

# Our advice on the Trade Bill

**Our advice to the House of Lords to help ensure equality and human rights are protected through the Trade Bill**

**House of Lords – Report Stage**

**Day 1: Wednesday 6 March 2019 and**

**Day 2: Wednesday 13 March 2019**

## Introduction

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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. 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. Nonetheless, the UK's future trade policy will be an important mechanism for ensuring the UK remains a global leader on equality and human rights.

We have provided briefings at the Trade Bill's earlier stages on the steps we consider the Government should take to ensure that the Bill fully delivers the Government's stated commitment to non-regression of equality and human rights protections, and to guard against the excessive transfer of power from Parliament to the Executive.

This briefing sets out our recommendations to support Amendments which, in our view, will help make progress towards these aims.

## Commission's Recommendations

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**Support the Government Amendment** in the name of Baroness Fairhead, after Clause 6 on a 'Statement on equalities legislation'.

The Government has stated that the aim of the Trade Bill is to make technical, rather than major policy, changes to domestic law in order to implement existing trade agreements into the UK context. The Commission has discussed with the Department of International Trade our concern that the Bill should not allow regression in relation to equality and human rights standards, and must avoid an excessive transfer of power from Parliament to the Executive. We are grateful for the positive dialogue we have had with Government on these issues.

Previous Government amendments to delegated powers contained in Clause 2(1) of the Bill reduced the duration of this regulation-making power and required legislative scrutiny of secondary legislation by way of the affirmative resolution procedure. However, Clause 2(6)(a) still allows Clause 2(1) regulations to amend primary legislation that is retained EU law when seeking to incorporate the terms of re-negotiated trade deals into UK law, to replace existing EU trade deals that the UK will no longer be a party to when we leave the EU.

This Amendment provides an additional necessary constraint on the exercise of delegated powers contained in Clause 2(1) of the Bill. It requires that, before any such regulations are laid before either Houses of Parliament, a written Ministerial statement must be published explaining, firstly, whether the regulations modify any provision of the Equality Acts 2006 and 2010 and associated subordinate legislation and, secondly, the effect of any such modification. The Amendment also requires Ministers to explain why no such statement has been made when this regulation-making power is exercised.

While an amendment which excludes the possibility of the Bill's powers from being used to weaken equality and human rights laws would have offered stronger protection, we are pleased that the Government's proposed Amendment promotes greater transparency and public scrutiny of any changes to domestic equality law

through regulations made under Clause 2(1) of the Bill. We also welcome the present Government's stated intention not to use delegated powers to reduce equality and human rights protections.

Amendments to Clauses 3 and 5 approved in the House of Commons require the Government to lay a report outlining any significant differences between existing EU agreements and the UK continuity agreement. We are working with the Government to ensure that these reports are as strong as they can be on the implications for people sharing protected characteristics as set out in the Equality Act 2010 and on human rights. This will also provide for greater parliamentary oversight of these important matters.

**Support the Amendment tabled by Baroness Jones, Lord Stevenson and Baroness Henig.**

As a matter of constitutional principle, changes which affect fundamental rights should be made by Parliament through primary legislation, not by Ministers through secondary legislation.

One of the purposes of this amendment is to prevent Clause 2(1) regulations from being used to reduce, among other things, human rights standards from the level of protection that is in place immediately before exit day.

While we welcome the present Government's assurances that it has no intention to use Clause 2(1) to diminish human rights protections in the UK, in our view those assurances would have greater force if they were also explicitly set out in the provisions of this Bill. This Amendment seeks to achieve that effect.

**Support the New Clause in the name of Lord Stevenson**, regarding the implementation of the United Nations Guiding Principles on Business and Human Rights (UNGPs). This New Clause aims to ensure that any trade agreement under this Act must comply with the UNGPs. The UNGPs call upon businesses to make a public commitment to respect human rights, to carry out human rights due diligence, and to provide a remedy when things go wrong. The UK Government

has shown strong commitment to the UNGPs, being the first in the world to publish a national action plan for their implementation (updated in 2016), which sets out Government's expectations of businesses to meet human rights standards, as well as the benefits of doing so - these include an enhanced reputation, reduced risk of litigation, and the ability to attract and retain the best staff. This Amendment provides an opportunity for the Government to reinforce its commitment to high human rights standards for businesses. More information on business and human rights is available via the [Commission's website](#).

## Further information

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The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. Find out more about the Commission's work on our [website](#).

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