course, no court will be determining that a trade agreement has to be revoked. It would be for the court to determine whether the bar had been met—that is, whether events documented a genocide that needed to be prevented. That preliminary determination of the courts would then, of course, have great import for any Government committed to human rights and their treaty obligations on genocide. One would expect any such Government then to revoke a trade agreement. All our trade agreements going forward would contain a clause indicating that, if there were a determination by the High Court, this would be the basis on which an agreement could be revoked.¹⁴

Lord Forsyth of Drumlean said:

As a nation, we cannot do business with states engaged in genocide. Waiting for determination by international judicial bodies—ships that never come in—and in the meantime doing business as usual simply cannot be accepted any more, not in the 21st century.¹⁵

China was mentioned a number of times in the debate, particularly in relation to the treatment of Uighur Muslims.

Government position

Viscount Younger of Leckie said that the Government wholeheartedly shared the concerns underlying this amendment. He said that the UK had long supported the promotion of its values globally and remained committed to its international obligations. The Minister said that the UK had played a leading international role in holding China to account for abuses.

Nevertheless, the Government had serious concerns about the approach taken by the amendment. Viscount Younger said:

The key point is that this would strike at the heart of the separation of powers in Britain's constitutional system, allowing the High Court to frustrate trade agreements entered into by the Government and ratified after parliamentary scrutiny. The noble and learned Lord, Lord Hope, raised a point about the separation of powers and the role of the courts. The Government's position has consistently been that only a competent court should make determinations of genocide, and this does not entail the courts having the power to revoke trade agreements. State genocide is very difficult to prove in the judicial context—the evidential threshold is very high, and proceedings tend to be long and costly but the amendment would make it simple to bring vexatious allegations of genocide to the court as a means of putting political and international pressure on the Government.¹⁶

¹⁴ HL Deb 7 December 2020 c1063

¹⁵ HL Deb 7 December 2020 c1066

¹⁶ HL Deb 7 December 2020 c1086

Viscount Younger said that strong economic relationships with other countries allowed the Government to have discussions on a range of difficult issues, including human rights.

The Minister pointed out that China was the UK's fourth largest trading partner but said that the Government had no current plans to open negotiations with China on a free trade agreement.

The Amendment was agreed by 287 votes to 161.¹⁷

Further information

- The Sun, [Boris Johnson faces Tory revolt as MPs demand China faces trade sanctions](#), 17 January 2021
- Nusrat Ghani MP in the Times, [The UK should be empowered not to trade with regimes overseeing genocide](#), 11 January 2021
- Commons Library, [E-petition 300146 relating to China's policy on its Uighur population](#), 8 October 2020
- Foreign Secretary, [Statement on Xinjiang: Forced Labour](#), 12 January 2021

5. NHS health and care

Baroness Thornton introduced an amendment on 'International trade agreements: health, care or publicly funded data processing services and IT systems in connection with the provision of health and care'.¹⁸

She said:

this proposed new clause aims to protect the NHS health, care or publicly funded data processing services and IT systems in connection with the provision of health and care in parts of the UK from any form of control from outside the UK through trade agreements.¹⁹

The amendment would mean that regulations to implement trade agreements, under clause 2 of this bill, could only be made if a variety of conditions were met:

(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,

¹⁸ Amendment 11 at Lords report stage

¹⁹ HL Deb 7 December 2020 c1092

(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.²⁰

Baroness Thornton argued that Parliamentary scrutiny of and control over trade agreements was weak so “additional scrutiny mechanisms are vital to protect the NHS and public health as the UK begins to negotiate independent free trade agreements in earnest.”²¹

Lord Freyberg, another signatory of the amendment, argued as follows:

Amendment 11 would safeguard state control of policy-making and the use of publicly funded health and care data. This capability is of vital importance in the context of the pandemic, but it should be guaranteed in perpetuity, since it underpins the efficient and effective operation of publicly funded health and care services in the UK, as well as those data-driven health services managed at present by, for example, Public Health England and the Joint Biosecurity Centre. It also amounts to a significant national asset or resource with the potential to function as a dynamo in relation to research, innovation and continued growth of the UK's life sciences, health and care tech sectors. The Trade Bill should recognise this and incorporate explicit provisions preventing the outsourcing of digital infrastructure that is critical to the nation's health and wealth and, by implication, the loss of skilled personnel working in data analytics to support core health and care functions alongside research and development activity.²²

Government position

Viscount Younger of Leckie said that the amendment would “place a range of restrictions on the regulations that we can make to implement continuity agreements.”²³ The Minister said that the conditions set out in sub-section 2 of the amendment were unnecessary – the Government

²⁰ HL Deb 7 December 2020 cc1091-92

²¹ HL Deb 7 December 2020 c1092

²² HL Deb 7 December 2020 c1093

²³ HL Deb 7 December 2020 c1102

had shown “time and again” that it was not selling off the NHS. The Minister said that sub-section 3 of the amendment would effectively prohibit the implementation (via clause 2) of any continuity agreement that the Government had signed.

The amendment was agreed on division by 232 votes to 143.²⁴

Further information

The effects of future trade agreements on the NHS, especially the consequences of agreeing a trade deal with the US, have been the focus of public debate for some time. There are particular concerns that trading terms agreed with other countries would limit the ability of the government and devolved administrations to organise and publicly fund their health services or change the way the public access NHS services.

The Government has consistently [said](#) that it is committed to protecting public services and that there will be nothing in the UK’s future agreements that will stop it from being able to regulate public services, including the NHS.

See the Library debate pack, [Trade deals and the NHS](#), 13 November 2020, and the [associated debate in Westminster Hall](#) on 16 November, for more information.

A number of campaign groups, including [We Own It](#) and [Keep Our NHS Public](#), are running a campaign on the scrutiny of trade deals and protecting the NHS – see The New European, [Campaigners remind MPs of 'moral duty' as vote on NHS protections enters House of Commons](#), 15 January 2021.

²⁴ HL Deb 7 December 2020 c1104

6. Ratification of international trade agreements and treaties

Lord Lansley proposed an amendment on the ratification of international trade agreements and treaties.²⁵ He explained the reasoning behind this amendment:

Amendment 12 would strengthen the CRaG processes in relation to international trade agreements in three respects.

First, it would require Ministers to publish, with their agreement or before it, an analysis of how an agreement would need to be implemented into domestic legislation. As we have learnt repeatedly during debates on this Bill, Parliament's principal constraint over the Government's treaty-making power occurs when it requires changes to domestic legislation. Parliament has control over that. For example, there is no merit in a Government agreeing a treaty offering access to the UK market for a product that it would be unlawful to sell in this country, when they know that Parliament would not agree to change the law. We need to know if an agreement would require changes to domestic legislation, and that should be a key issue in deciding whether Parliament will approve ratification. Ministers should not ratify an agreement that Parliament would not implement.

That brings me to my second point. Amendment 12 would require that ratification of an international trade agreement should not take place before the identified changes to domestic legislation had been enacted, should they require primary legislation, or laid if in the form of regulations. I understand that this is now a convention, although not a formal one, but it should be a statutory requirement.

The third element is also about giving statutory force to a convention: Ministers would extend the 21-day period until any debate sought by a committee in either House had taken place. Ministers say, as they did in Committee, that they would endeavour to ensure that parliamentary time is found. However, if it is not, Ministers should have to extend the time under Section 21 of CRaG.

As I mentioned, this does not apply to all treaties but only to international trade agreements. It is also important to remember that it is not open to Ministers to say, "But this constrains us, because we may have to proceed for reasons of public policy and timing"; there will remain a power for Ministers to ratify a treaty as an exceptional case under Section 22 of CRaG, which enables Ministers—with a Statement to Parliament—to disapply Section 20. The ratification process can be dispensed with by Ministers in exceptional circumstances.²⁶

²⁵ Amendment 12 at Lords report stage

²⁶ HL Deb 7 December 2020 cc981-82

Government position

The Government's position was set out by Lord Grimstone:

On implementing our trade deals, noble Lords will be aware that it has long been UK practice not to ratify international agreements until any necessary implementing legislation has been passed domestically. This is a well-established process that the FCDO has followed historically for treaties for centuries in order to ensure that the UK will not be in breach of the treaty when it enters into force. The Government have no intention of deviating from this process in relation to our new trade agreements. However, we believe that putting this on to a statutory footing would be inappropriate and would deprive and restrict the Government's flexibility in the conclusion of our international trade agreements, as well as curtailing the treaty-making prerogative.²⁷

[...]

In respect of facilitating debates on FTAs as part of CRaG, we have been clear that the Government will facilitate requests for debate on the agreement—including, of course, those from the relevant Select Committees—with the only caveat being that it is subject to available parliamentary time. As many noble Lords know far better than I, it would not be appropriate for the Government to guarantee debating time in the way suggested in this amendment. As I am sure my noble friend with his ministerial experience can appreciate, any Minister would like to be able to guarantee debating time. However, the pandemic and other matters have shown us the need to remain flexible in how we manage precious parliamentary time.²⁸

The amendment was agreed on division by 274 to 209.²⁹

²⁷ [HL Deb 7 December 2020 c1000](#)

²⁸ [HL Deb 7 December 2020 c1001](#)

²⁹ HL Deb 15 December 2020 c1557

7. Standards affected by international trade agreements

Lord Grantchester proposed an amendment on standards affected by international trade agreements, for example for food, animal welfare or labour law.³⁰ Among other things, it set out a number of steps which Ministers would have to take if they decided it was necessary to change standards in pursuit of such an agreement. Ministers would have to notify relevant Parliamentary Committees of necessary changes to legislation; consult and seek the consent of the devolved administrations; and take steps to ensure that necessary changes to legislation had completed their Parliamentary process before being laid before Parliament.

Government position

For the Government, Lord Grimstone said:

In conclusion, the Government have always been clear that we have no intention of lowering standards as part of our trade agenda, through either the front door or, as the noble Lord, Lord Grantchester, feared, the back door. The continuity agreements that we have signed thus far maintain our commitment to vigorously defend and uphold standards.³¹

Amendment agreed on division by 290 to 274 votes.³²

³⁰ Amendment 22 at Lords report stage

³¹ HL Deb 6 January 2021 c187

³² HL Deb 6 January 2021 c190

8. Protection of children online

Baroness Kidron introduced an amendment on the protection of children online.³³ She said that the purpose of the amendment was “to ensure that the online safety of children and other vulnerable users is not compromised as a consequence of clauses that appear in future free trade agreements.”³⁴

This amendment says that the UK could only sign a trade agreement if it is consistent with:

- other international treaties to which the United Kingdom is a party – and the domestic law of England and Wales – regarding the protection of children and other vulnerable user groups using the internet;
- provisions on data protection for children, as set out in the age appropriate design code under section 123 of the Data Protection Act 2018 and other provisions of that Act which impact children; and
- online protections provided for children in the United Kingdom that the Secretary of State considers necessary.

Government position

Lord Grimstone said that the Government shared the concerns of Baroness Kidron and others who had spoken in the debate. He said that the UK’s trade agreements were already fully compliant with existing domestic and international policies protecting children online. The Government had published its response to the Online Harms White Paper consultation.³⁵ Legislation on this issue would be ready this year, and no trade agreement would be able to overturn this legislation. He said online harms protection should be dealt with in online harms legislation – the legislation which DCMS would be bringing forward was the right place to address these issues.³⁶

The amendment was agreed by 340 votes to 248.³⁷

³³ Amendment 23 at Lords report stage

³⁴ HL Deb 6 January 2021 c193

³⁵ See [Online Harms White Paper](#), 15 December 2020

³⁶ HL Deb 6 January 2021 cc206-07

³⁷ HL Deb 6 January 2021 c209

9. Northern Ireland: non-discrimination

Lord Hain proposed an amendment on trade between Northern Ireland and Great Britain.³⁸

The amendment would:

- prevent trade agreements being ratified under the Constitutional Reform and Governance Act 2020, if anything in the agreement prevents the UK from ensuring unfettered market access for: goods moving from Northern Ireland to Great Britain, services provided from Northern Ireland to customers in Great Britain, or services provided from Great Britain to Northern Ireland
- preventing regulations made under clause 2(1) – which make provision implementing trade agreements – from:
 - applying tariffs or customs procedure requirements for goods originating in Northern Ireland when entering Great Britain, or
 - discriminating, directly or indirectly, between goods originating in Northern Ireland and other goods being traded within the UK, when entering Great Britain.

He explained the reasons for this amendment:

Amendment 26 is necessary for four main reasons. The first is the distinctiveness of Northern Ireland’s economic and trading position under the deal. The second is its dependence on the commitment of the UK to delivering on filling the gaps in its trading arrangements. The third is the possibility of tensions between the terms of new UK free trade agreements and Northern Ireland’s position in the protocol. The fourth and final reason is the failure of the UK Government, in their most substantial non-EU free trade agreement to date—with Japan—to give due consideration to this matter.

We can be sure that the economic and trading environment for Northern Ireland—de jure in the UK’s customs territory, but applying the European Union’s customs code—will become only more complicated over time. It is therefore absolutely essential to put protections for Northern Ireland into UK domestic law that ensure that government commitments to this most vulnerable of UK regions are upheld and secured, even as the tough decisions and pay-offs in international trade negotiations become an increasingly familiar reality.³⁹

Government position

Viscount Younger of Leckie set out the Government’s position as follows:

Our aim is to ensure that all our international agreements are implemented in a way that takes full account of the Northern Ireland protocol; this includes unfettered access. As set out in the Command Paper on the UK’s approach to the Northern Ireland

³⁸ Amendment 26 at Lords report

³⁹ HL Deb 6 January 2021 cc165-66

protocol, unfettered access means no declarations, tariffs, new regulatory checks or customs checks, or additional approvals for Northern Ireland businesses to place goods on the Great Britain market. We recognise that international trade partners will seek full access to the UK market. The UK internal market system provided for in the United Kingdom Internal Market Act will provide a stable, consistent regulatory framework that will support the UK's exporting and inward investment ambitions. Ensuring regulatory coherence across the UK internal market will help support free trade agreement implementation while maintaining unfettered access.⁴⁰

Amendment 26 was agreed following a division, 298 vs 252.

For more information on the Northern Ireland Protocol, see the Library briefing [Joint Committee decisions on the Northern Ireland Protocol](#).

10. Trade and Agriculture Commission

The Trade and Agriculture Commission (TAC) is an independent advisory board set up to advise on and inform the government's trade policies.⁴¹

The Government announced in July 2020 that a Commission would be set up for six months, after call from stakeholders for a body to consider issues of trade and standards.⁴² During debates on the Agriculture Act, there were calls to extend its term and put it on a statutory basis – for more in these debates see the Library briefing on [the Agriculture Act 2020](#).

In November 2020, during ping-pong on the Agriculture Act, the Government announced that it would “extend the Commission past its previous fixed term and give it a more active role through a new legislative underpinning, to be reviewed every three years”.⁴³ This was to be done through amending the Trade Bill at Lords report stage.⁴⁴

10.1 Appointments and purpose

The Government's amendment on the Trade and Agriculture Commission (TAC) would allow the government to appointment members of the Commission, and would set out the purpose of the Commission.⁴⁵

Purpose

The Trade and Agriculture Commission's purpose would be:

“to provide advice under section 42 of the Agriculture Act 2020 (reports relating to free trade agreements).”

[Section 42 of the Agriculture Act](#) sets out that, before a trade agreement itself can be laid before parliament under the Constitutional Reform and Governance Act, a report relating to any measures applicable to trade in agricultural products must be produced and laid before parliament. The report must explain how the measures are consistent with UK statutory protection of human, animal or plant life or health, of animal welfare, and of the environment.

Appointments

The amendment also allows the Secretary of State to appoint Commission members.

It sets out areas of expertise which the Secretary of State must take into account when making those appointments. These are:

- United Kingdom animal and plant health standards

⁴¹ Gov.uk, [Trade and Agriculture Commission \(TAC\)](#), updated 5 Jan 2021

⁴² Gov.uk, [Trade and Agriculture Commission membership announced](#), 10 July 2020

⁴³ Gov.uk, [Trade and Agriculture Commission put on statutory footing](#), 1 November 2020

⁴⁴ HC Deb 4 Nov 2020, c386.

⁴⁵ Amendment 31 at Lords report stage

- United Kingdom animal welfare standards
- United Kingdom environmental standards as they relate to agricultural products
- international trade law and policy.

This amendment was agreed.⁴⁶

10.2 Public health expertise

Lord Grantchester's amendment added "public health and health inequalities" to the list of areas of expertise that must be considered in appointments.⁴⁷

Lord Grantchester said that the inclusion of public health considerations had been agreed with Defra ministers and they had been included in section 42 of the Agriculture Act 2020. Allowing the Trade and Agriculture Commission to include these issues would aid transparency to Parliament and the public.⁴⁸

Government position

Lord Grimstone, for the government, said that "when we looked at the composition of the TAC and its range of duties, it seemed that expert advice relevant to human life and health would best be sourced separately from other, more expert bodies in that field. The report under the Agriculture Act will include both advice that comes from the TAC and advice that comes from other relevant bodies in relation to human life and health."⁴⁹

This amendment was agreed on division 285-258.⁵⁰

10.3 Advisory functions

A further Government amendment⁵¹ related to reports under section 42 of the Agriculture Act 2020. As mentioned above, Section 42 requires the Secretary of State to lay a report explaining whether a trade agreement's provisions on agriculture maintain UK levels of statutory protection relating to:

- Human animal or plant life or health
- Animal welfare
- The environment.

The amendment would amend section 42 of the Agriculture Act to require the Secretary of State to request advice from the TAC in preparing this report on the matters listed above, except insofar as they relate to human life or health. Lord Grantchester successfully moved an

⁴⁶ [HL Deb 6 January 2021](#), c247

⁴⁷ Amendment 31A at Lords report stage

⁴⁸ HL Deb 6 January 2021 c230

⁴⁹ HL Deb 7 December 2020 c1026

⁵⁰ HL Deb 6 January 2021 c244

⁵¹ Amendment 34 at Lords report stage

amendment removing this exception for human life and health (this amendment to the amendment passed without division).⁵²

The government amendment also contained provisions for these arrangements to be reviewed and repealed by regulations, subject to the affirmative resolution procedure.

The government's amendment (as amended) was agreed.⁵³

10.4 Repeal and other provisions

A Government amendment was agreed giving the Secretary of State power to repeal provision relating to the Trade and Agriculture Commission if the Secretary of State's duty to seek its advice under the Agriculture Act 2020 is repealed.

Further Government amendments on administrative matters relating to the Commission, including to insert a new schedule, were agreed, as was an amendment on amending the long title of the Bill.⁵⁴

⁵² HL Deb 6 January 2021 c247, amendment 34A at Lords report stage. In response, speaking for the government, Lord Grimstone said that advice on human health should not be sought from the TAC as this advice would be better taken from other appropriate bodies. In the Government's view, TAC advice should focus on product characteristics not broader policy on public health and health inequalities.

⁵³ HL Deb 6 January 2021 c247

⁵⁴ HL Deb 6 January 2021 c248, cc268-70

11. Trade information

A number of Government amendments were agreed to the parts of the Bill on trade information.⁵⁵ These were largely technical in nature. One of these amendments allowed HMRC to disclose information to a devolved authority to facilitate the excise by the devolved authority of their functions relating to trade. Other amendments corrected drafting errors.⁵⁶

Box: Relationship between this bill and the Trade (Disclosure of Information) Act 2019-21

Versions of Clauses 8 to 10 have already become law, in the [Trade \(Disclosure of Information\) Act 2019-21](#).

This Act was passed quickly in December, ahead of the end of the Brexit transition period.⁵⁷

The government said that the powers in Act were needed for the end of the transition period, including to give the Border Operations Centre information it needs to manage and mitigate potential disruption at the border.⁵⁸

The powers in the Trade (Disclosure of Information) Act 2019-21 would expire if the equivalent powers in the Trade Bill come into force.

The government's amendments to Clauses 8 to 10 would make them essentially identical to Sections 1 to 3 of the Trade (Disclosure of Information) Act.

See the Library briefing [Trade \(Disclosure of Information\) Bill 2019-21](#) for more on the Act.

⁵⁵ Amendments 37-40 and 42 at Lords report

⁵⁶ HL Deb 6 January 2021 cc252-57

⁵⁷ The Trade (Disclosure of Information) Act was introduced into the Commons on 15 December 2020. It had all of its stages in the Commons on 16 December, and its Lords stages on 17 December, which were then followed by Royal Assent the same day.

⁵⁸ [Explanatory Notes](#) to the Bill.

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