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# **Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh**

## **Legislative Consent Memorandum for the Trade Bill**



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# Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>



[dplr.committee@parliament.scot](mailto:dplr.committee@parliament.scot)



0131 348 5212

# Committee Membership



**Convener**  
**Graham Simpson**  
Scottish Conservative  
and Unionist Party



**Deputy Convener**  
**Stuart McMillan**  
Scottish National Party



**Tom Arthur**  
Scottish National Party



**Neil Findlay**  
Scottish Labour



**Alison Harris**  
Scottish Conservative  
and Unionist Party

# Introduction

1. The Trade Bill ("the Bill") was introduced by the UK Government to the House of Commons on 7 November 2017. The purpose of the Bill is to make some of the legislative changes needed to enable the UK to implement an independent trade policy once it has left the EU. After completing its progress through the House of Commons the Bill has now reached the Committee Stage in the House of Lords.
2. The Committee's report is on the Legislative Consent Memorandum (LCM) for the Bill rather than the Bill itself. The Finance and Constitution Committee is the lead committee for consideration of the LCM and therefore the Committee directs this report to that Committee.
3. As the Bill is still progressing through the UK Parliament and so is still subject to amendments, the Committee may require to look at a supplementary LCM in due course.

## The Bill


4. The Explanatory Notes to the Bill<sup>i</sup> state that the Bill provides a number of measures to allow the UK Government "to build a future trade policy for the UK" once it leaves the European Union. Namely:
  - a power to ensure that the UK can implement any procurement obligations arising from the UK becoming a member of the GPA (Government Procurement Agreement) in its own right;
  - a power to assist with the implementation of UK trade agreements with existing partner countries which correspond to the EU's existing trade agreements;
  - provisions establishing a new body, the Trade Remedies Authority (TRA);
  - a power for HM Revenue and Customs (HMRC) to collect information on behalf of the Government to confirm the number of exporters of goods and services in the UK; and
  - a power to establish a data sharing gateway between HMRC and other public and private bodies, so that those bodies, including the Department for International Trade, can discharge their public functions and access relevant data for research, monitoring and evaluation.
5. The LCM summarises the sections of the Bill which are of "particular relevance to devolved matters":
  - Clause 1 – which provides powers for both UK and Scottish Ministers (within devolved competence) to make regulations to implement the Government Procurement Agreement;
  - Clause 2 – which provides powers for both UK and Scottish Ministers (within devolved competence) to make regulations to implement qualifying international trade agreements; and
  - Part 1 of the Bill also introduces schedules 1-3, which establish and constrain 'devolved competence' for the purpose of the exercise of those powers, along similar lines to the approach taken to Scottish Ministers' powers in the European Union (Withdrawal) Act 2018.

## The Legislative Consent Memorandum

6. LCMs are lodged in relation to bills under consideration in the UK Parliament which contain what are known as "relevant provisions". These are provisions which:
  - change the law for a purpose within the Scottish Parliament's legislative competence (its powers to make laws in areas of policy devolved to the Scottish Parliament under the Scotland Act 1998); or

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<sup>i</sup> Trade Bill Explanatory Notes: <https://publications.parliament.uk/pa/bills/lbill/2017-2019/0127/18127en.pdf>

- alter the legislative competence of the Scottish Parliament or the executive competence of Scottish Ministers (their powers to govern).
7. The Scottish Government lodged an LCM on the Bill on 20 December 2017.<sup>ii</sup>
  8. The Bill is a relevant bill within Rule 9B.1.1 of the Scottish Parliament's Standing Orders as it makes provision applying to Scotland for purposes within the legislative competence of the Parliament and alters the executive competence of the Scottish Ministers.
  9. The Parliamentary Bureau referred the memorandum to the Finance and Constitution Committee as lead committee for consideration of the Bill. As it also contains provisions that confer new powers to make subordinate legislation on the Scottish Ministers, the remit of this Committee is also engaged.
  10. This Committee reports its conclusions on the relevant provisions in the Bill to the Finance and Constitution Committee who will in turn make a report to the Parliament.
  11. In most circumstances, following the lead committee's report on the memorandum, the Scottish Government would lodge a legislative consent motion to be taken in the Parliament seeking the Parliament's consent to the UK Parliament legislating on devolved matters. The Scottish Government said in the LCM that it "does not currently intend to lodge a legislative consent motion in relation to the Bill." In evidence to the Committee on the Bill on Tuesday 11 September 2018, the Cabinet Secretary for Government Business and Constitutional Relations re-emphasised the Scottish Government's stance to not lodge a legislative consent motion:  
  
 We will work with the UK Government to develop the Trade Bill to ensure, as far as we can, that Scottish interests are protected, but we will not invite the Parliament to consider consent legislation if the UK Government reserves the right to set aside our view on all bills for Brexit.
  12. While the Scottish Government may decide not to ask the Parliament to consider a legislative consent motion in relation to the Bill, the lead committee must still report to the Parliament on the LCM. Under Standing Orders (Rule 9B.3.6) , this Committee "shall consider and may report to the lead committee" on provisions conferring on the Scottish Ministers powers to make subordinate legislation.

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<sup>ii</sup> Legislative Consent Memorandum for the Trade Bill (LCM(S5)12):  
<http://www.parliament.scot/SPLCM-S05-12-2017.pdf>



## Committee consideration of the Bill

13. While the Bill was introduced in November 2017, it only completed its legislative stages in the House of Commons in July 2018. It is currently at the Committee stage in the House of Lords.
14. The Committee originally considered its approach to its scrutiny of the Bill at its meeting on [13 March 2018](#) where it agreed to take oral evidence from the UK and Scottish Governments at a future meeting. It subsequently heard from:
  - George Hollingbery MP, Minister of State for Trade Policy, at its meeting on [Wednesday 5 September 2018](#); and
  - Michael Russell MSP, Cabinet Secretary for Government Business and Constitutional Relations, at its meeting on [Tuesday 11 September 2018](#).
15. Following the evidence session with the Minister of State for Trade Policy, the Committee wrote to the Minister with some additional questions. A response was received on Monday 17 September.
16. This report makes a number of recommendations in relation to the delegated power provisions in the Bill. In particular:
  - clause 1 (implementation of the Government Procurement Agreement);
  - clause 2 (implementation of international trade agreements); and
  - clause 2(7) and (8) (power to extend the "sunsetting period" which applies to regulations under clause 2(1)).
17. Each of these areas will be covered in turn. The Committee will also provide some general recommendations in relation to the Bill.

### Clause 1 (implementation of the Government Procurement Agreement)

18. Part 1 of the Bill confers powers on UK Ministers and devolved authorities to implement international trade agreements. Within Part 1, clause 1 confers powers to implement procurement obligations if the UK becomes a member of the Agreement on Government Procurement (GPA) in its own right. The GPA is a plurilateral agreement within the World Trade Organisation (WTO) framework. It mutually opens government procurement markets and seeks to address trade barriers. The UK is currently a member by virtue of its EU membership. The UK Government's policy is for it to re-join as an independent member.
19. Clause 1 confers powers on Ministers (UK Ministers, Scottish Ministers, Welsh Ministers and Northern Ireland departments) to make any provision they consider appropriate for the purposes of implementing the GPA. It enables changes to be made to UK domestic legislation before the UK joins as an independent member. Power is also conferred on Ministers to make provision as a consequence of new

countries joining the GPA. The powers are to be exercised in regulations subject to the negative procedure.

## Evidence

20. Given the unprecedented nature of the proposal that the UK would become an independent member of the GPA, the Committee asked the Minister of State for Trade Policy for an explanation of the scope of the powers that would be available to Scottish Ministers to make amendments to the terms of the GPA. The Minister said that:
- ” The point of having the powers as they are set out in the bill is to allow for a rapid response to any changes in the schedules that adhere to the GPA.
21. Eleanor Weavis from the Department for International Trade, who gave evidence alongside the Minister, confirmed that in principle the regulations would largely effect no substantial changes. Eleanor Weavis said that the intent is to accede to the GPA on the same terms and coverage, to reflect countries acceding or withdrawing, or to update the list of entities covered by the agreement. The Minister acknowledged that the powers could be used more widely to make changes not presently intended although he asserted that the UK Government "is not going to use the powers for that purpose."
22. On the use of the negative procedure, the Minister was asked why the affirmative procedure was not being proposed. In response, the Minister said:
- ” Because there is no issue of policy to discuss; this is simply about accession and changing words. The whole purpose is to bring into UK law what everybody already uses in UK law, which is well known and well understood. It is about words and lists that need to be changed to reflect accessions.
23. The Cabinet Secretary for Government Business and Constitutional Relations (Michael Russell, MSP) acknowledged that the UK Government appeared to be trying to replicate the structures it currently has with the GPA as a member of the EU. However, the Cabinet Secretary did not feel that the use of the negative procedure was adequate:
- ” One of the difficulties with the Trade Bill has been trying to push these issues forward, but I would want to see substantial scrutiny on these matters.

## Recommendations

24. The Committee was encouraged by the Minister of State's assertion that the powers would not be used to make substantive changes to the GPA. It is content in principle with the scope of the powers of Scottish Ministers to make regulations under clause 1.
25. The Committee is less encouraged by the Minister's view that the negative procedure is a sufficient level of scrutiny for the regulations to be made by Scottish Ministers. It appears to the Committee that there could be circumstances in which the offer of a choice of negative or affirmative could provide an appropriate level of scrutiny for regulations making wider, or unanticipated, changes. The choice would

be available to Scottish Ministers but they would be accountable to the Parliament for the proper choice of procedure. This would be analogous to the procedure which has applied to the Public Contracts (Scotland) Regulations 2015 and the Utilities Contracts (Scotland) Regulations 2016 (and preceding Regulations), which implement provisions of the GPA and the EU Procurement Directives under section 2(2) of the European Communities Act 1972.

26. **The Committee considers that the option of providing a choice of the negative or the affirmative procedure in the Parliament for the regulations to be made by the Scottish Ministers under clause 1 should be provided in the Bill, having regard to the scope of the powers available in clause 1. The Committee therefore invites the UK Government to give thorough consideration to applying such a choice of procedure to the exercise of the powers.**

## Clause 2 (implementation of international trade agreements)

27. Also within Part 1, clause 2 confers powers on Ministers (UK Ministers, Scottish Ministers, Welsh Ministers and Northern Ireland departments) to make any provision they consider appropriate for the purpose of implementing an international trade agreement which the UK has reached with a third country, provided that there was a corresponding agreement in place between that country and the EU before exit day. The power is to be exercised in regulations subject to the affirmative procedure.
28. The DPM explains that although the intention is to keep these trade agreements substantively the same as, or similar to, the current EU-partner agreements, they will be legally distinct. Technical changes may be required to ensure future operability. In addition, the UK Government acknowledges in the DPM that “the power is broad enough to allow implementation of substantial amendments, including new obligations.”
29. The UK Government expects that, in most cases, the implementation of any obligations within UK trade agreements would be dealt with through the EU (Withdrawal) Act 2018. However not all EU-third country trade agreements will have been fully implemented via EU legislation by exit day. This Bill would apply in the following 3 circumstances:
1. where any part of those trade agreements requires changes to domestic legislation and these changes are not made by exit day;
  2. to ensure the trade agreements work outside the original EU context, adjustments may need to be agreed, and that may require a change to UK law; and
  3. to ensure the agreements remain operable and up to date beyond exit day, and that where technical changes to the agreement are necessary, these can be

implemented. For example, to ensure recognition in UK law of new assessment bodies in a partner country.

30. It is understood that amendments have been made to the Bill in the course of its passage through the UK Parliament to clause 2 which have:
- upgraded the scrutiny procedure for regulations made by Scottish Ministers from the negative procedure to the affirmative; and
  - that further information will be provided to the UK Parliament in advance of laying SIs under clause 2 in the form of a report explaining significant changes to a UK free trade agreement, as compared with the EU's pre-exit day agreement with another State (clause 5).

## Evidence

31. The Committee's focus in its evidence with the UK and Scottish Governments was the scope of the powers in clause 2 and also whether the proposed level of scrutiny was appropriate. One particular aspect of the Committee's consideration focused on clause 2(7) and (8) in relation to the power to extend the "sunsetting period" which applies to regulations under clause 2(1). This is covered separately in this report.
32. Firstly, on the use of secondary rather than primary legislation to implement the continuing trade agreements which this Bill applies to, the Minister of State said that this was a capacity issue because there were 40 agreements the UK Government would like to transition. The Minister added:
- ” We believe that this is by far and away the best way to transition those agreements, and both Parliaments can have confidence that they will understand the agreements when they come forward, because they will, on the whole, be agreements that they have used before.
33. Susanna Greaves OBE from the Department for International Trade added that the power can only be used to implement agreements that have been signed by the EU prior to the day of exit.
34. The Cabinet Secretary, when asked whether it is more appropriate that regulations should be introduced over primary legislation, said that the issue was "about scrutiny rather than anything else." Mr Russell added:
- ” The issue is to ensure that if there is debate and discussion, there should be that scrutiny. Transparency is important.
35. In relation to the scope of clause 2, the Committee sought clarification on the clarity and potential width of the powers. This is because the powers not only apply to international trade agreements, which are free trade agreements, but also to "an international agreement that mainly relates to trade". Eleanor Weavis from the Department for International Trade said:
- ” Quite simply, "an agreement that mainly relates to trade" is one that has trade as the majority of its content. It is fairly simple. An example of the type of agreement that that would cover would be an association agreement, should the majority of the agreement cover trade-related items.

36. The Cabinet Secretary for Government Business and Constitutional Relations did not however believe that the expression "one that has trade as the majority of its content" is appropriate without further definition.
37. In considering the Parliamentary scrutiny of regulations made by Scottish Ministers, the Committee noted that clause 5 of the Bill provides for a report to be issued in advance of the laying of regulations under clause 2 by the UK Government. This report would give details of significant changes to a UK free trade agreement, as compared to the EU's pre-exit day agreement with another State. However, this only applies to UK statutory instruments in relation to free trade agreements and so there is no similar requirement on Scottish Ministers to lay such a report with an SSI laid under clause 2.

The Minister for Trade, when asked via correspondence (please see the Annex), why the Bill does not place such a requirement on Scottish Ministers, said:

” We have placed this requirement only on the UK Government as the UK Government will agree to changes to these agreements on behalf of the whole of the United Kingdom; it therefore makes sense that this reporting requirement is placed only on them.

The reporting requirement relates only to trade elements of free trade agreements and not to other agreements, which mainly relate to trade, as we felt this was proportionate and reflective of the parameters of our programme of trade agreements continuity.

38. The Cabinet Secretary, while acknowledging the changes already made to this aspect of the Bill during its passage through the UK Parliament, said that the question is whether the Bill is transparent enough. The Cabinet Secretary added:

” It does not meet the standards that we have set out and therefore we want to continue to develop and change those. I believe that those parts have changed during the initial process of the bill and that they can change further.

## Recommendations

39. The Committee is generally satisfied with the scope of clause 2. However, it remains concerned that “an agreement that mainly relates to trade” lacks further definition. For example, if this covers agreements where the majority of the contents relate to trade, does this refer to a majority by way of number of words in the agreement, or a majority of the economic value of the agreement? It may also be useful for a report to be issued in advance of SSIs in the Scottish Parliament as well as with SIs in the UK Parliament, where such a report is of relevance to the implementing SSI.

40. **The Committee considers that the UK Government should further consider expanding its definition of “an international agreement that mainly relates to trade” to provide additional clarity of what this includes. Without more definition, there may continue to be uncertainty as to the width of the powers.**

41. **The Committee also invites the UK Government to extend clause 5 of the Bill so that a report can be issued in advance of the laying of regulations under clause 2 by both the UK Government for SIs and by the Scottish Government for SSIs. This would assist scrutiny in the Scottish Parliament where a report is of relevance to the SSI. This approach could further be expanded where regulations may be jointly made by a Minister of the Crown and the Scottish Ministers.**

## **Clause 2(7) and (8) (power to extend the "sunsetting period" which applies to regulations under clause 2(1))**

42. The power to make regulations under clause 2(1) in relation to implementing international trade agreements would expire, or "sunset", three years after exit day. Clause 2(8)(b) confers power on UK Ministers to delay that expiry and allow the power to continue in force for further periods of up to 3 years at a time. These periods were originally set at 5 years but were amended at Report stage in the House of Commons.
43. The power is to be exercised in regulations subject to the affirmative procedure.

### **Evidence**

44. The Minister was asked why it is considered appropriate that the power is available to UK Ministers but not the devolved authorities. The Minister of Trade said:
  - ” It was simply because this is an area of reserved competence. It is about free-trade deals and international trade, which are reserved matters under the Scotland Act.
45. When questioned as to whether the power could potentially be extended by another three years for specifically devolved matters, Eleanor Weavis said that it would be "part of the on-going process of engaging with the devolved Administrations in trade-agreement continuity".
46. When questioned on the UK Government's commitment to consult on extending the sunset period, the Cabinet Secretary confirmed that the Scottish Government's position is that it would like the Bill to contain a requirement to consult with the Scottish Government on an extension. The Department for International Trade has meanwhile committed that there will be consultation with the devolved administrations in advance of any proposed extension.



## Recommendations

47. There is a clear difference of view between the Scottish Government and the UK Government on the power to extend the sunset period. The Scottish Government consider that there should be an amendment to require the Secretary of State to consult Scottish Ministers before deciding whether or how to prolong the 3 year period. While not on the face of the Bill, the UK Government has undertaken to consult with the devolved administrations before exercising this power. The Committee, while welcoming the commitment to consult, considers that it may be appropriate that the consultation requirement is expressed in the Bill, as that is required to bind future administrations to consult.
48. As regards the reason why this power is available to UK Ministers and scrutinised at Westminster, the Committee notes, however, that the powers conferred on the Scottish Ministers by clause 2 are to implement international trade agreements in devolved areas. The exercise of the power in clause 2(7) and (8) would operate to extend such conferred, devolved powers. It appears to the Committee therefore that both Westminster and the Parliament have an interest in scrutinising the exercise of the power to extend the sunset period, in these circumstances.

49. **The Committee invites the UK Government to consider placing its commitment to consult with the Scottish Government and other devolved administrations ahead of any extension to the 3 year sunset period on the face of the Bill.**
50. **The Committee also invites the UK Government to consider that in principle the power to extend the sunset period, where it would apply to the powers conferred on Scottish Ministers under clause 2, should be jointly exercised by UK Ministers and the Scottish Ministers, and should be jointly scrutinised by means of affirmative procedure at Westminster and in the Parliament.**

## General comments on the Bill

### Delivery of subordinate legislation

51. In general, a number of the conclusions in the Committee's report on the supplementary LCM for the European Union (Withdrawal) Bill also seem relevant to this Bill. At that time the Committee said that there are "a number of fundamental principles that the Committee would expect to be at the centre of the approach to the delivery of the package of secondary legislation required for the purposes of the UK's Withdrawal from the EU. Firstly, as recognised by both sets of Ministers, there must be coordination and cooperation between governments for this process to work... Finally, instruments and proposals for instruments (where appropriate) should be laid in a way that allows for effective parliamentary consideration and enables stakeholders to contribute to that consideration."
52. A protocol was subsequently agreed between the Scottish Government and the Scottish Parliament to allow the Parliament to consider a proposal by the Scottish

Government to consent to the UK Government legislating using the powers under the European Union (Withdrawal) Act 2018 in relation to UK statutory instrument proposals. A protocol to consider SSIs under the 2018 Act has also been drafted. The current number of SIs and SSIs which might stem from the Trade Bill is currently unclear.

- 53. The Committee restates its position from its scrutiny of the European Union (Withdrawal) Bill that there must be coordination and cooperation between governments for this process to work. It therefore considers that it might be useful if the protocols stemming from the 2018 Act could be extended to regulations under the Trade Bill, and invites Scottish Parliament and Scottish Government officials to discuss this further.**
- 54. While exact numbers of regulations stemming from the Bill are not known, the Committee would welcome further details from both the UK and Scottish Governments as to the number and timing of instruments which may be laid under the Bill as soon as such information can be supplied.**



# Conclusions

55. **The Committee acknowledges the Scottish Government's position that it will not introduce further legislative consent motions on Brexit-related UK Parliament Bills.**
56. **Whether a motion is considered or not, the Committee nevertheless has a role in scrutinising any delegated power provisions in a UK Parliament bill which has provisions relevant to Scotland.**
57. **The Committee is therefore grateful for the evidence provided by both the UK and Scottish Governments which has greatly aided its scrutiny of the LCM.**
58. **The Committee hopes that the recommendations in this report can contribute to the wider consideration of the Trade Bill, independent of whether or not the Scottish Parliament gives its consent for the UK Parliament to legislate in devolved areas.**

# Annex

## Letter from the Convener of the Delegated Powers and Law Reform Committee to George Hollingbery MP, Minister of State for Trade Policy

Can I firstly thank you for your evidence at the meeting of the Delegated Powers and Law Reform Committee last week. I was disappointed that other parliamentary commitments prevented me from attending the committee. However, I was able to view the recording of the meeting online and my colleagues have also told me how useful they found the session.

At the close of the session you kindly offered to answer any additional questions the Committee might have by correspondence. I would therefore be grateful if you were able to provide answers to:

1. Dr Melo-Araujo of the School of Law, Queens University Belfast, in a written submission for the Finance and Constitution Committee's meeting of 21 February commented, in relation to the powers in clause 2:

“Conferring power to implement obligations derived from international trade agreements that have merely been signed by the EU, rather than ratified, raises questions about the democratic legitimacy of the process. International trade agreements that are not yet ratified will not have gone through the entire parliamentary scrutiny process either at EU or national level (...) In order to ensure that parliamentary scrutiny is not bypassed, the Trade Bill could be amended to provide that only those agreements that have been ratified by the EU prior to the UK's withdrawal of the EU are covered by the bill.”

It is assumed that the UK Government considers that it would not be appropriate to make such amendment to the Bill. If so, the Committee would welcome an explanation as to why it is considered appropriate that clause 2 refers to signature of agreements rather than ratification, and why it is considered that this would provide a sufficient level of Parliamentary scrutiny?

2. The requirement in clause 5 for a report to be laid with regulations under clause 2(1) only applies to UK statutory instruments. It also only applies to reports on free trade agreements (FTAs) and not other “international agreements that mainly relate to trade.” Why does the Bill not place a similar requirement on Scottish Ministers to lay such a report with an SSI laid under clause 2, and why does the requirement only apply to FTAs?

3. Can an estimate be provided of the number of SIs and SSIs that could be laid under clauses 1 and 2?

4. Finally, during the session you said that you would respond in writing to the following question:

“Similarly to clause 1, clause 2 enables the Scottish Government to make regulations “as they consider appropriate” to implement the relevant trade agreements—I do not know whether that includes those agreements that “mainly” relate to trade. Why is that subjective formulation justified, rather than a power to make such provision “as is necessary”?”

The Committee would welcome a response from you to these points by Tuesday 18 September 2018. I am sorry for such a tight turnaround time but this will allow the Committee to report its findings to the Finance and Constitution Committee in time for the final amending stages of the Bill in the House of Lords.

Graham Simpson MSP

Convener of the Delegated Powers and Law Reform Committee

11 September 2018

**Response from the Minister of State for Trade Policy to Graham Simpson MSP,  
Convener of the Delegated Powers and Law Reform Committee**

Firstly, I would like to express my thanks to the Delegated Powers and Law Reform Committee for providing me the opportunity to talk about the Trade Bill.

In relation to the additional questions which the Delegated Powers and Law Reform Committee have asked, I have outlined the UK Government's response below:

1. The Trade Bill clause 2 power can be used in relation to agreements signed before Exit Day, rather than agreements ratified before Exit Day. This is because many of the EU agreements that we currently operate under have not yet been ratified. They are merely signed and are being provisionally applied. Our policy is to seek continuity in the effects of our existing free trade agreements, which means that we need to ensure we can implement obligations of these agreements as well as those that have been ratified. This will ensure we do not lose the benefit of those agreements just because, for example, some EU member states have not completed their domestic ratification procedures. It is important to note that these agreements will all have gone through the UK Parliament's European scrutiny procedures required for Council decisions to authorise the signature of agreements.

2. The Trade Bill places a requirement for the UK Government to lay a report to detail changes to the trade-related provisions of existing EU free trade agreements made as the UK leaves the EU and adopts these agreements on a bilateral basis. This report should be laid in advance of any implementing SIs being laid or prior to any ratification required, whichever comes first. We have placed this requirement only on the UK Government as the UK Government will agree to changes to these agreements on behalf of the whole of the United Kingdom; it therefore makes sense that this reporting requirement is placed only on them.

The reporting requirement relates only to trade elements of free trade agreements and not to other agreements, which mainly relate to trade, as we felt this was proportionate and reflective of the parameters of our programme of trade agreements continuity. Free trade agreements are broad ranging agreements whereas other agreements which mainly relate to trade are usually more subject specific in focus. Through describing the changes made to Free Trade Agreements, Parliament will be able to gain a better sense of the impact of our programme, which is what members sought at Commons Report stage where our concessions received the agreement of Government back benchers.

3. In relation to the number of Statutory Instruments (SI) to be laid under Clause 1 and Clause 2, the power in Clause 1 (a) (b) will result in an SI to amend 3 sets of UK procurement regulations and possibly an equivalent SSI to amend Scottish procurement regulations, although Scotland may decide to make more than one SSI. This power will

allow GPA obligations to be implemented in domestic law as a result of the UK's independent accession.

It is difficult to estimate the number of SIs or SSIs that will be laid under Clause 1 (c) (d). This is because an SI or SSI will only be needed when a new Party accedes to the GPA or a Party withdraws. Currently there are ten active accessions to the GPA, each at a different stage in the process.

Clause 1 (e) (f) will be used once after the UK's accession to the GPA in order to implement modifications to Annex 1 to accurately reflect central government entities as they are now. An SI and SSI will be required. After this, the power may be exercised in the future to reflect machinery of government changes or future transfers of functions from one government entity to another.

In relation to Clause 2, we continue to discuss how best to deliver our continuity programme with our partner countries, we therefore do not yet have an exhaustive list of where we will need to lay regulations under the clause 2 power.

4. The issue of 'necessary' versus 'appropriate' was one which was debated during the passage of the EU (Withdrawal) Act. Allowing the power to be used in a manner which an authority considers 'appropriate' rather than simply 'necessary' gives us and the Devolved Administrations the flexibility needed to decide how best to bring UK laws into compliance in the way that works best for us all. Our reporting requirement will ensure that the Government is transparent with Parliament about what changes it seeks to make.

I hope this response is useful and should the Committee have any further questions, please do not hesitate to contact me.

George Hollingbery

Minister of State for Trade Policy

17 September 2018

