

# Trade (Australia and New Zealand) Bill

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for International Trade, have been ordered to be published as HL Bill 81—EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Lord Johnson of Lainston has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Trade (Australia and New Zealand) Bill are compatible with the Convention rights.



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[AS BROUGHT FROM THE COMMONS]

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## [AS BROUGHT FROM THE COMMONS]

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**B I L L**

TO

Enable the implementation of, and the making of other provision in connection with, the government procurement Chapters of the United Kingdom's free trade agreements with Australia and New Zealand.

**B**E IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Implementation of FTAs***1 Power to implement government procurement Chapters**

- (1) An appropriate authority may by regulations make such provision as the authority considers appropriate—
  - (a) to implement the government procurement Chapters of the UK-Australia and UK-New Zealand FTAs (“the procurement Chapters”), or 5
  - (b) otherwise for the purposes of dealing with matters arising out of, or related to, those Chapters.
- (2) Regulations under subsection (1)(b) may (among other things) make provision in relation to cases falling outside the scope of a procurement Chapter so as to secure that provision made under this section is of general application. 10
- (3) For the purposes of subsection (2), a case falls outside the scope of a procurement Chapter if the Chapter does not impose an obligation on the United Kingdom in respect of that case. 15
- (4) In subsection (1)(a), “government procurement Chapters of the UK-Australia and UK-New Zealand FTAs” means—
  - (a) Chapter 16 of the UK-Australia FTA (together with the United Kingdom's Schedule to Annex 16A to that agreement), and
  - (b) Chapter 16 of the UK-New Zealand FTA (together with the United Kingdom's Schedule to Annex 16A to that agreement). 20
- (5) In this section—

“UK-Australia FTA” means the free trade agreement between the United Kingdom and Australia signed at London on 16 December 2021 and

at Adelaide on 17 December 2021 (as that agreement is modified from time to time in accordance with any provision of it);

“UK-New Zealand FTA” means the free trade agreement between the United Kingdom and New Zealand signed at London on 28 February 2022 (as that agreement is modified from time to time in accordance with any provision of it). 5

## 2 Further provision about power

- (1) Regulations under section 1 may –
- (a) make provision for different purposes or areas;
  - (b) make provision generally or only in relation to specified cases; 10
  - (c) make incidental, supplementary or consequential provision;
  - (d) make transitional, transitory or saving provision.
- (2) Schedule 1 contains –
- (a) restrictions on the exercise of the power in section 1 by devolved authorities, and 15
  - (b) exclusions from restrictions on the legislative competence of Senedd Cymru.
- (3) Schedule 2 contains provision about the making of regulations under section 1.

*General and final provision* 20

## 3 Interpretation

In this Act –

- “appropriate authority” means –
- (a) a Minister of the Crown, or
  - (b) a devolved authority; 25
- “devolved authority” means –
- (a) the Scottish Ministers,
  - (b) the Welsh Ministers, or
  - (c) a Northern Ireland department;
- “government procurement Chapters of the UK-Australia and UK-New Zealand FTAs” has the meaning given by section 1(4); 30
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;
- “modify” includes amend or rectify (and related expressions are to be read accordingly); 35
- “subordinate legislation” means any Order in Council, order, rules, regulations, scheme, warrant, byelaw or other instrument made under –
- (a) an Act of Parliament,
  - (b) an Act of the Scottish Parliament, 40
  - (c) a Measure or Act of Senedd Cymru, or

(d) Northern Ireland legislation.

**4 Extent, commencement and short title**

- (1) This Act extends to England and Wales, Scotland and Northern Ireland.
- (2) This Act comes into force on the day on which it is passed.
- (3) This Act may be cited as the Trade (Australia and New Zealand) Act 2022.

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## SCHEDULES

### SCHEDULE 1

Section 2(2)

#### PROVISION RELATING TO DEVOLVED AUTHORITIES AND SENEDD CYMRU

#### PART 1

#### RESTRICTIONS ON DEVOLVED AUTHORITIES

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##### *No power to make provision outside devolved competence*

1 (1) No provision may be made by a devolved authority acting alone in regulations under section 1 unless the provision is within the devolved competence of the devolved authority.

(2) See paragraphs 5 to 7 for the meaning of “devolved competence”. 10

##### *Requirement for consent where it would otherwise be required*

2 (1) The consent of a Minister of the Crown is required before any provision is made by the Welsh Ministers acting alone in regulations under section 1 so far as that provision, if contained in an Act of Senedd Cymru, would require the consent of a Minister of the Crown. 15

(2) The consent of the Secretary of State is required before any provision is made by a Northern Ireland department acting alone in regulations under section 1 so far as that provision, if contained in an Act of the Northern Ireland Assembly, would require the consent of the Secretary of State.

(3) Sub-paragraph (1) or (2) does not apply if— 20

(a) the provision could be contained in subordinate legislation made otherwise than under section 1 by the Welsh Ministers acting alone or (as the case may be) a Northern Ireland devolved authority acting alone, and

(b) no such consent would be required in that case. 25

(4) The consent of a Minister of the Crown is required before any provision is made by a devolved authority acting alone in regulations under section 1 so far as that provision, if contained in—

(a) subordinate legislation made otherwise than under section 1 by the devolved authority, or 30

(b) subordinate legislation not falling within paragraph (a) and made otherwise than under section 1 by (in the case of Scotland) the First Minister or Lord Advocate acting alone or (in the case of Northern Ireland) a Northern Ireland devolved authority acting alone,

would require the consent of a Minister of the Crown. 35

(5) Sub-paragraph (4) does not apply if—

(a) the provision could be contained in—



- (i) an Act of the Scottish Parliament, an Act of Senedd Cymru or (as the case may be) an Act of the Northern Ireland Assembly, or
  - (ii) different subordinate legislation of the kind mentioned in sub-paragraph (4)(a) or (b), and 5
- (b) the consent of a Minister of the Crown would not be required in that case.

*Requirement for joint exercise where it would otherwise be required*

- 3 (1) No regulations may be made under section 1 by the Scottish Ministers, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under section 1 is exercisable by – 10
- (a) the Scottish Ministers acting jointly with a Minister of the Crown, or
  - (b) the First Minister or Lord Advocate acting jointly with a Minister of the Crown, 15
- unless the regulations are, to that extent, made jointly with the Minister of the Crown.
- (2) No regulations may be made under section 1 by the Welsh Ministers, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under section 1 is exercisable by the Welsh Ministers acting jointly with a Minister of the Crown, unless the regulations are, to that extent, made jointly with the Minister of the Crown. 20
- (3) No regulations may be made under section 1 by a Northern Ireland department, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under section 1 is exercisable by – 25
- (a) a Northern Ireland department acting jointly with a Minister of the Crown, or 30
  - (b) another Northern Ireland devolved authority acting jointly with a Minister of the Crown,
- unless the regulations are, to that extent, made jointly with the Minister of the Crown.
- (4) Sub-paragraph (1), (2) or (3) does not apply if the provision could be contained in – 35
- (a) an Act of the Scottish Parliament, an Act of Senedd Cymru or (as the case may be) an Act of the Northern Ireland Assembly without the need for the consent of a Minister of the Crown, or
  - (b) different subordinate legislation made otherwise than under section 1 by – 40
    - (i) the Scottish Ministers, the First Minister or the Lord Advocate acting alone,
    - (ii) the Welsh Ministers acting alone, or

- (iii) (as the case may be), a Northern Ireland devolved authority acting alone.

*Requirement for consultation where it would otherwise be required*

- 4 (1) No regulations may be made under section 1 by the Welsh Ministers acting alone, so far as they contain provision which, if contained in an Act of Senedd Cymru, would require consultation with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown. 5
- (2) No regulations may be made under section 1 by the Scottish Ministers acting alone, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under section 1 is exercisable by the Scottish Ministers, the First Minister or the Lord Advocate after consulting with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown. 10 15
- (3) No regulations may be made under section 1 by the Welsh Ministers acting alone, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under section 1 is exercisable by the Welsh Ministers after consulting with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown. 20
- (4) No regulations may be made under section 1 by a Northern Ireland department acting alone, so far as they contain provision which relates to a matter in respect of which a power to make subordinate legislation otherwise than under section 1 is exercisable by a Northern Ireland devolved authority after consulting with a Minister of the Crown, unless the regulations are, to that extent, made after consulting with the Minister of the Crown. 25
- (5) Sub-paragraph (2), (3) or (4) does not apply if – 30
- (a) the provision could be contained in an Act of the Scottish Parliament, an Act of Senedd Cymru or (as the case may be) an Act of the Northern Ireland Assembly, and
- (b) there would be no requirement for the consent of a Minister of the Crown, or for consultation with a Minister of the Crown, in that case. 35
- (6) Sub-paragraph (2), (3) or (4) does not apply if –
- (a) the provision could be contained in different subordinate legislation made otherwise than under section 1 by –
- (i) the Scottish Ministers, the First Minister or the Lord Advocate acting alone, 40
- (ii) the Welsh Ministers acting alone, or
- (iii) (as the case may be), a Northern Ireland devolved authority acting alone, and

- (b) there would be no requirement for the consent of a Minister of the Crown, or for consultation with a Minister of the Crown, in that case.

*Meaning of devolved competence*

- 5 A provision is within the devolved competence of the Scottish Ministers if – 5
- (a) it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament, or
  - (b) it is provision which could be made in other subordinate legislation by the Scottish Ministers, the First Minister or the Lord Advocate acting alone. 10
- 6 A provision is within the devolved competence of the Welsh Ministers if –
- (a) it would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (including any provision that could be made only with the consent of a Minister of the Crown), or 15
  - (b) it is provision which could be made in other subordinate legislation by the Welsh Ministers acting alone.
- 7 A provision is within the devolved competence of a Northern Ireland department if – 20
- (a) the provision, if it were contained in an Act of the Northern Ireland Assembly –
    - (i) would be within the legislative competence of the Assembly, and
    - (ii) would not require the consent of the Secretary of State, 25
  - (b) the provision –
    - (i) amends or repeals Northern Ireland legislation, and
    - (ii) would, if it were contained in an Act of the Northern Ireland Assembly, be within the legislative competence of the Assembly and require the consent of the Secretary of State, 30
  - (c) the provision is provision which could be made in other subordinate legislation by any Northern Ireland devolved authority acting alone.

*Meaning of “Northern Ireland devolved authority”*

- 8 In this Part, a “Northern Ireland devolved authority” means the First Minister and deputy First Minister in Northern Ireland acting jointly, a Northern Ireland Minister or a Northern Ireland department. 35

## PART 2

### LEGISLATIVE COMPETENCE OF SENEDD CYMRU: EXCLUSIONS FROM RESTRICTIONS

- 9 (1) Schedule 7B to the Government of Wales Act 2006 (general restrictions on legislative competence of Senedd Cymru) is amended as follows.
- (2) In paragraph 9(9) (no requirement for consent to Senedd Cymru removing certain consent or consultation requirements) – 5
- (a) omit the “or” at the end of paragraph (b), and
- (b) after paragraph (c) insert “; or
- (d) the Trade (Australia and New Zealand) Act 2022.”
- (3) In paragraph 11(6)(b) (no requirement for consent to Senedd Cymru removing Minister of the Crown functions exercisable concurrently) – 10
- (a) omit the “or” at the end of paragraph (vii), and
- (b) after paragraph (viii) insert “; or
- (ix) the Trade (Australia and New Zealand) Act 2022.” 15

## SCHEDULE 2

Section 2(3)

### REGULATIONS UNDER SECTION 1

## PART 1

### STATUTORY INSTRUMENTS AND STATUTORY RULES

- 1 (1) The power to make regulations under section 1 – 20
- (a) so far as exercisable by a Minister of the Crown acting alone or by a Minister of the Crown acting jointly with a devolved authority, is exercisable by statutory instrument,
- (b) so far as exercisable by the Welsh Ministers acting alone, is exercisable by statutory instrument, and 25
- (c) so far as exercisable by a Northern Ireland department acting alone, is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)) (and not by statutory instrument).
- (2) For regulations made under section 1 by the Scottish Ministers acting alone, see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) (Scottish statutory instruments). 30

## PART 2

### SCRUTINY OF REGULATIONS UNDER SECTION 1

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

- 2 (1) A statutory instrument containing regulations of a Minister of the Crown acting alone under section 1 is subject to annulment in pursuance of a resolution of either House of Parliament. 5
- (2) Regulations of the Scottish Ministers acting alone under section 1 are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).
- (3) A statutory instrument containing regulations of the Welsh Ministers acting alone under section 1 is subject to annulment in pursuance of a resolution of Senedd Cymru. 10
- (4) Regulations of a Northern Ireland department acting alone under section 1 are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)) as if they were a statutory instrument within the meaning of that Act. 15

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

- 3 (1) This paragraph applies to regulations of a Minister of the Crown acting jointly with a devolved authority under section 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. 20
- (3) A statutory instrument containing regulations to which this paragraph applies is subject to annulment in pursuance of a resolution of either House of Parliament. 25
- (4) Regulations to which this paragraph applies which are made jointly with the Scottish Ministers are subject to the negative procedure.
- (5) Sections 28(2), (3) and (8) and 31 of the Interpretation and Legislative Reform (Scotland) Act 2010 (negative procedure etc.) apply in relation to regulations to which sub-paragraph (4) applies as they apply in relation to devolved subordinate legislation (within the meaning of Part 2 of that Act) which is subject to the negative procedure (but as if references to a Scottish statutory instrument were references to a statutory instrument). 30
- (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 that Parliament of a Scottish statutory instrument (within the meaning of Part 2 of that Act). 35

- (7) A statutory instrument containing regulations to which this paragraph applies which are made jointly with the Welsh Ministers is subject to annulment in pursuance of a resolution of Senedd Cymru.
- (8) Regulations to which this paragraph applies which are made jointly with a Northern Ireland department are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 as if they were a statutory instrument within the meaning of that Act. 5
- (9) If in accordance with this paragraph—
- (a) either House of Parliament resolves that an address be presented to His Majesty praying that an instrument be annulled, or 10
  - (b) a relevant devolved legislature resolves that an instrument be annulled,
- nothing further is to be done under the instrument after the date of the resolution and His Majesty may by Order in Council revoke the instrument.
- (10) In sub-paragraph (9), “relevant devolved legislature” means— 15
- (a) in the case of regulations made jointly with the Scottish Ministers, the Scottish Parliament,
  - (b) in the case of regulations made jointly with the Welsh Ministers, Senedd Cymru, and
  - (c) in the case of regulations made jointly with a Northern Ireland 20
- department, the Northern Ireland Assembly.
- (11) Sub-paragraph (9) does not affect the validity of anything previously done under the instrument or prevent the making of a new instrument.
- (12) Sub-paragraphs (9) to (11) apply in place of provision made by any other enactment about the effect of such a resolution. 25
- (13) In this paragraph, “enactment” includes an enactment contained in, or in an instrument made under—
- (a) an Act of the Scottish Parliament,
  - (b) a Measure or Act of Senedd Cymru, or
  - (c) Northern Ireland legislation. 30

### PART 3

#### ANTICIPATORY EXERCISE OF SECTION 1 POWER

- 4 The power to make regulations under section 1 in relation to—
- (a) the government procurement Chapters of the UK-Australia and UK-New Zealand FTAs, or 35
  - (b) any modification of either Chapter which requires ratification, is capable of being exercised before the agreement or (as the case may be) modification concerned is ratified.



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[AS BROUGHT FROM THE COMMONS]

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## B I L L

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Enable the implementation of, and the making of other provision in connection with, the government procurement Chapters of the United Kingdom's free trade agreements with Australia and New Zealand.

*Brought from the Commons on 13th December 2022*

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Ordered to be Printed, 13th December 2022.

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