



**Equality and  
Human Rights  
Commission**

**Trade Bill  
House of Commons  
Report stage  
Tuesday 17 July 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.

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.

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.

Our priorities for this Bill are to:

- 1) Clarify that delegated powers cannot be used to reduce equality rights and human rights protections, and
- 2) Ensure robust equality and human rights impact assessments of trade agreements.

The Commission welcomes the Government's New Clauses 12 to 14 that require the Minister to lay a report before Parliament setting out significant differences between new trade agreements and existing EU agreements in advance of laying regulations under Clause 2. The Commission also welcomes the Government Amendments (44 to 47) to the sunset provision in Clause 2, which go some way to addressing our concerns. However, we have some outstanding concerns that are outlined in this briefing.

### **1. Limiting the use of delegated powers**

The Commission understands that the present Government has no intention to use the regulation-making power in Clause 2 to reduce equality and human rights protections. However, we remain concerned about a delegated power that is wide enough to allow a future reduction in the protection of fundamental rights. This is of particular concern given the ability to indefinitely renew this power. While we welcome Government Amendments 44 to 47, which reduce the life of the regulation-making power in Clause 2 from five to three years, this remains subject to extension with the approval of both Houses.

The Government states 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. Similar concerns were raised by Liberty in their second reading briefing.<sup>1</sup>

Clause 2(6) (a) enables the regulation-making power to amend primary legislation that is retained EU law. This will contain many fundamental rights, among which are likely to be: worker's rights, rights concerning information privacy and data protection, equality and non-discrimination, rights and responsibilities to act in the best interests of children, 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. Clause 2 contains none of the safeguards set out, for instance, in section 7 of the EU (Withdrawal) Act, which restricts the ability to modify retained EU law other than by primary legislation. Nor does it include constitutional safeguards to guard against excessive executive power, such as those contained in section 3(2) of the Legislative and Regulatory Reform Act 2006 (LRRRA).

We consider that the regulation-making power in Clause 2 should be explicitly constrained so as not to extend to making provision reducing fundamental rights. Any proposed regulations or amendments when laid before Parliament, should be required to be accompanied by a ministerial statement confirming that they do not adversely impact upon fundamental rights conferred on individuals, including equality and human rights legal protections.

We call on the Government to make a commitment on the face of the Bill to non-regression of equality and human rights protections in all Brexit-related legislation, including the Trade Bill. There is no reason why trade policy should reduce equality and human rights protections so it is unclear why 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 is necessary.

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

## **2. Ensure robust equality and human rights impact assessments**

### **Commission's recommendation**

Support **New Clause 3 and Amendment 3** to ensure robust human rights impact assessments of trade agreements.

### **What will it do?**

New Clause 3 would ensure that, before the commencement of negotiations of free trade agreements, a full sustainability impact assessment (SIA) is carried out. Amendment 3 would require regulations giving effect to trade deal negotiations to be consistent with human rights standards, among other things. Both would ensure proper parliamentary scrutiny of these important dimensions of UK trade negotiations and deals when the UK exits the EU.

### **Why is it needed?**

The UK is a world-leader in the promotion and protection of human rights. It should continue to play a positive influencing role, using its soft power and trading relationships with other countries to improve human rights standards around the globe wherever possible.

SIAs 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.

New Clause 3 achieves this by requiring independent SIAs concerning all contracting states on all new trade agreements and amendments, with specific reference to human rights, among other things. It would provide for greater parliamentary oversight on these matters.

Amendment 3 relates more specifically to sustainable development goals, referencing international human rights protections contained in the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child, which the UK has signed and ratified. It is important that future trade deals do not

undermine the UK's obligations under domestic and international human rights law.

The Commission considers these Amendments could be further strengthened with the inclusion of equality impact assessments that include an analysis of the implications for people sharing the protected characteristics set out in the Equality Act 2010.

### **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](http://www.equalityhumanrights.com)

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