

## Equality and Diversity Forum Briefing for the Lords 2<sup>nd</sup> reading of the Trade Bill

### Introduction

The Equality and Diversity Forum (EDF) is the national network of organisations committed to equal opportunities, social justice, good community relations, respect for human rights and an end to discrimination based on age, disability, gender and gender identity, race, religion or belief, and sexual orientation. Further information about our work is available at [www.edf.org.uk](http://www.edf.org.uk) Our members can be found [here](#)

EDF believes that all Brexit legislation should promote a vision for a modern outward-looking and high standards Britain where we can build on current rights to equality, respect and inclusion.

### The Trade bill

The UK has a strong tradition of protection for equality and human rights which has been further bolstered by EU legislation and case law. We believe that the Trade Bill as drafted makes it possible for ministers to alter equality and human rights protections through secondary legislation. Changes to fundamental rights should only be made by parliament through primary legislation, not by ministers through secondary legislation.

Changes should be made to the bill to:

- Rule out the use of delegated powers to amend or limit equality and human rights laws and include a non-regression clause on the face of the bill.
- Require a ministerial statement confirming that proposed regulations should not have any adverse impact on equality and human rights.
- Ensure that all future trade agreements are subject to robust equality and human rights impact assessments.

### Protection from the use of delegated powers

The Trade bill goes much further than the EU (Withdrawal) Act in its provision of delegated powers. It *explicitly* gives powers to ministers to modify primary legislation.

Clause 2 (5)a says:

‘Regulations under subsection (1) may, among other things, make provision – (for) modifying retained direct EU legislation or primary legislation that is retained EU law.’

The meaning of 'retained EU law' is defined within the EU (Withdrawal) Act 2018. This definition arguably includes all primary legislation introduced to give effect to EU law.<sup>i</sup>

As the bill is currently drafted, this means that ministers could modify 'retained EU law' if they believe that changes are necessary in order to implement an international trade agreement. Clause 2 contains none of the safeguards set out in the Withdrawal Act (Clause 7) which restricts the ability to modify retained EU law other than by primary legislation.

Any proposed regulations laid should be accompanied by a ministerial statement that they do not have any adverse impact on equality and human rights. This would mirror the clause in the EU (Withdrawal) Act<sup>ii</sup> and the commitment made by the Secretary of State in December 2017,<sup>iii</sup> to the Chair of the Women and Equalities Committee with regard to EU exit related bills:

'The government's intention is that similar statements will also be made by Ministers in relation to EU exit related Bills, and any relevant secondary legislation made under powers created by those Bills.'

While ministers say that they have no intention of using Clause 2 to reduce equality or human rights, there is no guarantee that a future government would not use these powers. We welcome government amendments 44-47 which reduce the life of the regulation power in Clause 2 from five years to three. However, it could be indefinitely renewed with the approval of both Houses.

### **Sustainable impact assessments**

The EU conducts 'sustainability impact assessments' (SIAs) on all new trade agreements. SIAs assess the economic, environmental and social impact of trade agreements, including on human rights and labour standards. Negotiating outside the EU is likely to mean that the UK will be under increased pressure to accept conditions required by other states. This could mean being pushed to accept lower standards, for instance on workers' rights – the classic 'race to the bottom'.

It is therefore critical to specify in advance human rights and equality standards and values that must be central to UK trade policy and will be non-negotiable with new trading partners. The UK should adopt the SIAs and go further by assessing the impact for people sharing the protected characteristics set out in the Equality Act 2010. This would allow the government to address any impacts identified, particularly on disadvantaged groups.

The government has said it has no intention of seeing a reduction in standards and by adopting the SIAs on the face of the bill, it could signal its will to maintain them.

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<sup>i</sup> Such legislation could include the Equality Act 2010, which implements four EU law non-discrimination Directives: (the Race Equality Directive (2000); Equal Treatment Directive (2000); Equal Treatment in Goods and Services (2004); and Equal Treatment (Recast) Directive (2006).

<sup>ii</sup> EU (Withdrawal) Act 2018), Schedule 7, Part 3, Para 28 (5) 'Before the instrument or draft is laid, the relevant Minister must make a statement to the effect that, in relation to the instrument or draft, the Minister has, so far as required to do so by equalities legislation, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.'

<sup>iii</sup>[http://data.parliament.uk/DepositedPapers/Files/DEP20170788/Justine\\_Greening\\_to\\_Maria\\_Miller\\_equalities.pdf](http://data.parliament.uk/DepositedPapers/Files/DEP20170788/Justine_Greening_to_Maria_Miller_equalities.pdf)

**11 September 2018**

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