

TRADE BILL

AMENDMENTS TO BE MOVED IN COMMITTEE

Clause 2, page 2, line 9	After 'considers' insert "necessary and"
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 6, line 9	At end insert "(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 17, 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"

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Clause 2, page 2, line 9

after 'considers' insert
"necessary and"

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.

Speaking in response to a similar amendment in the House of Commons Committee Stage, the Minister Greg Hands MP said that 'all regulations made under the clause 2 power to implement international trade agreements will be both necessary and appropriate. The power is needed to implement obligations arising from continuity trade agreements into domestic law over time and in all circumstances. Our expectation is that the power will be mainly used for obligations relating to procurement or mutual recognition of product conformity assessments. To be clear, it cannot be used to implement tariff-related provisions. Without such an ability to make changes, the UK would be at risk of being in breach of our international obligations. It is the Government's responsibility to ensure that that does not happen. The proposed amendment would prevent that by constraining the vires or scope of the regulations that can be made under clause 2, particularly when using the concurrent powers to legislate in areas of devolved competence' (Committee Hansard, Fourth Sitting col 131).

We welcome the commitments in this statement regarding the necessity and appropriateness of the regulations which will be made under clause 2. We cannot reconcile the comments by the Minister that the regulations will be necessary and appropriate with the last sentence of his comments. Perhaps the Government could explain their approach.

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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 on the face of it 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.

Speaking in response to a similar amendment in the House of Commons Committee Stage, the Minister Greg Hands MP said that legal professional privilege ‘is a long-standing principle that protects the confidentiality of communications between lawyers and their lay clients, and vice versa. It enables lawyers to consult and advise their clients without clients fearing that their information will later have to be disclosed. Indeed, it is a matter of general interest that any person who wishes to consult a lawyer must be free to do so under conditions that ensure uninhibited discussion. That principle is recognised and protected under article 8 of the European convention on human rights.

I can provide an absolute assurance to the Committee that the Government have no intention, either now or in the future, of using these powers to seek or share information that is protected by legal professional privilege. For clause 7, the information that has been requested from exporters is for trade statistics purposes and will be provided voluntarily. The fact that the information is being provided voluntarily is perhaps an indication of the Government’s position in respect of minimising burdens and therefore not requiring privileged information to be disclosed’. (Committee Hansard, Fourth Sitting col 299).

We are reassured by these statements by the Minister but given these comments it seems that the Government should have no difficulty in including the amendment in the bill.

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Clause 8, page 6, line 9

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.

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We are reassured by these statements by the Minister but given these comments it seems that the Government should have no difficulty in including the amendment in the bill.

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Schedule 4, paragraph 3, page 17, 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 up to five years from the date of appointment. A person is eligible for renewal of appointment for a further period of no more than five years upon the expiry of the first period”

Effect

The effect of this amendment is to establish a fixed period of up to five years in office for members of the TRA and to make provision for one further period of office of no more than five years.

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. Limiting the number of terms to two (of up to five years with a period of up to 10 years in total) would comply with the Cabinet Office guidelines on the appointment of members of the TRA as set out in the ‘Governance Code on Public Appointments’.

Speaking in response to a similar amendment in the House of Commons Committee Stage, the Minister Greg Hands MP said ‘It is crucial that the right people are appointed as members of the TRA. We are committed to appointing on merit following fair and open competition. That is why we are following standard Cabinet Office guidelines on the appointment of members of the TRA, as set out in the “Governance Code on Public Appointments”, which states that it is usual for Ministers to decide on the length of tenure. The code also sets out

“a strong presumption that no individual should serve more than two terms or serve in any one post for more than ten years, other than in exceptional circumstances.’

Specifying those details in the contractual terms for each appointment is the best way to ensure the flexibility to get the organisation off to the best start. The role of the TRA chair designate is crucial in shaping and forming the board. It is therefore only right that the Secretary of State does that through the terms and conditions for each role in consultation with the chair designate, rather than binding their hands in legislation. We are working closely with the TRA’s chair designate, Simon Walker, to start the recruitment of the rest of

the TRA board members in due course. We will specify the duration of appointments as part of that process.

By contrast, amendment 35 would replace the contractual terms for all TRA members with a fixed statutory period of either five or 10 years, with no provision for any other length of tenure. That would deny the TRA the flexibility that it needs, particularly now when we are trying to ensure the best possible start for the new organisation, but such a rigid approach would be detrimental to its good governance at any time' (Committee Hansard Eighth Sitting col 287).

The Minister's comments did not address the effect of ministerial discretion on the independence of TRA members (particularly in the context of the removal of a member) and we believe that this merits further examination of the protections which can be put in place.

The amendment has been altered to take account of the Minister's comments. Whilst retaining the 10 years statutory maximum term, will allow for staggered periods of appointment which will be convenient for the commencement of the TRA's work and we hope the Government will accept it.