



**Equality and
Human Rights
Commission**

Trade Bill
House of Lords – Second Reading
Tuesday 11 September 2018

Introduction

The Equality and Human Rights Commission (the Commission) has been given powers by Parliament to advise Government on the equality and human rights implications of laws and proposed laws and to publish information or provide advice, including to Parliament, on any matter related to equality, diversity and human rights.

At this moment of significant constitutional change, it is important to set out a positive vision for the kind of country we want to be after we have left the European Union. The Commission believes that a vision of a fair and inclusive Britain that supports individuals to achieve their potential involves delivering on two key objectives:

- Ensuring we retain the UK's equality and human rights legal framework as we leave the EU.
- Ensuring the UK remains a global leader on equality and human rights after leaving the EU.

The Commission considers that the UK should be an open and fair place to live and do business, and the UK's trade policy offers an opportunity to ensure the UK is a global leader on equality and human rights.

This briefing sets out our analysis of the steps that need to be taken to ensure the Trade Bill fully delivers the Government's stated commitment to non-regression of equality and human rights protections, in a way that

guards against the excessive transfer of power from Parliament to the Executive. To deliver on this commitment, we consider that the Bill must:

- 1) Limit the use of delegated powers to reduce equality rights and human rights protections.** We recommend that a non-regression clause, reflecting a commitment not to reduce equality and human rights protections, is included on the face of the Bill. In addition, any proposed regulations laid before Parliament should be accompanied by a ministerial statement confirming there is no adverse impact on equality or human rights.
- 2) Ensure there are robust equality and human rights impact assessments of trade agreements.** We recommend that Sustainability Impact Assessments are conducted for all trade agreements the Government concludes with other countries, and include an analysis of the implications for people sharing the protected characteristics set out in the Equality Act 2010.

We recognise that the purpose of the Trade Bill is to roll over existing trade agreements that the EU already has in place with other countries. However, our concerns relate to the breadth of delegated powers in the Bill, which could potentially be used to make changes to equality, and human rights protections in the UK if not expressly prohibited, and the need for robust impact assessments on any existing trade agreements being ‘rolled over’.

1. Limiting the use of delegated powers

The Commission welcomes the present Government’s stated intention not to use delegated powers to reduce equality and human rights protections. However, it is necessary and prudent to ensure that safeguards are in place to prevent any future use of the powers to reduce fundamental rights protections. This is especially important given the potential for the power to be indefinitely renewed. While the Commission welcomed the Government’s amendments 44 to 47, to Clause 2 of the bill at Report stage in the House of Commons, which reduce the life of the regulation-making power from five years to three, this remains subject to extension with the approval of both houses.

The Government has stated that the aim of the Trade Bill is to make technical, rather than policy, changes to domestic law in order to implement existing trade agreements into the UK context.

As a matter of constitutional principle, changes to fundamental rights should be made by Parliament by primary legislation, not by ministers through secondary legislation. However, the Bill as it currently stands does not prevent such changes being made by the delegated power in Clause 2.

Clause 2(6) (a) enables the Clause 2(1) regulation-making power to amend primary legislation that is retained EU law. It contains none of the safeguards set out, for instance, in section 7 of the EU (Withdrawal) Act, nor does it reflect, in its present form, the constitutional safeguards contained in section 3(2) of the Legislative and Regulatory Reform Act 2006 (LRRRA).

Retained EU law, as defined in the EU (Withdrawal) Act, will contain many fundamental rights, among which are likely to be: workers' rights, rights concerning information privacy and data protection, equality and non-discrimination, rights and responsibilities to act in the best interests of the child, rights of older people, the inclusion of disabled people, access to health, education and social protection, consumer rights, environmental protection and rights to protection against trafficking, slavery and forced labour. Similar concerns have already been raised by Liberty in their second reading briefing¹ and in their letter to Trade Secretary Liam Fox in July 2018, which was co-signed by a number of concerned organisations.²

Moreover, giving Parliament sufficient opportunity to rigorously consider the impact on equality and human rights when examining relevant regulations means that it is much less likely that they will be declared

¹ <https://www.libertyhumanrights.org.uk/sites/default/files/Liberty%20-%20Trade%20Bill%20briefing%20for%20Second%20Reading.pdf>

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<https://www.libertyhumanrights.org.uk/sites/default/files/Trade%20Bill%20joint%20letter%20FINAL.pdf>

ultra vires by the domestic courts, thus saving the Government time and expense in the longer term.

Our recommendation

We call on the Government to include a non-regression clause, reflecting a commitment not to reduce equality and human rights protections, on the face of all Brexit-related legislation including the Trade Bill. There is no reason why trade policy should need to reduce equality and human rights protections, and it is unclear why the Government considers the very broad (as the Government has already acknowledged in the associated Delegated Powers Memorandum) regulation-making power contained in Clause 2(1) of the Trade Bill to be necessary. An express commitment on the face of the Bill would provide a much-needed safeguard.

We also consider that any proposed regulations or amendments laid before Parliament should be accompanied by a ministerial statement confirming that they do not adversely impact upon fundamental rights conferred on individuals, which include equality and/or human rights legislation. This statement should be based on a robust equality and human rights impact assessment of the legislation.

2. Ensure robust equality and human rights impact assessments

In order to maintain its reputation as a world-leader in the promotion and protection of human rights, the UK should continue to play a positive role in using its soft power and trading relationships with other countries to improve human rights standards at home and across the globe.

Sustainability Impact Assessments (SIA) are designed to provide an in-depth analysis of the potential economic, social, human rights, and environmental impacts of trade agreements. All new trade agreements and amendments to existing terms of agreements should be subject to SIA to ensure that proper, informed parliamentary scrutiny can take place.

Our recommendation

The Commission considers the Bill should be strengthened by ensuring that SIAs are conducted for all trade agreements the Government concludes with other countries, including existing agreements which will be rolled over as part of this Bill, and that these SIAs include an analysis of the implications for people sharing the protected characteristics set out in the Equality Act 2010. This would provide for greater parliamentary oversight of these matters, and ensure that the UK maintains its status as a global leader on equality and human rights.

Further information

The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. Find out more about the Commission's work at: www.equalityhumanrights.com

For more information, please contact:

Parliamentary lead:

Denise Morrisroe (Monday, Tuesday, Friday)

Denise.Morrisroe@equalityhumanrights.com

Tel.: 0161 829 8109

Policy leads:

Lauren Payne

Lauren.Payne@equalityhumanrights.com

Tel.: 02078327869

Rachel Fox

Rachel.Fox@equalityhumanrights.com

Tel.: 020 7832 7856

Legal lead:

Sarfraz Khan

Sarfraz.Khan@equalityhumanrights.com

Tel.: 0161 829 8414