

Trade Bill

COMMONS INSISTENCE, DISAGREEMENT AND REASON

[The page and line numbers refer to HL Bill 128, the bill as first printed for the Lords]

After Clause 2

LORDS AMENDMENT 2

2 Insert the following new Clause—

“Free trade agreements: determination on compliance with international obligations and state actions

- (1) Before publishing the objectives and any initial impact assessments of a proposed trade agreement to be implemented under the Constitutional Reform and Governance Act 2010, the Government must conduct a risk assessment which considers whether the agreement would comply with the United Kingdom’s international treaties and other obligations, with particular reference to human rights, and examines serious violations committed, or alleged to have been committed, by the state or states who will be signatory to the proposed trade agreement.
- (2) The risk assessment under subsection (1) must be presented to the relevant Committees in both Houses of Parliament.
- (3) Before a trade agreement can be laid before Parliament under section 20(1) of the Constitutional Reform and Governance Act 2010 (“the CRAG procedure”), Ministers of the Crown must determine whether the trade agreement, if ratified, would be compliant with the United Kingdom’s international obligations, with particular reference to human rights, and whether serious violations have been committed by the state or states of the signed trade agreement. Such a determination must be published and made available to the relevant Committees at the same time as they are requested to consider a signed trade agreement.

- (4) The Government must present an annual report to the relevant Committees in both Houses of Parliament on the continuing compliance of trade agreements with the United Kingdom's international obligations, with particular reference to human rights, and which examines serious violations committed or alleged to have been committed by the state or states who are signatory to the trade agreement since it was signed. If breaches of the United Kingdom's international obligations or serious violations have taken place, Ministers of the Crown must make a determination on the continuation of a trade agreement.
- (5) In this section, "serious violations" include an activity by a state which would violate an individual's—
- (a) right to life, including but not limited to genocide;
 - (b) right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment;
 - (c) right to be free from slavery and not to be held in servitude or required to perform forced or compulsory labour;
- or other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.
- (6) In this section, "trade agreement" refers to any agreement between the United Kingdom and one or more partners that includes components that facilitate the trade of goods, services or intellectual property, including but not limited to—
- (a) free trade agreements as defined by section 4;
 - (b) Interim Association Agreements and Association Agreements;
 - (c) Economic Partnership Agreements;
 - (d) Interim Partnership Agreements;
 - (e) Stabilisation and Association Agreements;
 - (f) Global Agreements;
 - (g) Economic Area Agreements;
 - (h) Cooperation Agreements;
 - (i) Comprehensive Economic and Trade Agreements;
 - (j) Association Agreements with strong trade component;
 - (k) Transatlantic Trade and Investment Partnerships; and
 - (l) Investment Protection Agreements."

COMMONS REASON

The Commons disagree to Lords Amendment 2 for the following Reason –

2A

Because it is unnecessary in light of existing international obligations.

LORDS NON-INSISTENCE AND AMENDMENT IN LIEU

The Lords do not insist on their Amendment 2, to which the Commons have disagreed for their Reason 2A, and do propose Amendment 2B in lieu –

2B After Clause 2, insert the following new Clause –

“Free trade agreements: determination on state actions

- (1) Before a trade agreement can be laid before Parliament under section 20(1) of the Constitutional Reform and Governance Act 2010, Ministers of the Crown must determine whether another signatory to the relevant agreement has committed crimes against humanity, or if the agreement is compliant with the United Kingdom’s human rights and international obligations. Such a determination must be published and made available to the relevant Committees in both Houses of Parliament at the same time as they are requested to consider a signed trade agreement.
- (2) The Government must present an annual report to the relevant Committees in both Houses of Parliament which examines any crimes against humanity committed or alleged to have been committed by another signatory to the relevant agreement since it was signed. If such crimes have taken place, Ministers of the Crown must make a determination on the continuation of a trade agreement.”

After Clause 2

LORDS AMENDMENT 3

3 Insert the following new Clause –

“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.”

COMMONS REASON

The Commons disagree to Lords Amendment 3 for the following Reason –

3A *Because it is not an effective means of dealing with cases of state genocide.*

LORDS NON-INSISTENCE AND AMENDMENT IN LIEU

The Lords do not insist on their Amendment 3, to which the Commons have disagreed for their Reason 3A, and do propose Amendment 3B in lieu –

3B After Clause 2, insert the following new Clause –

“Agreements with states accused of committing genocide

- (1) The High Court of England and Wales, or the Court of Session in Scotland, or the High Court of Justice in Northern Ireland, may make a preliminary determination that another signatory to a relevant agreement represents a state which has committed genocide, within the meaning of Article II and Article III of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, following an application to the Court from a person or group of persons belonging to a national, ethnic, racial or religious group, or an organisation representing such a group, which is alleged to have been the subject of that genocide.
- (2) “A relevant agreement” in subsection (1) is a bilateral trade agreement towards which the United Kingdom is negotiating or to which it is a signatory.
- (3) The Lord Chancellor must lay before both Houses of Parliament any such preliminary determination by the Court.
- (4) After the laying before Parliament of a preliminary determination under subsection (3) a Minister of the Crown must, after a reasonable period, make arrangements for a motion to be debated in each House of Parliament requiring the Government to set out its course of action relating to the relevant agreement in subsection (1).
- (5) This section applies to genocides which occur after this section comes into force, and to those considered by any Court in subsection (1) to have been ongoing at the time of its coming into force.
- (6) A Minister of the Crown may by regulations made by statutory instrument make provision for or in connection with an application and preliminary determination made pursuant to subsection (1).
- (7) Regulations under subsection (6) above may in particular –
 - (a) specify the form, content, and criteria for applications;
 - (b) make provision about the procedure to be followed in relation to applications;
 - (c) make provision about the procedure and rules of evidence necessary for consideration of an application by the Court, allowing for contradictory representations to be made.
- (8) In making such regulations the Minister of the Crown must have regard to –
 - (a) the experience gained in the operation of this section;
 - (b) the object and intended purpose behind the operation of this section including –
 - (i) the upholding of all undertakings in and international obligations arising from the United Nations Convention on the Prevention and Punishment of the Crime of Genocide;
 - (ii) provision of meaningful access to the Court by persons making applications specified in subsection (1) without hindrance from unreasonable provision made pursuant to subsection (7).
- (9) Regulations under subsection (6) may contain supplemental, incidental, consequential and transitional provision.

- (10) A statutory instrument containing regulations under subsection (6) is subject to annulment in pursuance of a resolution of either House of Parliament.”

COMMONS DISAGREEMENT AND AMENDMENTS IN LIEU

The Commons disagree to Lords Amendments 2B and 3B but propose Amendments 3C and 3D in lieu –

3C Insert the following new Clause –

“2A Free trade agreements and genocide

- (1) Subsection (2) applies if the responsible committee of the House of Commons publishes a report which –
- (a) states that there exist credible reports of genocide in the territory of a prospective FTA counter-party, and
 - (b) confirms that, in preparing the report, the committee has taken such evidence as it considers appropriate.
- (2) If, after receiving a response from the Secretary of State, the committee publishes a report which –
- (a) includes a statement to the effect that the committee is not satisfied by the Secretary of State’s response, and
 - (b) sets out the wording of a motion to be moved in the House of Commons in accordance with subsection (3),
- subsection (3) applies.
- (3) A Minister of the Crown must make arrangements for the motion mentioned in subsection (2)(b) to be debated and voted on by the House of Commons.
- (4) Subsection (5) applies if the responsible committee of the House of Lords publishes a report which –
- (a) states there exist credible reports of genocide in the territory of a prospective FTA counter-party, and
 - (b) confirms that, in preparing the report, the committee has taken such evidence as it considers appropriate.
- (5) If, after receiving a response from the Secretary of State, the committee publishes a statement to the effect that –
- (a) it is not satisfied by the Secretary of State’s response, and
 - (b) it seeks a debate on the report,
- subsection (6) applies.
- (6) A Minister of the Crown must make arrangements for a motion for the House of Lords to take note of the report and the Secretary of State’s response to be moved in that House by a Minister of the Crown.
- (7) References in this section to genocide are references to genocide occurring, or continuing, after this section comes into force.
- (8) In this section –
- “genocide” has the same meaning as in the Convention on the Prevention and Punishment of the Crime of Genocide (see Article 2 of the Convention);

“prospective FTA counter-party” means a state with which the United Kingdom is engaged in formal negotiations for a bilateral free trade agreement;

“the responsible committee of the House of Commons” means the select committee of the House of Commons charged with responsibility for this section;

“the responsible committee of the House of Lords” means the select committee of the House of Lords charged with responsibility for this section.”

3D Title, Line 1, leave out “the implementation of”

LORDS NON-INSISTENCE, DISAGREEMENT AND AMENDMENT IN LIEU

The Lords do not insist on their Amendments 2B and 3B, to which the Commons have disagreed, do disagree with the Commons in their Amendments 3C and 3D, and do propose Amendment 3E in lieu –

3E After Clause 2, insert the following new Clause –

“Trade agreements and genocide

- (1) Subsection (2) applies if the responsible committee of the House of Commons publishes a report which –
 - (a) states that there exist credible reports of genocide perpetrated by a counter-party to a relevant agreement, and
 - (b) confirms that, in preparing the report, the committee has taken such evidence as it considers appropriate.
- (2) The matter is referred to the Parliamentary Judicial Committee (“PJC”) for a preliminary determination on genocide perpetrated by a counter-party to a relevant agreement.
- (3) Following a preliminary determination from the PJC under subsection (2) the Secretary of State must prepare a response to the responsible committee of the House of Commons.
- (4) Subsection (5) applies if, after receiving a response from the Secretary of State to the preliminary determination mentioned in subsection (2), the responsible committee of the House of Commons publishes a report which –
 - (a) includes a statement to the effect that the committee is not satisfied by the Secretary of State’s response, and
 - (b) sets out the wording of a motion to be moved in the House of Commons in accordance with subsection (5).
- (5) A Minister of the Crown must make arrangements for the motion mentioned in subsection (4)(b), within a reasonable period, to be debated and voted on by the House of Commons.
- (6) Subsection (7) applies if the responsible committee of the House of Lords publishes a report which –
 - (a) states that there exist credible reports of genocide perpetrated by a counter-party to a relevant agreement, and
 - (b) confirms that, in preparing the report, the committee has taken such evidence as it considers appropriate.

- (7) The matter is referred to the PJC for a preliminary determination on genocide perpetrated by a counter-party to a relevant agreement.
- (8) Following a preliminary determination from the PJC under subsection (7) the Secretary of State must prepare a response to the responsible committee of the House of Lords.
- (9) Subsection (10) applies if, after receiving a response from the Secretary of State to the preliminary determination mentioned in subsection (7), the responsible committee of the House of Lords publishes a statement to the effect that—
 - (a) it is not satisfied by the Secretary of State’s response, and
 - (b) it seeks a debate on the report.
- (10) A Minister of the Crown must make arrangements for a motion for the House of Lords to take note of the report and the Secretary of State’s response to be moved, within a reasonable period, in that House by a Minister of the Crown.
- (11) A Minister of the Crown may by regulations made by statutory instrument make provision for or in connection with the establishment and funding of, and appointment to, the PJC, and the process of referral and preliminary determination made pursuant to subsections (2) and (7).
- (12) Regulations under subsection (11) above may in particular—
 - (a) specify the procedure by which members (who must have held high judicial office) may be appointed to the PJC, and on whose authorisation;
 - (b) make provision about the procedure and rules of evidence necessary for consideration of a referral mentioned in subsections (2) and (7), allowing for hearings under oath, the collection of evidence, including exculpatory evidence, and the standard of proof to which the PJC should work.
- (13) In making such regulations the Minister of the Crown must have regard to—
 - (a) the experience gained in the operation of this section;
 - (b) the object and intended purpose behind the operation of this section including—
 - (i) the upholding of all undertakings in and international obligations arising from the United Nations Convention on the Prevention and Punishment of the Crime of Genocide;
 - (ii) provision of meaningful referral without unreasonable hindrance to the PJC or the committee making the referral pursuant to subsection (2) or (7).
- (14) Regulations under subsection (11) may contain supplemental, incidental, consequential and transitional provision.
- (15) A statutory instrument containing regulations under subsection (11) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (16) In this section—

“counter-party to a relevant agreement” means a counter-party with which the United Kingdom has a bilateral trade agreement or is engaged in negotiations for a bilateral trade agreement;

“genocide” has the same meaning as in the Convention on the Prevention and Punishment of the Crime of Genocide (see Article 2 of the convention) and refers to genocide occurring, or continuing, after this section comes into force;

“Parliamentary Judicial Committee” or “PJC” means an ad hoc committee established in accordance with regulations under subsection (11), comprising five members of the House of Commons or House of Lords who have held high judicial office;

“preliminary determination” means a public finding by the PJC of genocide perpetrated by a counter-party to a relevant agreement, after due consideration by the PJC of all available evidence;

“the responsible committee of the House of Commons” means any select committee of the House of Commons charged with responsibility for this section;

“the responsible committee of the House of Lords” means any select committee of the House of Lords charged with responsibility for this section.”

COMMONS INSISTENCE, DISAGREEMENT AND REASON

The Commons insist on their Amendments 3C and 3D and disagree to Lords Amendment 3E for the following Reason –

3F

Because Amendments 3C and 3D make appropriate provision for taking reports of genocide into account during parliamentary scrutiny of trade agreements, and because Amendment 3E would impose a charge on public funds; and the Commons do not offer any further Reason in respect of Amendment 3E, trusting that this Reason may be deemed sufficient.

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