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10th July 2018

Dear Derek,

Thank you for your letter dated 28 June 2018, and your patience in waiting for my response. I wanted to wait until the Government had tabled amendments to the Trade Bill in advance of Report Stage before responding.

I am writing to provide you with an update on amendments which the UK Government has tabled to the Trade Bill in relation to devolution.

As you are aware, the UK Government introduced the Trade Bill which:

- Create powers to enable the UK to transition trade agreements that currently exist between the EU and other countries, and which we are party to through our EU membership;
- Create the powers needed for the UK to implement the Agreement on Government Procurement (GPA) as an independent member instead of as part of the EU, maintaining current guaranteed access for UK businesses to global procurement opportunities and offering value for money;
- Establish an independent body (the Trade Remedies Authority) to conduct trade remedies investigations, providing a safety net for domestic industries against unfair and injurious trade practices, or surges in imports, consistent with our legal obligations at the World Trade Organisation (WTO); and
- Ensure the UK Government has the necessary powers in relation to the gathering and sharing of trade information.

The Trade Bill will have its Report Stage in the UK House of Commons on Tuesday, 17 July. Consequently, the Government has tabled amendments to the Trade Bill, and I have outlined below, the amendments which will be of interest to you.

Firstly, in line with the European Union (Withdrawal) Act we are removing the restrictions on the Devolved Administrations using the Government Procurement Agreement power (Clause 1) and the trade continuity agreement continuity power (Clause 2) contained within the Bill to amend directly applicable EU law and replacing it with a narrower restraint that only includes those areas of retained direct EU law that are subject to the new Section 12 power (in the European Union (Withdrawal) Act).

Secondly, amendments would replace the requirement for devolved Ministers to have the consent of a Minister of the Crown to (1) use the trade agreement continuity power to make provision relating to quotas, or (2) use the trade agreement continuity power and or GPA power to provide for pre-exit commencement of regulations, with a requirement to consult a Minister of the Crown before using the power to make such provision. This will ensure a coordinated UK approach whilst allowing for a less rigid process to enable this.

Finally, we will make a change also made in the European Union (Withdrawal) Act, to ensure that if one provision of regulations made by a devolved authority is ultra vires, only the provision that is outside of competence will be ultra vires and not the whole instrument in which it is contained.

The UK Government believes that these amendments improve the legislation, demonstrate continued commitment to the devolution settlement, and address the proposed Amendment 5 proposed by the Scottish Government.

In relation to amendments 1 and 2, the UK Government is happy to re-commit that we will not normally use the powers in the Bill to amend legislation in devolved areas without consent from the relevant devolved Ministers, and I am hopeful our officials can work together to understand your suggestions on draft protocols to ensure scrutiny of regulations.

In relation to amendment 3, we can commit that the UK Government will consult with the devolved administrations in advance of extending the sunset of the trade agreement continuity power should the decision be taken to do so.

In relation to amendment 4, the Government is of the view that our amendments as drafted are a significant extension the powers given to the devolved administrations under this Bill and are in keeping with the spirit of the progress made by the UK, Scottish and Welsh Governments during the passage of the European Union (Withdrawal) Act.

In relation to amendment 6, the Government is of the view that we must make sure that the Trade Remedies Authority (TRA) is led by the right individuals. That is why members of the TRA will be appointed based on merit, following a fair and open competition. While they may come from a particular nation or region, that should not be the reason why they are chosen. We look forward to working with the Devolved Administrations on the establishment and operation of the TRA, to ensure that their views and interests are taken into account where appropriate.

In relation to the sharing of Trade Data, Clause 8 enables departments and organisations which have public functions in respect of trade to have access to HMRC data needed to carry out these functions. Any data can be shared with the DAs subject to the Commissioners of Revenue and Customs allowing that onward disclosure, so it is not envisaged that this would be a problem and, of course, those administrations can also approach HMRC directly under the HMRC data sharing provision (Clause 8 – Disclosure of Information by HMRC) in the Trade Bill to request the information directly as well. We are currently setting up data governance and protocols with HMRC to cover mechanisms for access.

I look forward to continuing to work with you on this important legislation that will provide continuity to the whole of the UK, ensuring that businesses, workers and consumers can continue to enjoy the benefits of free trade, and I am happy to meet with you to discuss any questions you may have.

*Yours sincerely,
Liam*

THE RT HON LIAM FOX MP
Secretary of State, Department for International Trade
& President of the Board of Trade



House of Commons

[10 July 2018]

CONSIDERATION OF BILL

TRADE BILL

Secretary Liam Fox

1

To move the following Clause—

“Report on proposed free trade agreement

- (1) This section applies (subject to subsection (2)) where the United Kingdom has authenticated a free trade agreement (“the proposed agreement”), if—
 - (a) the other party (or each other party) and the European Union were signatories to a free trade agreement immediately before exit day, or
 - (b) where the proposed agreement is authenticated by the United Kingdom before exit day, the other party (or each other party) and the European Union are signatories to a free trade agreement on the day the proposed agreement is authenticated by the United Kingdom.
- (2) This section applies only if the proposed agreement is not binding on the United Kingdom as a matter of international law unless it is ratified by the United Kingdom.
- (3) Before the United Kingdom ratifies the proposed agreement, a Minister of the Crown must lay before Parliament a report which gives details of, and explains the reasons for, any significant differences between—
 - (a) the trade-related provisions of the proposed agreement, and
 - (b) the trade-related provisions of the existing free trade agreement.
- (4) Subsection (3) does not apply if a report in relation to the proposed agreement has been laid before Parliament under section (*Report to be laid with regulations under section 2(1)*)(2).
- (5) The duty imposed by subsection (3) applies only at a time when regulations may be made under section 2(1) (see section 2(8)).
- (6) In this section a reference to authenticating a free trade agreement is a reference to doing an act which establishes the text of the agreement as authentic and definitive as a matter of international law.
- (7) In this section—

“the existing free trade agreement” means the free trade agreement referred to in subsection (1)(a) or (b);

the “trade-related provisions” of a free trade agreement are the provisions of the agreement that mainly relate to trade.”

Consideration of Bill:

Trade bill, *continued*

Member's explanatory statement

This amendment requires a Minister to lay a report before Parliament before the UK ratifies a new free trade agreement with a country that (before exit day) had a free trade agreement with the EU. The report must explain any significant differences between the proposed new agreement and the existing agreement with the EU. The duty to lay a report does not apply if a report on the agreement has already been laid under the new clause in amendment 3. In addition, amendment 2 provides that the reporting requirement does not apply if a Minister takes the view that, exceptionally, the agreement should be ratified without the reporting requirement being met.

Secretary Liam Fox

2

To move the following Clause—

“Reporting requirement not to apply in exceptional cases

- (1) Section (*Report on proposed free trade agreement*) does not apply to a free trade agreement if a Minister of the Crown is of the opinion that, exceptionally, the agreement needs to be ratified without laying before Parliament a report which meets the requirements of subsection (3) of that section.
- (2) If a Minister determines that a free trade agreement is to be ratified without laying before Parliament a report which meets the requirements of section (*Report on proposed free trade agreement*)(3), the Minister must, as soon as practicable after the agreement is ratified, lay before Parliament—
 - (a) a report which meets those requirements, and
 - (b) a statement indicating that the Minister is of the opinion mentioned in subsection (1) and explaining why.”

Member's explanatory statement

See Member's explanatory statement for amendment 1.

Secretary Liam Fox

3

To move the following Clause—

“Report to be laid with regulations under section 2(1)

- (1) This section applies where a Minister of the Crown proposes to make regulations under section 2(1) for the purpose of implementing a free trade agreement to which the United Kingdom and another signatory (or other signatories) are signatories.
- (2) A draft of the statutory instrument containing the regulations may not be laid before Parliament unless, at least 10 Commons sitting days before the draft is laid, a Minister of the Crown has laid before Parliament a report which gives details of, and explains the reasons for, any significant differences between—
 - (a) the trade-related provisions of the free trade agreement to which the United Kingdom and the other signatory (or other signatories) are signatories, and
 - (b) the trade-related provisions of the existing free trade agreement.
- (3) Subsection (2) does not apply if, at least 10 Commons sitting days before a draft of the statutory instrument containing the regulations is laid, a report in relation to the agreement has been laid before Parliament under section (*Report on proposed free trade agreement*)(3).
- (4) In this section—

Consideration of Bill:

Trade bill, *continued*

“Commons sitting day” means a day on which the House of Commons begins to sit;

“the existing free trade agreement” means the free trade agreement to which the European Union and the other signatory (or other signatories)—

- (a) were signatories immediately before exit day, or
- (b) where the report is laid before Parliament before exit day, are signatories on the day the report is laid before Parliament;

the “trade-related provisions” of a free trade agreement are the provisions of the agreement that mainly relate to trade.”

Member’s explanatory statement

This amendment requires a Minister to lay a report before Parliament at least 10 Commons sitting days before regulations implementing a new free trade agreement are laid in draft under clause 2(1). The report is required to explain any significant differences between the new agreement and the existing agreement with the EU. The duty to lay a report does not apply if a report on the agreement has already been laid under the new clause in amendment 1.

Secretary Liam Fox

4

Clause 1, page 1, line 13, leave out “or”.

Member’s explanatory statement

This amendment is consequential on amendment 5.

Secretary Liam Fox

5

Clause 1, page 1, line 15, at end insert—

- “(e) in consequence of a modification of the list of central government entities in Annex 1 to the United Kingdom’s Appendix I to the 1994 GPA, or
- (f) in consequence of a modification of the list of central government entities in Annex 1 to the United Kingdom’s Appendix I to the Revised GPA.”

Member’s explanatory statement

This amendment provides that the power in clause 1 can be exercised to reflect updates to the list of UK government entities covered by Annex 1 to the UK’s Appendix I to the 1994 GPA and the Revised GPA.

Secretary Liam Fox

6

Clause 1, page 2, line 3, at end insert—

- “(e) in the case of regulations under subsection (1)(e) or (f), the day the modification becomes effective.”

Member’s explanatory statement

This amendment provides that regulations implementing a modification of Annex 1 can only come into force on or after the day that the modification becomes effective.

Secretary Liam Fox

7

Clause 1, page 2, line 3, at end insert—

- “(3) Regulations under subsection (1) may make provision modifying retained direct EU legislation.”

Member’s explanatory statement

This amendment makes clear that the power in clause 1 can be exercised to modify retained direct

Consideration of Bill:

Trade bill, continued

EU legislation. “Retained direct EU legislation” is defined in the Interpretation Act 1978.

Secretary Liam Fox

8

Clause 2, page 2, line 9, leave out subsection (2)

Member’s explanatory statement

This amendment is consequential on amendment 26.

Secretary Liam Fox

9

Clause 2, page 2, line 18, leave out “the regulations are made” and insert “a draft of the regulations is laid”

Member’s explanatory statement

This amendment is consequential on amendment 48.

Secretary Liam Fox

10

Clause 2, page 2, line 20, leave out “the regulations are made” and insert “a draft of the regulations is laid”

Member’s explanatory statement

This amendment is consequential on amendment 48.

Secretary Liam Fox

11

Clause 2, page 2, line 27, leave out “the regulations are made” and insert “a draft of the regulations is laid”

Member’s explanatory statement

This amendment is consequential on amendment 48.

Secretary Liam Fox

12

Clause 2, page 2, line 29, leave out “the regulations are made” and insert “a draft of the regulations is laid”

Member’s explanatory statement

This amendment is consequential on amendment 48.

Secretary Liam Fox

13

Clause 2, page 2, line 33, after “modifying” insert “retained direct EU legislation or”

Member’s explanatory statement

This amendment makes clear that the power in clause 2 can be exercised to modify retained direct EU legislation. “Retained direct EU legislation” is defined in the Interpretation Act 1978.

Secretary Liam Fox

14

Clause 2, page 2, line 35, after “discretion” insert “but not including a power to make subordinate legislation”

Member’s explanatory statement

This amendment makes clear that the power in clause 2 cannot be exercised to confer a power to make subordinate legislation. Amendment 28 includes a definition of subordinate legislation.

Consideration of Bill:

Trade bill, *continued*

Secretary Liam Fox

15

Clause 2, page 2, line 37, at end insert—

- “(6A) In this section, a reference to a draft of regulations being laid is to a draft of the regulations, or the instrument containing the regulations, being laid before—
- (a) each House of Parliament, in the case of regulations to which paragraph 3A(1) or 3B of Schedule 2 applies (regulations of a Minister of the Crown, or a Minister of the Crown acting jointly with a devolved authority);
 - (b) the Scottish Parliament, in the case of regulations to which paragraph 3A(2) of Schedule 2 applies (regulations of the Scottish Ministers);
 - (c) the National Assembly for Wales, in the case of regulations to which paragraph 3A(3) of Schedule 2 applies (regulations of the Welsh Ministers);
 - (d) the Northern Ireland Assembly, in the case of regulations to which paragraph 3A(4) of Schedule 2 applies (regulations of a Northern Ireland department).”

Member’s explanatory statement

This amendment is consequential on amendment 48.

Secretary Liam Fox

16

Clause 2, page 2, line 38, leave out subsection (7)

Member’s explanatory statement

This amendment is consequential on amendment 25.

Secretary Liam Fox

17

Clause 2, page 2, line 42, leave out first “five” and insert “three”

Member’s explanatory statement

This amendment provides that the power in clause 2 can be exercised only for a period of three years from exit day.

Secretary Liam Fox

18

Clause 2, page 2, line 42, leave out second “five” and insert “three”

Member’s explanatory statement

See the explanatory statement for amendment 17.

Secretary Liam Fox

19

Clause 2, page 3, line 1, leave out “five” and insert “three”

Member’s explanatory statement

This amendment provides that the sunset period in subsection (8) may only be extended for further periods of three years.

Secretary Liam Fox

20

Clause 2, page 3, line 3, leave out “five” and insert “three”

Member’s explanatory statement

See the explanatory statement for amendment 19.

Consideration of Bill:

Trade bill, *continued*

Secretary Liam Fox

21

Clause 3, page 3, line 9, at end insert—

“(1A) Regulations under section 1(1) or 2(1) that modify—

- (a) retained direct EU legislation,
- (b) anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018, or
- (c) any other retained EU law,

may be made before exit day so long as they come into force on or after exit day.”

Member’s explanatory statement

This amendment puts beyond doubt that amendments purporting to modify retained EU law (which, under the European Union (Withdrawal) Act 2018, will come into being on exit day) can be made before exit day so long as they come into force on or after exit day.

Secretary Liam Fox

22

Clause 4, page 3, line 19, at end insert “or”

Member’s explanatory statement

This amendment is consequential on amendment 23.

Secretary Liam Fox

23

Clause 4, page 3, line 20, leave out from “authority” to end of line 22

Member’s explanatory statement

This amendment makes clear that a Minister of the Crown and a devolved authority cannot make regulations under clause 1 or clause 2 jointly (except as required by paragraph 5 of Schedule 1).

Secretary Liam Fox

24

Clause 4, page 3, leave out lines 27 and 28

Member’s explanatory statement

This amendment omits the definition of “exit day”, which is no longer needed now the relevant amendments to the Interpretation Act 1978 made by the European Union (Withdrawal) Act 2018 are in force.

Secretary Liam Fox

25

Clause 4, page 3, line 28, at end insert—

““free trade agreement” means an agreement that is or was notifiable under—

- (a) paragraph 7(a) of Article XXIV of GATT, or
- (b) paragraph 7(a) of Article V of GATS;”

Member’s explanatory statement

This amendment defines “free trade agreement” for the purposes of Part 1. The definition is in the same terms as the current definition in clause 2(7).

Secretary Liam Fox

26

Clause 4, page 3, line 32, at end insert—

““international trade agreement” means—

- (a) a free trade agreement, or

Consideration of Bill:

Trade bill, *continued*

- (b) an international agreement that mainly relates to trade, other than a free trade agreement;”

Member’s explanatory statement

This amendment defines “international trade agreement” for the purposes of Part 1. The definition is in the same terms as the current definition in clause 2(2).

Secretary Liam Fox

27

Clause 4, page 3, leave out lines 38 and 39

Member’s explanatory statement

This amendment omits the definition of “retained EU law”, which is no longer needed now the relevant amendments to the Interpretation Act 1978 made by the European Union (Withdrawal) Act 2018 are in force.

Secretary Liam Fox

28

Clause 4, page 3, line 39, at end insert—“

““subordinate legislation” has the same meaning as in section 21 of the Interpretation Act 1978;”

Member’s explanatory statement

This amendment defines “subordinate legislation” for amendment 14.

Secretary Liam Fox

29

Clause 4, page 3, line 41, at end insert—

- “(2) In this Part a reference to being a signatory to an international trade agreement includes a reference to—
- (a) exchanging instruments, where the exchange constitutes the agreement;
 - (b) acceding to the agreement.
- (3) In this Part a reference to ratifying an international trade agreement is a reference to doing an act specified in subsection (4) which establishes consent to be bound by the agreement as a matter of international law.
- (4) The acts are—
- (a) depositing or delivering an instrument of ratification, accession, approval or acceptance;
 - (b) depositing or delivering a notification of completion of domestic procedures.”

Member’s explanatory statement

This amendment provides for references in Part 1 to being a “signatory” to an international trade agreement to be read as covering doing anything that would amount to a consent to be bound by the agreement as a matter of international law. It also provides for references to “ratifying” an agreement to be read as doing an act that establishes consent to be bound as a matter of international law.

Secretary Liam Fox

30

Clause 4, page 3, line 41, at end insert—

- “(5) References in this Part to anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 include references to any

Consideration of Bill:

Trade bill, continued

modifications, made by or under that Act or by other domestic law from time to time, of the rights, powers, liabilities, obligations, restrictions, remedies or procedures concerned.”

Member’s explanatory statement

This amendment provides for references in Part 1 to anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 (directly effective Treaty rights etc) to catch modifications of the rights etc concerned, as well as the rights etc themselves.

Secretary Liam Fox

31

Clause 5, page 4, line 6, at end insert—

“(3) Schedule (*Transfer Schemes*) contains provision about schemes for the transfer of staff in connection with the establishment of the TRA.”

Member’s explanatory statement

*This amendment introduces new Schedule (*Transfer Schemes*) which provides that the Secretary of State can make a scheme providing for the transfer of staff from the Secretary of State to the Trade Remedies Authority.*

Secretary Liam Fox

32

Clause 8, page 5, line 38, leave out “Data Protection Act 1998” and insert “data protection legislation”

Member’s explanatory statement

This amendment and amendment 33 reflect the fact that the Data Protection Act 2018 has now replaced the Data Protection Act 1998.

Secretary Liam Fox

33

Clause 8, page 5, line 40, at end insert—

“() In this section “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).”

Member’s explanatory statement

See the explanatory statement for amendment 32

Secretary Liam Fox

34

Schedule 1, page 7, line 5, leave out “regulations” and insert “provision”

Member’s explanatory statement

This amendment makes clear that the usual rule on ultra vires provision in devolved SIs applies: if one provision is ultra vires it does not follow that the entire instrument is ultra vires.

Secretary Liam Fox

35

Schedule 1, page 7, line 6, leave out “every provision of them” and insert “the provision”

Member’s explanatory statement

See the explanatory statement for amendment 34.

Consideration of Bill:

Trade bill, *continued*

Secretary Liam Fox

36

Schedule 1, page 7, line 10, leave out paragraph 2 and insert—

- “2 (1) No provision may be made by the Scottish Ministers under section 1(1) or 2(1) so far as the provision—
- (a) modifies any retained direct EU legislation or anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018, and
 - (b) would, when made, be in breach of—
 - (i) the restriction in section 30A(1) of the Scotland Act 1998 if the provision were made in an Act of the Scottish Parliament, or
 - (ii) the restriction in section 57(4) of the Scotland Act 1998 if section 57(5)(c) of that Act were ignored.
- (2) No provision may be made by the Welsh Ministers under section 1(1) or 2(1) so far as the provision—
- (a) modifies any retained direct EU legislation or anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018, and
 - (b) would, when made, be in breach of—
 - (i) the restriction in section 80(8) of the Government of Wales Act 2006 if section 80(8A)(c) of that Act were ignored, or
 - (ii) the restriction in section 109A(1) of the Government of Wales Act 2006 if the provision were made in an Act of the National Assembly for Wales.
- (3) No provision may be made by a Northern Ireland department under section 1(1) or 2(1) so far as the provision—
- (a) modifies any retained direct EU legislation or anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018, and
 - (b) would, when made, be in breach of—
 - (i) the restriction in section 6A(1) of the Northern Ireland Act 1998 if the provision were made in an Act of the Northern Ireland Assembly, or
 - (ii) the restriction in section 24(3) of the Northern Ireland Act 1998 if section 24(4)(c) of that Act were ignored.
- (4) No provision may be made by a devolved authority under section 1(1) or 2(1) so far as, when made, the provision is inconsistent with any modification (whether or not in force) which—
- (a) is a modification of any retained direct EU legislation or anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018,
 - (b) is made by the European Union (Withdrawal) Act 2018 or by a Minister of the Crown under that Act, or by a Minister of the Crown under this Act, and
 - (c) could not be made by the devolved authority by virtue of sub-paragraph (1), (2) or (as the case may be) (3).
- (5) For the purposes of sub-paragraphs (1)(b), (2)(b) and (3)(b), the following provisions, any regulations made under them and any related provision are to be assumed to be wholly in force so far as that is not otherwise the case—

Consideration of Bill:

Trade bill, continued

- (a) sections 30A and 57(4) to (15) of the Scotland Act 1998,
 - (b) sections 80(8) to (8L) and 109A of the Government of Wales Act 2006, and
 - (c) sections 6A and 24(3) to (15) of the Northern Ireland Act 1998.
- (6) References in this paragraph to section 80(8) of the Government of Wales Act 2006 are to be read as references to the new section 80(8) of that Act provided for by paragraph 2 of Schedule 3 to the European Union (Withdrawal) Act 2018.
- (7) In this paragraph “domestic law” means the law of England and Wales, Scotland or Northern Ireland.”

Member’s explanatory statement

This amendment provides that the devolved authorities may not make provision under clause 1(1) or 2(1) that: (a) modifies retained direct EU legislation or anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018; and (b) would breach the relevant devolved competence restriction in the devolution settlements (as amended by that Act).

Secretary Liam Fox

37

Schedule 1, page 7, line 27, leave out “without the consent of a Minister of the Crown”

Member’s explanatory statement

This amendment and amendment 38 provide that the devolved authorities need only consult with a Minister of the Crown before making regulations that are to come into force before exit day.

Secretary Liam Fox

38

Schedule 1, page 7, line 28, at end insert “, unless the regulations are, to that extent, made after consulting with a Minister of the Crown”

Member’s explanatory statement

See the explanatory statement for amendment 37.

Secretary Liam Fox

39

Schedule 1, page 7, line 30, leave out “without the consent of a Minister of the Crown”

Member’s explanatory statement

This amendment and amendment 40 provide that the devolved authorities need only consult with a Minister of the Crown before making regulations about, or which are incompatible with, quota arrangements.

Secretary Liam Fox

40

Schedule 1, page 7, line 32, at end insert “, unless the regulations are, to that extent, made after consulting with a Minister of the Crown”

Member’s explanatory statement

See the explanatory statement for amendment 39.

Secretary Liam Fox

41

Schedule 1, page 10, line 36, leave out “and (5)”

Member’s explanatory statement

Consideration of Bill:

Trade bill, *continued*

This amendment removes an unnecessary reference to subsection (5) of section 57 of the Scotland Act 1998.

Secretary Liam Fox 42
Schedule 1, page 11, line 15, leave out “and (4)”

Member’s explanatory statement

This amendment removes an unnecessary reference to subsection (4) of section 24 of the Northern Ireland Act 1998.

Secretary Liam Fox 43
Schedule 2, page 12, line 5, leave out “or 2(1)”

Member’s explanatory statement

This amendment is consequential on amendment 48.

Secretary Liam Fox 44
Schedule 2, page 12, line 7, leave out “or 2(1)”

Member’s explanatory statement

This amendment is consequential on amendment 48.

Secretary Liam Fox 45
Schedule 2, page 12, line 11, leave out “or 2(1)”

Member’s explanatory statement

This amendment is consequential on amendment 48.

Secretary Liam Fox 46
Schedule 2, page 12, line 13, leave out “or 2(1)”

Member’s explanatory statement

This amendment is consequential on amendment 48.

Secretary Liam Fox 47
Schedule 2, page 12, line 20, leave out “or 2(1)”

Member’s explanatory statement

This amendment is consequential on amendment 48.

Secretary Liam Fox 48
Schedule 2, page 13, line 30, at end insert—

Consideration of Bill:

Trade bill, *continued*

“PART 2A

SCRUTINY OF REGULATIONS UNDER SECTION 2(1)

Scrutiny of regulations made by Minister of the Crown or devolved authority acting alone

- 3A (1) A statutory instrument containing regulations of a Minister of the Crown under section 2(1) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (2) Regulations of the Scottish Ministers under section 2(1) are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).
- (3) A statutory instrument containing regulations of the Welsh Ministers under section 2(1) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.
- (4) Regulations of a Northern Ireland department under section 2(1) may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
- (5) This paragraph does not apply to regulations to which paragraph 3B applies.

Scrutiny of regulations made by Minister of the Crown and devolved authority acting jointly

- 3B (1) This paragraph applies to regulations of a Minister of the Crown acting jointly with a devolved authority under section 2(1).
- (2) The procedure provided for by sub-paragraph (3) applies in relation to regulations to which this paragraph applies as well as any other procedure provided for by this paragraph which is applicable in relation to the regulations concerned.
- (3) A statutory instrument which contains regulations to which this paragraph applies may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (4) Regulations to which this paragraph applies which are made jointly with the Scottish Ministers are subject to the affirmative procedure.
- (5) Section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) (affirmative procedure) applies in relation to regulations to which sub-paragraph (4) applies as it applies in relation to devolved subordinate legislation (within the meaning of Part 2 of that Act) which is subject to the affirmative procedure (but as if references to a Scottish statutory instrument were references to a statutory instrument).
- (6) Section 32 of the Interpretation and Legislative Reform (Scotland) Act 2010 (laying) applies in relation to the laying before the Scottish Parliament of a statutory instrument containing regulations to which sub-paragraph (4) applies as it applies in relation to the laying before the Scottish Parliament of a Scottish statutory instrument (within the meaning of Part 2 of that Act).
- (7) A statutory instrument containing regulations to which this paragraph applies which are made jointly with the Welsh Ministers may not be made unless a draft

Consideration of Bill:

Trade bill, *continued*

of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.

- (8) Regulations to which this paragraph applies which are made jointly with a Northern Ireland department may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.”

Member’s explanatory statement

This amendment provides for regulations under clause 2(1) of the Bill (implementing international trade agreements) to be subject to the affirmative procedure in Parliament when made by a Minister of the Crown, and in the relevant devolved legislature when made by a devolved authority. Where the regulations are made jointly by a Minister and a devolved authority (by virtue of paragraph 5 of Schedule 1) they are required to be approved in draft by both Parliament and the devolved legislature in question.

Secretary Liam Fox

49

Schedule 3, page 13, line 41, leave out from “2018” to end of line 3 on page 14 and insert “omit the “or” at the end of paragraph (a) and, at the end of paragraph (b) insert— “,
or

- (c) to the making of regulations under section 1(1) or 2(1) of the Trade Act 2018.””

Member’s explanatory statement

This amendment updates the numbering of the inserted text, following changes to text added by the European Union (Withdrawal) Act 2018.

Secretary Liam Fox

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Schedule 3, page 14, line 7, leave out from “2018” to end of line 10 and insert “omit the “or” at the end of paragraph (a) and, at the end of paragraph (b) insert— “, or

- (c) to the making of regulations under section 1(1) or 2(1) of the Trade Act 2018.””

Member’s explanatory statement

See the explanatory statement to amendment 49.

Secretary Liam Fox

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Schedule 3, page 14, line 14, leave out from “2018)” to end of line 17 and insert “omit the “or” at the end of paragraph (a) and, at the end of paragraph (b) insert— “, or

- (c) to the making of regulations under section 1(1) or 2(1) of the Trade Act 2018.””

Member’s explanatory statement

See the explanatory statement to amendment 49.

Secretary Liam Fox

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To move the following Schedule—

Consideration of Bill:

Trade bill, *continued*

SCHEDULE

TRANSFER SCHEMES

- 1 (1) The Secretary of State may make one or more staff transfer schemes in connection with the establishment of the TRA by this Act.
- (2) A “staff transfer scheme” is a scheme providing for the transfer from the Secretary of State to the TRA of any rights or liabilities under or in connection with a contract of employment.
- 2 (1) A staff transfer scheme may, among other things, make provision—
 - (a) for the transfer of rights and liabilities that could not otherwise be transferred;
 - (b) for the transfer of rights and liabilities arising after the making of the scheme;
 - (c) which is the same as or similar to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246);
 - (d) creating rights, or imposing liabilities, in relation to rights or liabilities transferred;
 - (e) about the continuing effect of things done by the Secretary of State in respect of any rights or liabilities transferred;
 - (f) about the continuation of things (including legal proceedings) in the process of being done by, or on behalf of, or in relation to, the Secretary of State in respect of any rights or liabilities transferred;
 - (g) for references to the Secretary of State in an instrument or other document in respect of any rights or liabilities transferred to be treated as references to the TRA;
 - (h) that is supplementary, incidental, transitional or consequential.
- (2) A staff transfer scheme may provide—
 - (a) for the scheme to be modified by agreement after it comes into effect, and
 - (b) for any such modifications to have effect from the date when the original scheme comes into effect.
- 3 For the purposes of this Schedule—
 - (a) an individual who holds employment in the civil service of the State is to be treated as employed by virtue of a contract of employment, and
 - (b) the terms of the individual’s employment in the civil service of the State are to be regarded as constituting the terms of the contract of employment.”

Member’s explanatory statement

This amendment inserts a Schedule that sets out powers for the Secretary of State to make a scheme providing for the transfer of staff from the Secretary of State to the Trade Remedies Authority.

Secretary Liam Fox

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Title, line 1, after “the” insert “ratification and”

Member’s explanatory statement

This amendment is consequential on amendment 1.