

TRADE BILL

AMENDMENTS TO BE MOVED AT COMMITTEE STAGE

Clause 1 - Implementation of the Agreement on Government Procurement

Page 1, line 4, replace “may” with “should, following consultation with relevant stakeholders”

Clause 2 - Implementation of international trade agreements

Page 2, line 15, after “may” insert “following consultation with relevant stakeholders”

Page 2, line 16, replace “appropriate” with “necessary”

Clause 11 – Collection of exporter information by HMRC

Page 7, line 33, after “may” insert “following consultation with relevant stakeholders”

Page 8, line 3, insert “(7) Nothing in the regulations made under subsection (3) may require the disclosure of information or the production of documents which are subject to legal professional privilege.”

Clause 12 – Disclosure of information by HMRC

Page 8, line 33, insert at end “(c) Nothing in this section authorises the disclosure of information or the production of documents which are subject to legal professional privilege.”

Schedule 4 – The Trade Remedies Authority

Page 20, lines 2 and 3, leave out “A person holds and vacates office as a member of the TRA in accordance with the terms and conditions of the person’s appointment” and insert “A person holds office as a member of the TRA for a fixed period of five years from the date of appointment. A person is eligible for renewal of appointment for a further fixed period of five years upon the expiry of the first period

Page 20, line 13, leave out paragraph 6(a)

Page 20, line 25, insert at end

“11 A person shall be considered unable or unfit if the Chair is satisfied as regards any of the following matters –

(a) That the member becomes insolvent;

(b) That the member has been convicted of a criminal offence;

(c) That the member is otherwise unable or unfit to discharge the functions of a member or is unsuitable to continue as a member.”

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Clause 1, page 1, line 4, replace “may” with “should, following consultation with relevant stakeholders”

Effect

To require the relevant authority to make the regulations referred to and to impose a duty to consult relevant stakeholders when making the regulations as specified.

Reason

The UK is already party to the GPA. Requiring the relevant authority to make regulations to implement the GPA would ensure continuity upon withdrawal from the EU.

Under clause 1(1), the Bill grants an appropriate authority the power to make regulations which it considers “appropriate” to implement GPA. We consider that if the intention is to ensure implementation of the 1994 GPA then the authorities should be required to make such provisions. In this specific context, it could be helpful to allow the relevant authority discretion, facilitated by the current wording, to make regulations which it considers appropriate to implement the GPA to ensure continued alignment with EU requirements.

We consider that the regulations should be made following consultation with relevant stakeholders. Consultation provides an additional layer of scrutiny by stakeholders. Imposing a duty on the relevant authority to consult will ensure any draft statutory instrument is exposed to critical comment from stakeholders, which may improve an instrument and help to avoid future issues when it is going through Parliament.

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AMENDMENT TO BE MOVED AT COMMITTEE STAGE

Clause 2, page 2, line 15, after “may” insert “following consultation with relevant stakeholders”

Effect

To impose a duty to consult relevant stakeholders when making the regulations as specified.

Reason

Consultation provides an additional layer of scrutiny by stakeholders. Imposing a duty on the relevant authority to consult will ensure any draft statutory instrument is exposed to critical comment from stakeholders, which may improve an instrument and help to avoid future issues when it is going through Parliament.

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Clause 2, page 2, line 16, replace “appropriate” with “necessary”

Effect

To limit the scope of powers to be delegated to an appropriate authority.

Reason

Clause 2(1) provides that an appropriate authority may make such provision as the authority considers appropriate to implement a future agreement. We believe this power should be limited to making regulations which are considered “necessary” to implement the agreement.

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Clause 11, page 7, line 33, after “may” insert “following consultation with relevant stakeholders”

Effect

This amendment would impose a duty on the Treasury to consult relevant stakeholders when making regulations as specified.

Reason

Consultation provides an additional layer of scrutiny by stakeholders. Imposing a duty on the Treasury to consult will ensure any draft statutory instrument is exposed to critical comment from stakeholders, which may improve an instrument and help to avoid future issues when it is going through Parliament.

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Clause 11, page 8, line 3, insert

“(7) Nothing in the regulations made under subsection (3) may require the disclosure of information or the production of documents which are subject to legal professional privilege.”

Effect

To protect legal professional privilege.

Reason

We are concerned that clause 11(1) grants a very wide discretion to HMRC to require information. The scope of this provision should be more clearly defined to give greater certainty as to the extent of information and the anticipated frequency and method of data collection.

Legal professional privilege (LPP) and confidentiality are essential to safeguard the rule of law and the administration of justice. They permit information to be communicated between a lawyer and client without fear of it becoming known to a third party without the clear permission of the client. Many UK statutes already give express protection of LPP and it is vigorously protected by the courts. The ‘iniquity exception’ alleviates concerns that LPP may be used to protect communications between a lawyer and client which are being used for a criminal purpose. Such purpose removes the protection from the communications, allowing them to be targeted using existing powers and not breaching LPP.

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Clause 12, page 8, line 33, insert at end

“(c) Nothing in this section authorises the disclosure of information or the production of documents which are subject to legal professional privilege.”

Effect

To protect legal professional privilege.

Reason

We are concerned that clause 12 grants a very wide discretion to HMRC to disclose information. The scope of this provision should be more clearly defined to give greater certainty as to the extent of information and the anticipated frequency and method of data collection.

Legal professional privilege (LPP) and confidentiality are essential to safeguard the rule of law and the administration of justice. They permit information to be communicated between a lawyer and client without fear of it becoming known to a third party without the clear permission of the client. Many UK statutes already give express protection of LPP and it is vigorously protected by the courts. The ‘iniquity exception’ alleviates concerns that LPP may be used to protect communications between a lawyer and client which are being used for a criminal purpose. Such purpose removes the protection from the communications, allowing them to be targeted using existing powers and not breaching LPP.

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AMENDMENT TO BE MOVED AT COMMITTEE STAGE

Schedule 4 page 20, lines 2 and 3, leave out “A person holds and vacates office as a member of the TRA in accordance with the terms and conditions of the person’s appointment” and insert:

“A person holds office as a member of the TRA for a fixed period of five years from the date of appointment. A person is eligible for renewal of appointment for a further fixed period of five years upon the expiry of the first period”

Effect

The effect of this amendment is to establish a fixed period of office for members of the TRA and to make provision for one further period of office.

Reason

Introducing a fixed term would give the TRA members greater security of tenure. It would therefore reinforce their independence and impartiality as the duration of service could not be subject Ministerial discretion.

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Schedule 4, page 20, line 13, leave out paragraph 6(a)

Effect

Consequential amendment.

Reason

Consequential amendment.

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Schedule 4, page 20, line 25, insert at end

“11 A person shall be considered unable or unfit if the Chair is satisfied as regards any of the following matters –

- (a) That the member becomes insolvent;
- (b) That the member has been convicted of a criminal offence;
- (c) That the member is otherwise unable or unfit to discharge the functions of a member or is unsuitable to continue as a member.”

Effect

The effect of this amendment is to define the meaning of “unable or unfit” in Schedule 4, paragraphs 9 and 10.

Reason

Introducing a definition of “unable or unfit” would provide greater legal certainty as to the circumstances in which a person may be removed from office as a non-executive or executive member of the TRA.