

Response of the Equality and Human Rights Commission to the Select Committee Inquiry:

Title:	UK Trade Policy Transparency and Scrutiny
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For more information please contact

Name of EHRC contact providing response and their office address:	
Lauren Payne Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX	
Rachel Albinson Arndale House, Manchester M4 3AQ	
Telephone number:	LP – 020 7832 7869 RA – 0161 829 8107
Mobile number:	-
Email address:	Lauren.Payne@equalityhumanrights.com Rachel.Albinson@equalityhumanrights.com

About the Equality and Human Rights Commission

1. The Equality and Human Rights Commission (the Commission) is a statutory body established under the Equality Act 2006. It operates independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. We are committed to our vision of a modern Britain where everyone is treated with dignity and respect, and we all have an equal chance to succeed.
2. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. It encourages compliance with the Human Rights Act 1998 and is accredited at UN level as an 'A status' national human rights institution (NHRI) in recognition of its independence, powers and performance.

3. 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. We hope that our submission will help inform the Committee's recommendations to the UK Government on the transparency and scrutiny of future trade policy.

Introduction

4. We welcome the opportunity to respond to this inquiry as the issues raised fall within the remit of several of the Commission's strategic priorities, including safeguarding and enhancing equality and human rights throughout the Brexit process and seeking to ensure the UK's future trade agreements include robust human rights protections.
5. Britain has a long history of upholding people's rights, valuing diversity and challenging intolerance. 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 (EU).
6. A key part of this will be how we protect people's rights at home and how we are perceived on the international stage. We have provided briefings to Parliament¹ on the steps that need to be taken to fully deliver the Government's commitment to non-regression of equality and human rights protections in Brexit-related legislation, in a way that guards against the excessive transfer of power from Parliament to the Executive.²
7. The Commission considers that the UK should be an open and fair place to live and do business, and the UK's future trade policy offers an opportunity to ensure the UK is a global leader on equality and human rights.

¹ For example, our briefing to the House of Lords on the second reading of the EU (Withdrawal) Bill on 30 April 2018. Available at: <https://www.equalityhumanrights.com/sites/default/files/eu-withdrawal-bill-house-of-lords-second-reading-30-january-2018.pdf>

² Department for Exiting the European Union (2017), 'Legislating for the United Kingdom's Withdrawal from the European Union', p.18. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/604516/Great_repeal_bill_white_paper_accessible.pdf [accessed 22 June 2018].

Summary of recommendations

8. This submission focuses on addressing the following questions raised in the inquiry terms of reference:
 - i) How should the Government consult business and civil society groups on trade policy matters, including prospective and ongoing trade negotiations?
 - ii) What procedures should be in place for the UK Parliament and devolved administrations/legislatures to scrutinise trade agreements as they are being negotiated?
 - iii) What powers should Parliament and the devolved administrations and legislatures have over the ratification and implementing legislation of UK trade agreements?

9. Our key recommendations are:
 - The UK Government should ensure that future trade policy at a minimum guarantees the same level of human rights protections currently established in the EU's trade and cooperation agreements.
 - The UK Government should commit to strengthening human rights protections in relation to international investment agreements by updating the relevant sections of its National Action Plan on Business and Human Rights.
 - The UK Government should establish a transparent mechanism for consulting with businesses and civil society organisations (CSOs), which are representative of individuals across the full range of protected characteristics,³ when developing trade policy and engaging in trade negotiations.
 - Parliament should receive regular formal updates on the progress of trade negotiations and scrutinise the work of Government departments in the usual way. Parliamentary

³ The nine protected characteristics set out in the Equality Act 2010 are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. Available at: Available at: <http://www.legislation.gov.uk/ukpga/2010/15/section/149>

approval should be required before any agreement can be ratified.

- The UK Government should produce, in consultation with stakeholders, robust Sustainability Impact Assessments (SIAs) that include thorough analysis of the human rights and other implications of trade policy and negotiations.
- The use of delegated powers currently proposed in the Trade Bill should be limited by expressly excluding the creation of any regulations or amendments to primary legislation which would reduce rights under equalities or human rights legislation.

General points

10. Respect for human rights and democratic principles should be the foundation of any trade policy and negotiations.
11. The UK's trade policy should, at a minimum, ensure the same level of human rights protections as currently guaranteed through EU trade and cooperation agreements.⁴
12. The EU's human rights and democracy clauses allow for 'appropriate measures' to be taken if the other party violates human rights or democratic principles,⁵ while procedures that require human rights impact assessments for trade arrangements ensure that there isn't a race to the bottom in respect of rights and protections.
13. We therefore welcome the Government's commitment to include human rights protections that are at least equal to the current EU level in any new bilateral agreements,⁶ and will continue to monitor and advise on ensuring adherence to this commitment.

⁴ See also Joint Committee on Human Rights (2017), 'Human Rights and Business 2017: Promoting responsibility and ensuring accountability'. Available at: <https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/443/443.pdf> [accessed 22 June 2018]

⁵ This includes, for example, sanctions or the suspension of the agreement if the other party violates an 'essential elements' clause referring to basic human rights and democracy standards.

⁶ When asked about the Government's plans to include human rights clauses in future bilateral trade agreements, Margot James MP, Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy, replied: "I certainly would not expect any diminution whatever". Joint Committee on Human Rights, 'Oral evidence: Human Rights and Business', 8 February 2017, HC443 Q101. Available at:

14. Future trade policy also offers an opportunity for the UK to go further in the protection and promotion of equality and human rights. As the first country in the world to develop a National Action Plan Business and Human Rights,⁷ the UK should continue to show global leadership by committing to strengthen human rights protections in relation to international investment agreements in the next iteration of the NAP. We would be happy to provide further information to the Committee on this matter, which is outside of the scope of the current inquiry.

i) How should the Government consult business and civil society groups on trade policy matters, including prospective and on-going trade negotiations?

15. The Commission considers that businesses and CSOs should be consulted using a model that builds on the EU's current 'civil society dialogue'.⁸ This involves informing interested parties about ongoing developments in EU trade policy and negotiations, and exchanging views with them.

16. The UK should establish a transparent mechanism for consulting with businesses and CSOs that ensures representation of a broad range of organisations, including diversity of representation across the full range of protected characteristics. There should be a formal requirement to hold structured meetings with CSOs when drawing up trade policy and engaging in negotiations to ensure that trade issues do not negatively affect human rights or labour rights, among others.

17. Any consultation should provide an opportunity for an exchange of views, with a commitment to fully consider any concerns raised, rather than an information relay alone. This should facilitate debate and ensure a greater level of transparency and accountability.

18. A mechanism to monitor the development of SIAs of trade agreements should also be established. This should include an

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/human-rights-and-business/oral/47020.html>

⁷ HM Government (2013), 'Good Business: Implementing the UN Guiding Principles on Business and Human Rights (updated May 2016)'. Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/522805/Good_Business_Implementing_the_UN_Guiding_Principles_on_Business_and_Human_Rights_updated_May_2016.pdf [accessed 22 June 2018]

⁸ Further information available at: http://trade.ec.europa.eu/civilsoc/csd_proc.cfm

effective consultation process for businesses, CSOs and individuals to feed into and scrutinise SIAs to ensure robust analysis of human rights and other impacts.

ii) What procedures should be in place for the UK Parliament and devolved administrations/legislatures to scrutinise trade agreements as they are being negotiated?

19. Parliament should be provided with regular updates on the progress of trade negotiations, including reports at the end of each negotiating round. Parliamentary committees should scrutinise the work of Government departments in the normal way.
20. Robust SIAs of trade agreements under negotiation should be undertaken to ensure proper analysis of the human rights and other implications of ongoing trade negotiations.
21. Any proposed regulations that are laid before Parliament should be accompanied by a ministerial statement confirming that the proposals do not diminish rights conferred to individuals through equalities or human rights legislation.

iii) What powers should Parliament and the devolved administrations and legislatures have over the ratification and implementing legislation of UK trade agreements?

22. With regard to the rolling over of existing trade agreements, the regulation-making power contained in clause 2(1) of the Trade Bill is very broad (as the Government has already acknowledged in the Delegated Powers Memorandum).⁹ The power is capable of being exercised in its present form to restrict or remove fundamental rights, including those contained in primary legislation that is retained EU law.
23. The Government clearly wishes to maintain flexibility in shaping its trade agenda once it leaves the EU, but requiring vast powers to amend primary legislation simply to convert existing EU trade agreements into UK trade agreements risks the diminution of rights protections and parliamentary sovereignty.

⁹ Department for International Trade (2017), 'Trade Bill: Delegated Powers – Memorandum by the Department for International Trade'. Available at: <https://publications.parliament.uk/pa/bills/cbill/2017-2019/0122/Trade-Bill-Delegated-Powers-Memorandum.pdf> [accessed 22 June 2018].

24. The use of delegated powers should be limited by expressly excluding the creation of any regulations or amendments to primary legislation, which would reduce rights under equalities or human rights legislation.¹⁰
25. Any adverse impacts on fundamental rights through regulations made under the Trade Bill must be clearly and expressly set out to Parliament, enabling it to scrutinise and debate the measures. The super-affirmative procedure in section 18 of the Legislative and Regulatory Reform Act 2006 appears most appropriate in these circumstances to ensure the highest level of scrutiny of regulations that may affect fundamental rights.
26. With regard to future trade agreements, Parliamentary approval should be required before any agreement can be ratified.

¹⁰ Clause 2(6) (a) of the Trade Bill 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 clause 7 of the EU (Withdrawal) Bill, nor does it reflect, in its present form, the constitutional safeguards contained in section 3(2) of the Legislative and Regulatory Reform Act 2006.