



## BRIEFING PAPER

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# Trade (Disclosure of Information) Bill 2019-21

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The [Trade \(Disclosure of Information\) Bill 2019-21](#) essentially replicates certain data sharing powers from the Trade Bill. The powers in this bill would expire if equivalent powers in the Trade Bill come into force.

The government states that the powers in this bill are needed for the end of the transition period, including to give the Border Operations Centre information it needs to manage and mitigate potential disruption at the border. <sup>1</sup>

## 1. Introduction

The Trade (Disclosure of Information) Bill 2019-21 (Bill 232) was introduced into the Commons on 15 December 2020. It is expected to have all of its stages in the Commons on 16 December.

The Bill would:

- enable data sharing between HMRC and other private and public sector bodies to fulfil public functions relating to trade,
- allow specified public authorities to share data in order to facilitate the exercise by a Minister of the Crown of the Minister's functions relating to trade,
- require the Secretary of State to make regulations to cause the rest of the bill to expire if the Trade Bill is passed and if it contains provisions that have the same or similar effect.

Clauses 1 to 3 of the bill are essentially the same as clauses in the Trade Bill 2019-21 (as amended). The Trade Bill has completed its Commons stages and is currently at Report stage in the Lords. Clauses 1 to 3 will be identical to the clauses in the Trade Bill (but for minor drafting changes), if proposed government amendments to the Trade Bill are made at Lords Report stage.

The bill extends and applies to the whole of the UK.<sup>2</sup>

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<sup>1</sup> [Explanatory Notes](#) to the Bill.

<sup>2</sup> [Explanatory Notes](#) to the Bill.

## 2. The Bill

**Clause 1** would allow HMRC to share data with other bodies to fulfil public functions relating to trade.

HMRC may only disclose the information they hold on taxpayers under certain limited circumstances – for example, to comply with a court order, or if the person to whom the information relates has given their assent. It is a criminal offence for HMRC officers to deliberately disclose information that would allow someone to be identified without lawful authority.<sup>3</sup>

This clause would allow HMRC to share information with public or private bodies, if it is in relation to public functions relating to trade, including functions of Ministers, the devolved administrations or international organisations.

The government says that this will support the sharing of data relating to the movement of goods across the border, “which will allow the government to build a commodity level view of flow at the border and identify any friction to flow”.<sup>4</sup> Other examples might include sharing:

- With the Department for International Trade and the Trade Remedies Authority so that they can carry out the trade dispute and trade remedies functions that are currently fulfilled by the European Commission.
- With the Department for International Trade to allow it to produce statistics, research and analysis to inform the development of trade policy, and monitor and evaluate its effectiveness.
- With international organisations such as the World Trade Organization (WTO).<sup>5</sup>

Subsection 1(2) lists some of the possible functions for which such sharing might be done:

Those functions include, among other things, functions relating to—

- (a) the analysis of the flow of traffic, goods and services into and out of the United Kingdom;
- (b) the analysis of the impact, or likely impact, of measures or practices relating to imports, exports, border security and transport on such flow;
- (c) the design, implementation and operation of such measures or practices.

Subsection 1(3) states that anyone who receives information through this power may only use it for the purpose of public functions that relate to trade and may not share the information further (unless they have permission from the HMRC Commissioners).

Subsection 1(4) states that offences and penalties – [in section 19 of the Commissioners of Revenue and Customs Act 2005](#) – may apply if such information is disclosed, should that information allow someone to be identified.

This power would sit alongside one in the [Taxation \(Cross-Border Trade\) Act 2018](#) which allows information to be disclosed relating to import duty (but only for purposes relating to customs duty).<sup>6</sup>

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<sup>3</sup> Under s18 & s19 of the [Commissioners for Revenue & Customs Act \(CRCA\) 2005](#). The department’s [Manual on Information Disclosure](#) sets out these provisions in detail; see from [para IDG40000](#) onwards. See also, [HC Deb 10 July 2014 cc389-90W](#).

<sup>4</sup> [Explanatory Notes](#) to the Bill.

<sup>5</sup> [Trade Bill Explanatory Notes](#), paras 73 and 75

<sup>6</sup> [Trade Bill Explanatory Notes](#), para 74

**Clause 2** would allow the Secretary of State, the Minister for the Cabinet Office, strategic highways companies and port health authorities to disclose information for the purposes of facilitating government functions relating to trade. The clause lists possible functions, repeating the list in Clause 1.

The government states that the purpose of the clause is to “support the sharing of data related to the movement of goods across the border, which will allow the government to build a comprehensive view of flow at the border and identify any friction to flow”.

Subsection 2(4) states that anyone who receives information through this power may only use it for the purpose of public functions that relate to trade.

Subsection 2(5) states that information may be further disclosed, but only with the consent of the authority that first disclosed the information.

Subsection 2(7) states that disclosures under this section do not breach obligations of confidence or other restrictions on the disclosure of information.

Subsections 2(9) and 2(10) state that the list of public authorities permitted to disclose information under this clause may be amended by regulations, made under the affirmative procedure.<sup>7</sup>

**Clause 3** would make it an offence to disclose data in contravention of clause 2 if it allowed the identification of an individual.

**Clause 4** would apply if the Trade Bill is passed and if the Trade Bill contains provisions that have the same or similar effect to those in Clauses 1 to 3. In that case the Secretary of State would have to make regulations that provide for Clauses 1 to 3 to expire.

### 3. How are these clauses different to those in the Trade Bill?

Essentially Clauses 1 to 3 are identical to clauses in the Trade Bill as amended, if the government’s proposed changes at Report Stage in the Lords are accepted, aside from some minor drafting changes.

A version of Clause 1 has been present in the Trade Bill since its introduction in the Commons.<sup>8</sup> The clause in the Trade Bill was amended at the Commons Report Stage:

- To allow HMRC to share information with Ministers of the Crown rather than just the Secretary of State. In practical terms, this would allow sharing with the Cabinet Office, which is not headed by a Secretary of State.
- To specify some Ministerial functions relating to trade - in particular those of the Minister for the Cabinet Office.
- With the intention of clarifying the interaction between the power to share information and the data protection legislation.<sup>9</sup>

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<sup>7</sup> The government will seek legislative consent for this power from the devolved administrations, as explained in the [Explanatory Notes](#) to the Bill.

<sup>8</sup> A similar clause was also in the Trade Bill 2017-2019

<sup>9</sup> [Report Stage Proceedings, Monday 20 July 2020](#); [Consideration of Bill Amendments as at 20 July 2020](#)

The government has also put forward amendments to this clause in the Trade Bill at Lords Report Stage, which was underway when this paper was being written. The government says that these would allow HMRC to disclose information to a devolved authority, and correct a drafting error.<sup>10</sup>

A version of Clause 2, along with Clause 3, was introduced via a government amendment to the Trade Bill at [Commons Report Stage](#).

The government has also put forward an amendment to the equivalent clause to Clause 2 in the Trade Bill at Lords Report Stage, to correct a drafting error.

## 4. How were the clauses in the Trade Bill received?

The Trade Bill 2019-21 is currently going through its Report Stage in the House of Lords, having already gone through all of its stages in the Commons.

The equivalent clauses to Clauses 1 to 3 in this bill have been relatively uncontroversial and no amendments to them were put to a vote.

The Delegated Powers and Regulatory Reform Committee did not draw the attention of the House to anything in the Trade Bill.<sup>11</sup>

## 5. Why is this Bill needed now?

The government says that:

2. After leaving the European Union (EU), irrespective of the nature of the future relationship, Government departments with trade functions will need to have access to data held by other public authorities to assist them to carry out their functions relating to trade. For example, information will be required by the Cabinet Office so that, through its Border and Protocol Delivery Group, it can analyse and promote efficiencies in the flow of traffic, goods and services in and out of the United Kingdom. Clauses 1 and 2 allow specific public authorities to share data with Government departments with trade functions in order that they can fulfil those functions.

3. Whether a Free Trade Agreement is agreed with the EU or not, the end of the Transition Period will see the introduction of new border requirements. Delivering the data sharing clauses in this Bill are an integral part of the smooth and effective implementation of the UK's new relationship with the EU.

4. The Cabinet Office is establishing the Border Operations Centre to manage and mitigate potential disruption caused by the new border requirements at the crucial moment of transition. Without the data sharing clauses, Cabinet Office will be limited in the data it can receive from other departments, which will significantly hamper its ability to provide the single version of truth for flow of goods through the border, including a commodity level view of flow across the border (such as medicines and food supply). This will limit its ability to manage flow, minimise the friction caused by new controls introduced at the end of the Transition Period, and support the continued supply of critical goods.<sup>12</sup>

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<sup>10</sup> [Trade Bill: Second Marshalled List of Amendments to be moved on Report](#), 10 December 2020

<sup>11</sup> House of Lords Delegated Powers and Regulatory Reform Committee, [Domestic Abuse Bill, Parliamentary Constituencies Bill, Trade Bill](#), HL Paper 117, 29 July 2020, para 15

<sup>12</sup> [Explanatory Notes](#) to the Bill

## 6. Further information

The [bill](#) and [explanatory notes](#) can be found on the [bill page on the parliament website](#).

For briefing on the equivalent clauses of the Trade Bill, see :

- Page 24 of [Trade Bill 2019-21](#), 18 May 2020 – Commons Library paper produced ahead of Second Reading in the Commons
- Section 6 of [Trade Bill: Briefing for Lords Stages](#), 27 August 2020 – Lords Library paper produced ahead of Second Reading in the Lords

Note that the Trade Bill also contains one other clause on trade information, allowing HMRC to collect information about UK exporters – this clause is not in the Trade (Disclosure of Information) Bill.

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