

TRADE BILL
AMENDMENTS TO BE MOVED IN COMMITTEE

Amendments

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| Clause 1, page 1, line 4 | Leave out “may” and insert “must” |
| Clause 2, page 2, line 9 | Leave out “appropriate” and insert “necessary” |
| Clause 2, page 2, line 13 | Leave out subsection 2(b) and insert new subsection “(b) an agreement between two or more countries aimed at reducing the barriers to trade in goods or services between them” |
| Clause 7, page 5, line 4 | After “may” insert “following consultation with relevant stakeholders” |
| Clause 7, page 5, line 17 | At end 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 8, page 5, line 45 | 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, paragraph 3, page 15, line 27 | 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” |
| Schedule 4, page 16, line 11 | 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 person becomes insolvent; (b) That the person has been convicted of a criminal offence; (c) That the person 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, leave out “may” and insert “must”

Effect

To require the relevant authority to make the regulations referred to.

Reason

The UK is already party to the Government Procurement Agreement (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.

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Clause 2, page 2, line 9, leave out “appropriate” and insert “necessary”

Effect

This amendment would limit the scope of powers to be delegated to an appropriate authority to what is necessary to achieve implementation of international trade agreements.

Reason

Clause 2(1) provides that an appropriate authority may make such provision as the authority considers “appropriate” to implement a future agreement, however the term “appropriate” is vague and subjective. A necessity test is clearer and more objective and we believe this power should be limited to making regulations which are considered “necessary” to implement the agreement.

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Clause 2, page 2, line 13, leave out subsection 2(b) and insert new subsection “(b) an agreement between two or more countries aimed at reducing the barriers to trade in goods or services between them”

Effect

To provide a more precise definition of “international agreement” and achieve greater clarity in the bill.

Reason

The amended wording would provide a clearer definition of international trade agreement than that which is currently provided for by the Bill. This is in line with the Government’s intention as set out in the explanatory note. The principle of certainty is central to good law-making. Under clause 2(2) an international trade agreement means a “free trade agreement”, further defined under clause 2(7). Clause 2(2)(b) refers to “an international agreement that mainly relates to trade, other than a free trade agreement”. However, “mainly” does not grant sufficient certainty in terms of interpretation. We note that the explanatory notes define international trade agreements as follows: “International trade agreements are agreements between two or more countries aimed at reducing the barriers to trade in goods or services between them.” We consider that this definition is clearer than that currently included in the Bill.

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Clause 7, page 5, line 4, 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 7, page 5, line 17, at end 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 7(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 8, page 5, line 45, 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 8 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.

TRADE BILL

AMENDMENT TO BE MOVED IN COMMITTEE

Schedule 4, paragraph 3, page 15, line 27, 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 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 paragraph 6, page 15, line 38, leave out paragraph 6(a)

Effect

Consequential amendment.

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Schedule 4, page 16, line 11, 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.