

Research Briefing

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Trade (Australia and New Zealand) Bill 2022-23



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Summary

The Government presented the Trade (Australia and New Zealand) Bill to the House of Commons on 11 May 2022. The Bill's second reading took place on 6 September. Its committee stage was completed on 18 October 2022. The Bill is awaiting the report stage.

The Bill would enable the implementation of the UK's Free Trade Agreements with Australia and New Zealand – the first two trade agreements that the UK has negotiated independently, outside the EU.

The Bill's objectives

The Bill would create powers to change UK [domestic procurement law](#) to implement the public procurement chapters of each agreement. UK procurement rules, set out in procurement regulations and guidance, regulate government and wider public sector purchases of goods and services.

The Bill would enable the UK Government and devolved authorities to make regulations for two purposes:

- To implement the changes in domestic procurement law required to implement the UK Free Trade Agreements with Australia and New Zealand, and
- To change domestic law to reflect some specific amendments required under the agreement with Australia, and apply those provisions to suppliers from the UK and other countries. This aims to ensure consistent regulation and treatment of all suppliers.

Temporary powers

[The Procurement Bill 2022-23 \[HL\]](#), currently under consideration in the House of Lords, proposes equivalent powers to update the UK procurement rules when required to implement new free trade agreements. The Procurement Bill is expected to repeal the Trade (Australia and New Zealand) Bill as enacted, although retaining the changes this Bill introduces.

Parliament's role

The UK Government has prerogative powers to negotiate international agreements. However, some agreements may require changes to domestic law and these have to be agreed by Parliament. This Bill represents such legislation.

Besides passing implementing legislation, Parliament formally scrutinises the

trade agreements under the [Constitutional Reform and Governance Act 2010 \(CRAG\)](#), and has power to delay the ratification of the agreements. On 20 July, the process was concluded for the UK Australia Free Trade Agreement. The agreement with New Zealand was laid before Parliament under CRAG on 27 October. The initial 21 day period for parliamentary scrutiny under CRAG ends on 1 December 2022.

The Government does not ratify and enter into force international agreements before both processes – passing domestic legislation and completing the scrutiny under the CRAG Act – have been completed.

The agreements will come into effect after also New Zealand and Australia have completed their domestic ratification procedures.

Procurement provisions

In the UK Australia and the UK New Zealand Free Trade Agreements, the parties have committed to ensuring fair, transparent and non-discriminatory selection processes of suppliers. They have agreed to open up their procurement markets allowing suppliers to bid for more contracts of wider public sector bodies. It is unclear how economically significant the improvements are compared to the current situation.

Some obligations of the procurement chapters go beyond the World Trade Organisation Government Procurement Agreement (GPA) – of which the UK, Australia and New Zealand are part. These include innovative provisions on advertising and conducting procurement electronically, and helping small companies bid for tenders.

The Government's view is that where the text of the agreements deviates from the GPA and [might seem to reduce commitments](#) (PDF), this was [unlikely to have negative effects on suppliers](#) (PDF).

Commons stages

During the second reading debate MPs were for a significant part focussing on the issue of parliamentary scrutiny of the UK free trade agreements and the role of the devolved administrations in the negotiation process. MPs also debated the effects of both FTAs on the economy, especially agriculture.

In the Committee, the opposition parties sought to add impact assessments and consultations with stakeholders and the devolved administrations. Other amendments proposed more parliamentary scrutiny of regulations made under the Bill. The Committee passed the Bill unamended.

Further information

Further information on the UK free trade agreements with Australia and New Zealand is in Commons Library briefings [UK-Australia Free Trade Agreement](#) and [UK-New Zealand Free Trade Agreement](#).

1 Background

The [Trade \(Australia and New Zealand\) Bill](#) (Bill 9) was introduced to the House of Commons on 11 May 2022. Second reading of the Bill took place on 6 September 2022. A Public Bill Committee finished considerations of the Bill on 18 October. The bill is awaiting the report stage.

1.1 The purpose of the Bill

The purpose of the Bill is to enable the implementation of the government procurement Chapters of the UK’s Free Trade Agreements with Australia and New Zealand – the “first independently negotiated [UK] Free Trade Agreements in more than 50 years.”¹

The Bill would create a power to make regulations for this purpose. It would also create a power to change domestic law to reflect some specific changes required under the UK Australia Free Trade Agreement and apply those provisions generally, not only to suppliers from Australia. The aim is to ensure consistent treatment of all suppliers.

1.2 Territorial application

This Bill would extend and apply to the whole of the UK. Alongside the UK Government, it would provide the Scottish Ministers, Welsh Ministers or a Northern Ireland Department with the power to make changes to domestic procurement legislation necessary to implement the two agreements.

The UK Government is seeking [legislative consent motions](#) from the Senedd Cymru, the Scottish Parliament and the Northern Ireland Assembly for this Bill. See section 2.4 below.

¹ Department for International Trade, [New Bill to enable implementation of Australia and New Zealand trade deals](#), 11 May 2022

1.3 More information

The [Bill](#) (PDF), with its [explanatory notes](#) (PDF) is available on [the Bill's page on Parliament.uk](#).

The Department for International Trade has published separate impact assessments of the UK Free Trade Agreements with [Australia](#) and [New Zealand](#) including an overview of the public procurement chapters.² For further information on the impact assessments see section 1.7 below.

1.4 The role of Parliament in implementing UK's free trade agreements

Comprehensive free trade agreements

The UK Government signed the Free Trade Agreement with Australia in December 2021. The Agreement with New Zealand was signed in February 2022. Both agreements seek to deepen the trading relationship between the UK and its partners, by removing tariffs on goods trade and reducing various regulatory barriers to trade and investment.

The agreements support freer trade and cooperation on a wide array of subjects, including professional services, recognition of qualifications, business mobility, e-commerce and free flow of data, innovation, and environmental and labour protection.

Specific chapters seek to facilitate small and medium sized enterprises (SME) access to markets, gender equality in trade, and innovation. For more information on the signed agreements, see Commons Library, [UK Australia Free Trade Agreement](#) and [UK-New Zealand Free Trade Agreement](#).

Each agreement contains a dedicated chapter on public procurement, described in section 1.5 below.³

The agreements will enter into force after the UK, Australia and New Zealand complete their domestic ratification procedures.

² Department for International Trade, [Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia](#) (PDF), May 2022, p21; Department for International Trade, [Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and New Zealand](#) (PDF), February 2022, p21

³ GOV.UK, [UK-Australia Free Trade Agreement](#) and [UK-New Zealand Free Trade Agreement](#) (accessed on 26 July 2022)

Scrutiny of trade agreements

The UK Government is responsible for negotiating, signing, ratifying, amending and withdrawing from all international treaties involving the UK, under its prerogative powers. However, like other treaties, trade agreements do not automatically change UK domestic law. Sometimes they require Parliament (and/or devolved legislatures) to pass implementing legislation, which may be primary or secondary.

Details of the legislative changes required to implement the UK-Australia and the UK-New Zealand Free Trade Agreements are set out in the Government's respective (Draft) Explanatory Memorandums. This includes some changes to secondary legislation and immigration rules outside this Bill.⁴

Furthermore, the government cannot ratify a treaty unless it has first laid the signed treaty before Parliament, for 21 sitting days, as set out under Part 2 of the [Constitutional Reform and Governance Act 2010](#) (CRAG). The House of Commons may pass a resolution that a treaty should not be ratified, triggering another 21-sitting-day delay to ratification – and this process may be repeated.

The [Government formally laid the UK Australia agreement before Parliament](#) under the CRAG Act on 15 June 2022. The 21 sitting day objection period expired on 20 July and the Government can now formally ratify the agreement.⁵

At the time of publication the UK New Zealand Free Trade Agreement has not yet been laid before Parliament under the CRAG Act procedure.

There is no direct link between the implementing legislation of a treaty and the CRAG Act, however, the long-standing practice of successive UK Governments is not to ratify a treaty unless and until it can implement that treaty in domestic law. Any required implementing legislation (primary or secondary) will therefore be passed before ratification.⁶

In summary, for the government to ratify and bring into force the agreements with Australia and New Zealand, the following steps have to be completed:

- The treaty ratification requirements of the CRAG Act have been met.
- Parliament must pass the Trade (Australia and New Zealand) Bill.

⁴ Department for International Trade (DIT), [Explanatory Memorandum on the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia](#), 15 June 2022, section 5;

DIT, [Draft Explanatory Memorandum on the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and New Zealand](#), 28 February 2022, section 5

⁵ For further information on the UK Australia FTA and its scrutiny under the CRAG Act see our briefing, [UK-Australia Free Trade Agreement](#), CBP-9484, section 5.

⁶ Department for International Trade press release, [New Bill to enable implementation of Australia and New Zealand trade deals](#), 11 May 2022

- Parliament must pass the secondary legislation required to make the changes to the UK procurement rules to meet the terms of the agreements.

Further information on Parliament's role is in our briefing, [How Parliament treats treaties](#), and debate pack, [Parliamentary scrutiny of trade deals](#).⁷

1.5 Procurement provisions in the agreements with Australia and New Zealand

Procurement chapters in the UK-Australia and UK New-Zealand Free Trade Agreements (Chapter 16 in each agreement) include commitments on government procurement of goods, services, and construction services by central government, sub-central bodies (such as regional authorities), and wider public sector entities. The provisions of procurement chapters in both agreements have largely similar coverage, with some specific differences as set out below.

Only specific entities listed in schedules annexed to the agreements are covered by the scope of the procurement obligations and must follow the rules. A schedule annexed to each agreement lists goods, services or construction services within the scope and the contract value thresholds above which the procurement provisions apply.⁸

Both agreements provide that on the procurement markets of one party (country), services and suppliers of the other party will be treated no less favourably than their domestic counterparts and will not be discriminated against. These are generally referred to as national treatment obligations.⁹

Parties have agreed innovative commitments on advertising and conducting procurement electronically, wherever possible. They will share information on their procurement system and require procuring entities to publicise intended procurement and encourage transparency around upcoming projects, or so-called procurement pipelines. The UK and New Zealand have agreed to provide public electronic access to procurement award data.

Parties have committed to ensuring fair, transparent and non-discriminatory selection processes of suppliers. Suppliers of the other party will be granted

⁷ [Commons Library Research briefing CBP-9247, How Parliament treats treaties, 01 June 2021](#), section sections 3.2, 3.3, and p38

Commons Library debate pack 2022/0164, [Parliamentary scrutiny of trade deals](#)

⁸ [Annex 16A](#) of the UK and Australia FTA; [Annex 16A](#) of the UK and New Zealand FTA; See [UK-Australia Free Trade Agreement: Australia side letter regarding local government procurement](#) (PDF); [UK-Australia Free Trade Agreement: UK side letter regarding local government procurement](#) (PDF), 16 December 2021

⁹ "National treatment and Non-Discrimination" provisions (Article 16.4) of the UK-Australia FTA; "Non-Discrimination" provisions (Article 16.4) of the UK-New Zealand FTA.

access to domestic review procedures allowing them to challenge procuring authorities for a breach of domestic procurement legislation and seek remedies in courts of the host country.

Both agreements leave room for consideration of environmental, social and labour aspects in procurement, such as giving a preference to more energy-efficient goods or employing apprentices, provided that any such measures do not discriminate against non-domestic suppliers. The parties have also agreed to support participation of SMEs in procurement.

Additional provisions aim to address corruption in procurement and to promote liberalisation of government procurement markets at the international level.

Australia and the UK have committed to negotiate extending the coverage to procurement of local government and smaller bodies, should either include such procurement in another trade agreement.¹⁰ Similarly, the UK and New Zealand have agreed to negotiate greater market access opportunities in the future should New Zealand reform its procurement rules or offer further concessions to other trading partners.¹¹

Trade experts agree that the procurement provisions in these agreements will increase transparency of public procurement and legal certainty for businesses who seek tender opportunities.¹² However, it is unclear how significantly the access to procurement markets will be improved compared to the current situation (see section 1.7 below).

Relation to the Government Procurement Agreement

The commitments of the procurement chapters in both Free Trade Agreements build on the countries' obligations under the World Trade Organisation [Government Procurement Agreement](#) (GPA). The GPA is a voluntary (plurilateral) agreement between 20 countries and the EU to open up their public procurement markets to each other, subject to open, fair and transparent conditions of competition. Australia, New Zealand and the UK are already part of the GPA.

Some substantive obligations of the procurement chapters of the UK Australia and the UK New Zealand Free Trade Agreements go beyond the GPA, for example by requiring that procurement must be advertised and conducted electronically, by the inclusion of environmental, social and labour considerations (Article 16.17), ensuring integrity in procurement practices

¹⁰ [UK-Australia Free Trade Agreement: Australia side letter regarding local government procurement](#) (PDF); [UK-Australia Free Trade Agreement: UK side letter regarding local government procurement](#) (PDF), 16 December 2021

¹¹ Department for International Trade, [Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and New Zealand](#) (PDF), February 2022, p21

¹² See for example HL International Agreements Committee: [Sam Lowe written evidence NZT0048](#)

(Article 16.18), and a clause on SMEs' access to procurement opportunities (Article 16.21).¹³

The UK-Australia agreement also widens the economic coverage by including build-operate-transfer contracts and public works concessions.¹⁴ In terms of access to its procurement market, Australia has made the most comprehensive commitments it has ever included in a treaty.¹⁵ New Zealand has also given the UK access to procurement opportunities from a broader range of government and wider public sector bodies than under the GPA.¹⁶

At the same time, certain concerns have been raised about the compatibility of Chapter 16 of the UK-Australia agreement with the GPA.¹⁷ Albert Sanchez-Graells, Professor of economic law at Bristol University, has argued that both agreements, by deviating from the text of the GPA, might create lesser commitments than under the GPA. He highlights two areas of potential legal uncertainty:

National treatment obligations

The GPA awards national treatment to suppliers to a particular procurement, which provide goods or services originating in any other party to the GPA.¹⁸ In comparison, the text of the UK-Australia agreement is open to the interpretation that UK and Australian suppliers of goods and services would be awarded national treatment if they provide goods and services which originate in either the UK or Australia.¹⁹ Identical issues might arise from the text in the UK-New Zealand agreement which also deviates from the GPA.²⁰

¹³ Department for International Trade, [Draft explanatory memorandum on the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and New Zealand](#), paras 4.51-4.53

¹⁴ Albert Sanchez-Graells, in Trade and Public Policy Network, [What's in the UK-Australia FTA? Preliminary Reflections](#) (PDF), March 2022; "Build-operate-transfer contract" and "public works concession contract" are contracts for the construction and exploitation of public infrastructure. As part of the contract, the ownership of the works or the right to operate them for profits is temporarily transferred to the supplier.

¹⁵ HL International Agreements Committee, [Uncorrected oral evidence: UK-Australia trade negotiations](#), 7 April 2022, Q72; International Trade Committee, [Oral evidence: UK trade negotiations: Agreement with Australia](#), HC 1002, 9 March 2022, Q158

¹⁶ HL International Agreements Committee: [Sam Lowe written evidence NZT0048: DIT, UK-New Zealand Free Trade Agreement: Benefits for the sectors of the UK economy](#), February 2022, chapter 9

¹⁷ Letter of Baroness Hayter, Chair of the International Agreements Committee to Lord Grimstone of Boscobel Kt, Minister for Investment, Department for International Trade, [Questions on UK-Australia Procurement Chapter \(PDF\)](#), 7 March 2022

¹⁸ This means that suppliers of the other party must be treated no less favourably than domestic suppliers.

¹⁹ Articles 16.4.1 and 16.4.2b; See Albert Sanchez-Graells, [Written Evidence to the House of Lords International Agreements Committee on "UK-Australia trade negotiations"](#) (PDF), 27 January 2022, section 3.1

²⁰ Albert Sanchez-Graells, [NZT0038 - submission to the HL International Agreements Committee](#), para 00, fn7

Legal remedies available to suppliers

The UK-Australia agreement permits limiting access to remedies under domestic review procedures in a way that differs from the text of the GPA, potentially denying compensation to wronged suppliers on grounds of an overriding public interest.²¹ This relates to suppliers' ability to challenge procuring authorities for an alleged breach of domestic procurement rules or this agreement, and request (financial) compensation.

Legal uncertainty due to the differences between both agreement texts and the GPA could have a chilling effect on businesses seeking to tender for a public contract in the other market, says Sanchez-Graells.²²

Lord Grimstone, then Minister for Investment, wrote that the national treatment obligations in the UK-Australia agreement “[did] not undermine the obligation to not treat suppliers of the other Party less favourably than domestic suppliers.” The specific provisions regarding legal remedies, the wording of which was derived from the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), were “in practice ... unlikely to have material practical impacts”.²³

Further information

International Trade Committee

Report on [UK trade negotiations: Agreement with Australia](#) (paragraphs 350-374)²⁴

Report on [UK trade negotiations: Agreement with New Zealand](#) (paragraphs 188-198).²⁵

House of Lords International Agreements Committee

[Report - Scrutiny of international agreements: UK-Australia free trade agreement](#) (paragraphs 133-136)²⁶

²¹ Article 16.19(7); See Albert Sanchez-Graells, [Written Evidence to the House of Lords International Agreements Committee on “UK-Australia trade negotiations”](#) (PDF), 27 January 2022, section 3.2; The rules on remedies in the UK-NZ FTA follow those of the GPA without deviation. See Albert Sanchez-Graells, [NZT0038 - submission to the HL International Agreements Committee](#), paras 09-11

²² International Trade Committee, [Oral evidence: UK trade negotiations: Agreement with Australia](#), HC 1002, 9 March 2022, Q150; See also Professor Albert Sánchez-Graells (AUS0036), paras 18–20

²³ [Letter of Lord Grimstone of Boscobel](#) (PDF), Minister for Investment, Department for International Trade to Baroness Hayter, Chair of the HL International Agreements Committee, 21 March 2022

²⁴ International Trade Committee, [UK trade negotiations: Agreement with Australia](#), Second Report of Session 2022–23, HC 117, 6 July 2022, paras 350-374

²⁵ International Trade Committee, [UK trade negotiations: Agreement with New Zealand](#), Third Report of Session 2022–23, HC 78, 24 October 2022, paras 188-198

²⁶ HL International Agreements Committee, [Scrutiny of international agreements: UK-Australia free trade agreement](#), 4th Report of Session 2022-23, HL 26, 23 June 2022, paras 133-136

[Report - Scrutiny of international agreements: UK-New Zealand free trade agreement](#) (paragraphs 40-50)²⁷

1.6

Procurement data

Total procurement spending in Australia and New Zealand

In 2019, around 40% of public sector spending in Australia was procurement. It was worth very roughly £180 billion.²⁸

In 2019, around 37% of public sector spending in New Zealand was procurement. It was worth very roughly £25 billion.²⁹

The UK has a bigger economy, spending around £270-300 billion on public sector procurement a year, pre-pandemic – about a third of public sector spending.³⁰

Procurement spending under the GPA

Some procurement spending is already covered by the GPA of which Australia, New Zealand and the UK are members.

Roughly £26 billion a year of Australian procurement spending is covered by the GPA (figure for 2019), and about £3 billion a year of New Zealand procurement spending (figure for 2016).³¹

²⁷ HL International Agreements Committee, [Scrutiny of international agreements: UK-New Zealand free trade agreement](#), 9th Report of Session 2022-23, HL 86, 4 November 2022

²⁸ Figures from OECD, [Government at a Glance, 2021](#) – figures underlying Figure 8.1. Totals are based on these figures along with estimates of GDP (from OECD GDP dataset) and period average exchange rates (from OECD PPPs and exchange rates dataset), all for 2019.

Other useful sources on procurement statistics for Australia include Australian Government, Department of Finance, [Statistics on Australian Government Procurement Contracts](#), updated March 2022 and Australian National Audit Office, [Australian Government Procurement Contract Reporting Update](#), March 2020

²⁹ Figures from OECD, [Government at a Glance, 2021](#) – figures underlying Figure 8.1. Totals are based on these figures along with estimates of GDP (from OECD GDP dataset) and period average exchange rates (from OECD PPPs and exchange rates dataset), all for 2019.

Another useful source on procurement statistics for New Zealand is New Zealand Government Procurement, [Growth in government procurement spend](#), May 2021

³⁰ There are a number of estimates for procurement spending in the UK, depending on what's included in the total. For more information on these, see the Library briefing [Procurement statistics: a short guide](#).

³¹ [Committee on Government Procurement - Notification of statistics under article XVI:4 of the Agreement on Government Procurement 2012 - Report by Australia for 2019](#) – figures are for part of the year, so have been scaled linearly to the whole year

1.7

Impact assessment and additional market access

The Department for International Trade has published assessments of the overall impact of the UK Free Trade Agreements with [Australia](#) and [New Zealand](#). These Impact assessments include an estimate of the GDP impacts of each agreement and a brief overview of the public procurement chapters.³²

The government has also given a brief qualitative assessment of economic impacts of the powers in the Trade (Australia and New Zealand) Bill in Annex B of the Explanatory notes to the Bill. It states that the impact of procurement provisions cannot be separated out from the overall effect of each agreement:

The impact assessments that were published alongside the full text of the Agreements estimate that by 2035, UK gross domestic product (GDP) could increase by 0.08% and 0.03% as a result of the UK-Australia FTA and UK-New Zealand FTA respectively. It should be noted that these impacts cannot be disaggregated by individual chapters (for example the government procurement Chapter).³³

Apart from allowing the UK “to reap the benefits” of the agreements, the Bill is not expected to have other direct impacts on costs to business.³⁴

Additional market access

The government has said that the agreement with Australia will amount to “approximately £10 billion of new legally guaranteed market access” a year.³⁵ For example, this would give UK companies a right to bid for contracts for railway and freight transport services, or “financial and business service contracts procured by the Australian Financial Security Authority (AFSA) and other federal and state-level finance departments”.³⁶

Albert Sanchez-Graells, of Bristol University, has commented that the government assessment would have benefitted from clarifying that most of

[Committee on Government Procurement - Statistics for 2016 reported under article XVI:4 of the revised GPA - Report by New Zealand - Addendum](#)

Figures have been converted to £s using period average exchange rates (from OECD PPPs and exchange rates dataset), for 2016 and 2019

³² DIT, [Impact Assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia](#) (PDF), December 2021; [Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and New Zealand](#) (PDF), February 2022

³³ [Explanatory Notes to the Trade \(Australia and New Zealand\) Bill 2022, Annex B](#) (PDF), p14

³⁴ As above

³⁵ Department for International Trade, [Impact Assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia](#) (PDF), 16 December 2021, p21

³⁶ Department for International Trade, [UK-Australia Free Trade Agreement: Benefits for the UK](#) (PDF), pp 15, 17

the additional opening of procurement market of Australia is either strictly reciprocal, based on mutual concessions in various areas, or that in other areas the market opening is incremental. For example, the opening up of the rail sector procurement is reciprocal. The Australian Financial Security Authority (AFSA) is already covered in the GPA, but the agreement gives UK businesses right to bid for smaller AFSA contracts, which is an incremental change.³⁷

The Government has not given an equivalent figure for additional market access for New Zealand.

³⁷ Albert Sanchez-Graells, [The procurement chapter in the UK-Australia free trade agreement – GPA+ or GPA complex?](#) January 2022, section 5

2 Bill clauses

The Bill consists of four clauses and two schedules.

Clauses 1 and 2 create power to implement government procurement Chapters in the UK Free Trade Agreements with Australia and New Zealand and make further provisions about this power.

Clauses 3 and 4 contain general provisions such as the interpretation of terms, and final provisions.

Schedule 1 includes provisions relating to the powers of devolved authorities. Schedule 2 sets out how regulations under Clause 1 would be made.

2.1 Implementation of free trade agreements

Clause 1 would create a power to make the necessary changes to UK domestic procurement regulations to implement government procurement chapters of the UK-Australia and UK-New Zealand Free Trade Agreements.³⁸

As set out in the Explanatory notes to the Bill, the power would allow the appropriate authority to make regulations for two purposes:

- To implement the changes required under the two Free Trade Agreements (Subsection (1)(a)).
- To make regulations that deal with matters “arising out of, or related to” the procurement chapters in these Free Trade Agreements (Subsection (1)(b)).³⁹

Subsection (1)(a): power to implement FTAs

With the powers of **subsection (1)(a)**, the current domestic secondary legislation, including [the Public Contracts Regulations 2015](#), would be amended in several ways:

³⁸ This refers to [Chapter 16 and Annex 16A of the UK-Australia FTA](#) and [Chapter 16 and Annex 16A of the UK-New Zealand FTA](#). For an overview of the current UK procurement rules see [Commons Library Research Briefing SN06029, Public procurement and contracts, 19 September 2018](#)

³⁹ See [Explanatory Notes to the Trade \(Australia and New Zealand\) Bill 2022](#), para 16

- To provide Australian and New Zealand suppliers additional access to the UK procurement market beyond what is available under the [Government Procurement Agreement](#) (GPA).
- To extend Australian and New Zealand suppliers' access to remedies when a contracting authority has breached domestic procurement legislation.⁴⁰
- To amend domestic procurement rules to implement the procurement provisions of the UK-Australia free trade agreement. The [Explanatory Memorandum for the UK-Australia Free Trade Agreement](#) sets out that changes would relate to provisions in three areas:
 - how procuring authorities determine whether a procurement is above the financial threshold such that it is covered by the Treaty;
 - the means by which sub-central (regional and other) procuring authorities may advertise a procurement in certain circumstances; and
 - prohibiting procuring authorities from terminating an awarded contract in order to circumvent the procurement obligations in the Treaty.⁴¹
- To enable further amendments following any updates to the procurement chapters of the UK Australia and UK New Zealand Free Trade Agreements over their lifetime.⁴²

Subsection (1)(b): power to make related provisions

Clause 1(2) clarifies that regulations under **Subsection (1)(b)** may make provision “of general application” in relation “to cases falling outside the scope of a procurement Chapter”. This would enable the Government to make changes to domestic law stemming from the UK-Australia Free Trade Agreement, that would apply to all suppliers and not only to suppliers from Australia.⁴³

The Secretary of State Anne-Marie Trevelyan explained in a letter to the International Trade Committee that such changes were necessary to ensure coherence of rules and consistent treatment of suppliers from Australia and other trading partners:

This will ensure procurement regulations remain uniform and coherent by not imposing different or conflicting procurement procedures on contracting authorities for procurements covered by the FTA, and ensure the UK can

⁴⁰ [Explanatory Notes to the Trade \(Australia and New Zealand\) Bill 2022](#), para 17

⁴¹ Department for International Trade, [Explanatory Memorandum on the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia](#), 15 June 2022, paragraph 5.3; for detailed commentary see International Trade Committee, [UK trade negotiations: Agreement with Australia](#), Second Report of Session 2022–23, HC 117, 6 July 2022, para 370

⁴² [Explanatory Notes to the Trade \(Australia and New Zealand\) Bill 2022](#), para 17

⁴³ [Explanatory Notes to the Trade \(Australia and New Zealand\) Bill 2022](#), paras 18-21

implement its obligations in the FTA in a way that is consistent with the UK's other international procurement obligations.⁴⁴

Similarly to the power under Subsection (1)(a), this power may be used to make changes in secondary legislation in relation to estimating contract values before procurement, advertisement of procurement opportunities, and the termination of awarded contracts, brought in by the UK agreement with Australia.⁴⁵

Clauses 1(2) and 1(3) allow Ministers to extend specific provisions of the UK-Australia and UK-New Zealand agreements to all covered procurement, applying them generally.⁴⁶

Clause 2 sets out what types of provisions can be made by regulation with the power provided by Clause 1. Clause 2 also gives effect to Schedules 1 and 2 (see below).

Temporary powers replaced by the Procurement Bill

[The Procurement Bill \[HL\] 2022-23](#), which was introduced in the House of Lords on 11 May 2022, aims to reform the current EU-law based procurement regime.

The explanatory notes to the Trade (Australia and New Zealand) Bill make clear that the powers created by the Trade (Australia and New Zealand) Bill are required for a limited period of time until the new Procurement Bill is enacted. The Procurement Bill proposes equivalent delegated powers to update the UK procurement rules when required to implement new free trade agreements.⁴⁷

The Procurement Bill is expected to repeal the Trade (Australia and New Zealand) Bill (as enacted), which by that time is expected to have implemented the UK Free Trade Agreements with Australia and New Zealand. The Procurement Bill would save (maintain) relevant statutory instruments made under the Trade (Australia and New Zealand) Bill. The Procurement Bill would also create powers to amend legislation reflecting the changes required by updates of existing UK trade agreements.⁴⁸

2.2

General and final provisions

Clause 3 sets out how certain legal terms in this Bill should be interpreted. It clarifies, among others, that an “appropriate authority” to exercise the power

⁴⁴ [Letter](#) of the Rt Hon Anne-Marie Trevelyan, Secretary of State for International Trade to Angus Brendan MacNeil, Chair of the International Trade Committee, 11 May 2022

⁴⁵ [Explanatory Notes to the Trade \(Australia and New Zealand\) Bill 2022](#), para 21

⁴⁶ [Explanatory Notes to the Trade \(Australia and New Zealand\) Bill 2022](#), paras 19-20

⁴⁷ [Explanatory Notes to the Procurement Bill \[HL\]](#), para 23

⁴⁸ [Explanatory Notes to the Trade \(Australia and New Zealand\) Bill](#), para 6

under this Act would be a Minister of a Crown, or a devolved authority – the Scottish Ministers, the Welsh Ministers, or a Northern Ireland department.

Clause 4 sets out that the Act would apply to England and Wales, Scotland and Northern Ireland. It would come into force immediately on the day it becomes an Act of Parliament.

2.3

Schedules

Schedule 1 contains provisions relating to the regulation-making power under Clause 1 available to devolved authorities.

Paragraph 1 sets out that the devolved authorities – the Scottish Ministers, the Welsh Ministers, or a Northern Ireland department – would be able to make regulations under Clause 1 on their own only within the areas of “devolved competence”, as defined under paragraphs 5 to 7 of the Schedule.

The following paragraphs clarify when the devolved authorities, before making regulations under Clause 1, would be required to receive ministerial consent (paragraph 2), or when the devolved regulations would be made jointly with (paragraph 3) or after consulting (paragraph 4) a Minister of the Crown. Generally, working together with the Ministers of the Crown would be required if the devolved authority would normally be required to cooperate in making a particular regulation.⁴⁹

Paragraph 9 in Part 2 of the Schedule disapplies certain provisions of the Government of Wales Act 2006 in relation to concurrent functions.⁵⁰ Concurrent powers are shared powers that can be exercised by the devolved Ministers or UK Ministers to make secondary legislation [in relation to the devolved nations](#).

Schedule 2 contains provision about the making of regulations under Clause 1. It provides that the power is “exercisable by statutory instrument when exercised by a Minister of the Crown acting alone”. Corresponding provisions are made for each of the devolved authorities acting alone and for a Minister of the Crown acting jointly with a devolved authority.⁵¹

Part 2 of the Schedule provides that UK Parliament or devolved authorities would scrutinise regulations made under Clause 1 by the [negative procedure](#).⁵² At the time of publication of this briefing, the government has not published a delegated powers memorandum.

⁴⁹ [Explanatory Notes to the Trade \(Australia and New Zealand\) Bill 2022](#), paras 33-35; The Trade (Australia and New Zealand) Bill (and changes it would make to the Government of Wales Act 2006) would be repealed by provisions in schedule 11 of the Procurement Bill.

⁵⁰ [Explanatory Notes to the Trade \(Australia and New Zealand\) Bill 2022](#), para 38

⁵¹ [Explanatory Notes to the Trade \(Australia and New Zealand\) Bill 2022](#), para 39

⁵² [Explanatory Notes to the Trade \(Australia and New Zealand\) Bill 2022](#), paras 40-42

The power to make regulations under Clause 1 may be exercised before the trade agreements with Australia and New Zealand are ratified (Part 3).

2.4 Legislative consent

The UK Government is seeking legislative consent motions from the Senedd Cymru, the Scottish Parliament and the Northern Ireland Assembly for this Bill. The UK Parliament normally only legislates about devolved matters with the consent of the relevant devolved legislature.

The Welsh Government has recommended that the Senedd rejects the Bill in its current form and withholds its consent. In its [Legislative Consent Memorandum](#) (PDF), the Welsh Government says it agrees that procurement legislation in Wales must be amended to meet the requirements of the two Free Trade Agreements. However, it opposes the Bill, because although the Bill gives Welsh Ministers powers to make regulations in devolved areas, “it also gives those powers to UK Ministers without any requirement to obtain Welsh Ministers’ consent” (concurrent powers). The Senedd is considering the memorandum.⁵³

The Scottish Government has given similar reasons for [recommending that the Scottish Parliament does not consent](#) (PDF) to the Bill in its current form.⁵⁴ The Scottish Parliament has not taken a formal decision on its legislative consent so far.

Since the May 2022 Northern Ireland Assembly Elections no Executive has been formed and a new election is expected. A caretaker Executive has been in place, but could not take any new decisions.⁵⁵

What happens if legislative consent is withheld?

Receiving legislative consent for legislation concerning devolved matters is a constitutional convention – also referred to as the Sewel Convention – and not a legal requirement. On some occasions, the threat of no consent can lead the Government to amending legislation, or making other concessions, in order to secure devolved agreement. However, legally, the UK Parliament can seek Royal Assent for any Bill, even if a devolved legislature withholds consent for its provisions.

Historically it’s been [rare for legislative consent to be withheld](#). However, in the recent years, several bills have passed without devolved legislative

⁵³ Senedd Cymru website, [Legislative Consent: Trade \(Australia and New Zealand\) Bill](#), accessed 10 November 2022; The Welsh Government, [Legislative consent memorandum, Trade \(Australia and New Zealand\) bill](#), 25 May 2022

⁵⁴ The Scottish Parliament, [Trade \(Australia and New Zealand\) Bill](#), accessed 10 November 2022; [The Scottish Government, Legislative Consent Memorandum, Trade \(Australia and New Zealand\) Bill](#), 13 June 2022

⁵⁵ Commons Library, [Another Northern Ireland Assembly election?](#), 21 October 2022

consent. This has included the [EU \(Withdrawal Agreement\) Act 2020](#), the UK [Internal Market Act 2020](#), and the [Subsidy Control Act 2022](#).⁵⁶

⁵⁶ See tab 'Legislative Consent Motions – devolved legislatures' on the Act's page; more information in [Sewel convention](#). Institute for Government explainer, 9 February 2022

3 Commons stages

The Trade (Australia and New Zealand) Bill 2022-23 has completed its second reading and committee stage. The Bill is awaiting the report stage.

[Second Reading of the Trade \(Australia and New Zealand\) Bill 2022-23](#) took place on 6 September 2022. The Bill was granted a [second reading](#) with 309 votes to 56. The Labour Party abstained from voting.⁵⁷

MPs passed a Programme Motion for a Public Bill Committee to conclude its work by 22 September, but the committee stage had to be postponed because of the Demise of the Crown and the subsequent Conference recess.

The Public Bill Committee (the Committee) held four sittings on 12 and 18 October 2022. The opposition parties put forward 22 amendments and four new clauses, but the Bill was passed unamended.

3.1 Second reading debate

Anne-Marie Trevelyan, then Secretary of State for International Trade, led the second reading debate on behalf of the Government. The Secretary of State said that the agreements with Australia and New Zealand represented first significant successes of the UK as an independent trading nation. The deals – the first ones “negotiated from scratch” – would secure increased opportunities for trade and wider access to procurement markets for UK businesses in Australia and New Zealand.

The SoS pointed out that the Bill was narrowly focused on enabling the Government to implement its obligations under the agreements’ procurement chapters.⁵⁸

Scrutiny of trade agreements

During the debate MPs were for a significant part focussing on the issue of parliamentary scrutiny of the UK free trade agreements with Australia and New Zealand and trade agreements in general.

Nick Thomas-Symonds, Shadow Secretary of State for International Trade, said the Labour Party supported “deepening our trade links with our friends in

⁵⁷ The Conservative Party and the DUP voted for the Bill; the remaining parties voted against.

⁵⁸ [HC Deb 6 September 2022 \[Trade \(Australia and New Zealand\) Bill\]](#) cc142-143

Australia and New Zealand”.⁵⁹ Mr Thomas-Symonds went on to describe the parliamentary scrutiny process of both trade deals as “wholly inadequate”. He said not making time for a parliamentary debate was “a clear breach of the Government’s own promises”:⁶⁰

The cross-party International Trade Committee has rightly been scathing about the way the Government have handled scrutiny of the Australia trade deal and their premature triggering of the 21-day Constitutional Reform and Governance Act 2010 process without full Select Committee consideration being available to Members.⁶¹

With regard to the scrutiny of the UK-New Zealand FTA he said no Minister from the Department of International trade “came to the House to speak about it and open themselves up to questions; instead, they just issued a written statement”.⁶²

The Liberal Democrat spokesperson Sarah Green said:

The precedent that is being set is that free trade agreements will get no parliamentary scrutiny and it sends a signal that the Government will do the bare minimum to get them over the line.⁶³

Mr Thomas-Symonds said that the Government had conceded to both trade partners, agreeing deals that would benefit Australian and New Zealand exporters more than UK exporters, at the cost of resources expected to be reallocated away from the UK agriculture, forestry, fishing, and semi-processed food industry. Several other members said that future UK trade partners in negotiations would look at these deals as a precedent for concessions they might get from the UK.⁶⁴

Both Conservative (Mr Garnier), Labour (Mr Thomas-Symonds, Mr Thomas) and SNP (Mr Angus Brendan MacNeil) MPs criticised the Government for not publishing a single cohesive strategy document for the UK trade negotiations – a point that has also been made by the International Trade Committee.⁶⁵

Wider effects on the economy

MPs also debated the wider effects of both FTAs on the economy. They mentioned the opportunities created by the deals, such as new export markets for Scotch whisky, the recognition of professional services, business mobility and the recognition of qualifications.⁶⁶

⁵⁹ [HC Deb 6 September 2022 \[Trade \(Australia and New Zealand\) Bill\]](#) c145

⁶⁰ [HC Deb 6 September 2022 \[Trade \(Australia and New Zealand\) Bill\]](#) cc144-145

⁶¹ [HC Deb 6 September 2022 \[Trade \(Australia and New Zealand\) Bill\]](#) c145

⁶² [HC Deb 6 September 2022 \[Trade \(Australia and New Zealand\) Bill\]](#) c145

⁶³ [HC Deb 6 September 2022 \[Trade \(Australia and New Zealand\) Bill\]](#) c188

⁶⁴ [HC Deb 6 September 2022 \[Trade \(Australia and New Zealand\) Bill\]](#) c146, cc179-180, c196

⁶⁵ [HC Deb 6 September 2022 \[Trade \(Australia and New Zealand\) Bill\]](#) c152, c154, c168, cc198-200

International Trade Committee, Fourth Report of Session 2022-23, [UK trade negotiations: Parliamentary scrutiny of free trade agreements](#), 27 October 2022, HC 815, para 15

⁶⁶ [HC Deb 6 September 2022 \[Trade \(Australia and New Zealand\) Bill\]](#) c185

Various members across the House were concerned about the effects of the FTAs on UK farming, agriculture and animal welfare in the UK.⁶⁷ Others pointed to lower prices of produce as a result of the FTAs benefitting UK consumers.⁶⁸ Andrew Griffith, then Parliamentary Under-Secretary of State for International Trade, noted the independent Trade and Agriculture Commission had given the deal “a green light and a clean bill of health” in terms of its impact.⁶⁹

The role of the devolved administrations

The Secretary of State said that the Department for International Trade had engaged collaboratively with the devolved administrations throughout the trade agreement negotiations.⁷⁰ But opposition MPs expressed concern with the Welsh and Scottish Governments declining to give their consent to the Bill so far.⁷¹ See further on legislative consent in section 2.4 above.

The Labour Party urged the Government to involve all parts of the UK in the overall trade policy, in setting the negotiating mandate and during the negotiation and ratification process. Mr Thomas-Symonds put forward that the Government could formalise the involvement of devolved administrations in a form of a concordat or agreement. He also urged the Government to produce nation-specific impact assessments on trade deals.⁷²

Procurement

Regarding procurement Labour’s view was that the Government needed to support UK businesses bidding in Australia and New Zealand. In particular, support was needed to facilitate the participation of small and medium-sized enterprises in the procurement process and to promote the use of paperless procurement.⁷³

Paul Blomfield said there was a “real concern” that the regulation-making powers in Clauses 1 and 2 of the Bill would enable existing legislation to be amended significantly “without scrutiny, undermining parliamentary sovereignty and transferring yet more power to the Executive.”⁷⁴ He said the powers should be constrained by “an objective test of necessity, or at least be subject to the affirmative resolution procedure.”⁷⁵

Procurement is partially a devolved matter, and this Bill seeks a concurrent power for making regulations in areas of devolved competence. See [section](#)

⁶⁷ See for example [HC Deb 6 September 2022 \[Trade \(Australia and New Zealand\) Bill\]](#) c165, c176, cc179-180, c192

⁶⁸ As above, cc165-167

⁶⁹ As above, c201

⁷⁰ As above, cc142-143

⁷¹ As above, cc183-185, cc188-189

⁷² As above, c151

⁷³ As above, c151

⁷⁴ As above, c193

⁷⁵ As above, c194

[2.4 above](#). SNP members criticised the Government for including concurrent powers in the Bill. Minister Andrew Griffith said that the Government was committed to not “normally” using the concurrent powers without a devolved administration’s consent, and never without consulting them first. He said the Government had made similar commitments regarding the use of powers in the Trade Act 2021 and the Government had honoured it.⁷⁶

3.2 Committee stage

The Public Bill Committee (the Committee) held four sittings on 12 and 18 October 2022. The Chairs of the Committee were Mark Pritchard and Derek Twigg. For a list of Committee members see [Annex 1](#).

Throughout the sittings, Sir James Duddridge, the then Minister of State at the Department of International Trade, spoke on behalf of the Government.

The Labour shadow team was led by Gareth Thomas, Shadow Minister (International Trade).

The Committee received written submissions from the Farmers' Union of Wales, the Public Law Project and The Rt Hon Lord Lansley CBE PC DL.

On 12 October the Committee held two oral evidence sessions with experts. Written evidence and transcripts of the committee sittings are available on [the Trade \(Australia and New Zealand\) Bill](#) pages of the Parliament website.

No changes to the Bill in the Committee

The opposition parties proposed a total of 22 amendments to the Bill and five new clauses. However, the Committee rejected all amendments, and the Bill passed unamended.

A total of 6 opposition amendments and four new clauses were voted against. The remaining amendments were withdrawn after a debate or were not moved.

3.3 Proposed amendments

General application of agreement provisions

Gareth Thomas moved a Labour probing Amendment 19 seeking to delete Clauses 1(2) and 1(3). These subclauses allow Ministers to extend specific

⁷⁶ [HC Deb 6 September 2022 \[Trade \(Australia and New Zealand\) Bill\]](#) c202

provisions of the UK-Australia and UK-New Zealand agreements to all covered procurement, applying them generally.⁷⁷

The Minister said Clauses 1(2) and 1(3) “simply ensure that any supplier participating in a tender that is covered by the agreements do so under the same rules and processes”. This would prevent UK suppliers and contracting authorities from having to navigate different or conflicting procurement procedures.⁷⁸

Gareth Thomas was specifically concerned that Clauses 1(2) and 1(3) would enable changes to the provisions dealing with contracts of unknown value.⁷⁹ This, he said, could cause issues for British suppliers, and could create much greater competition for contracts and potentially undermine “buy British” campaigns.⁸⁰ Later, in a letter to Gareth Thomas, the Minister wrote the changes to estimating the contract value would only apply to a limited number of cases. They would not open the procurements to significantly more competitors.⁸¹

Amendment 19 was withdrawn, but Gareth Thomas said he might return to this issue on report.

Enhanced consultations and impact assessments

MPs debated a group of SNP and Labour amendments proposing consultation and impact assessment in advance of making regulations under Clause 1. The amendments would have introduced:

- consultations with the devolved administrations in relation to matters of their competence, such as agriculture (amendments 4 and 5);
- a review of the potential impact of the procurement chapters by the Trade and Agriculture Commission (amendment 7);

⁷⁷ [PBC Deb 18 October 2022 \[Trade \(Australia and New Zealand\) Bill \(Third sitting\)\]](#) c61

⁷⁸ [PBC Deb 18 October 2022 \[Trade \(Australia and New Zealand\) Bill \(Third sitting\)\]](#) c70; see also [a letter of Sir James Duddridge KCMG MP, Minister for International Trade to Gareth Thomas MP on Trade \(Australia and New Zealand\) Bill](#), 21 October 2022

⁷⁹ The UK-Australia FTA sets out that to estimate the value of a procurement for the purposes of ascertaining whether it is covered procurement, that is, its value exceeds the procurement thresholds, a contracting authority shall estimate the maximum value of the procurement over its entire duration. If contract’s duration is unknown, it is deemed covered procurement (UK-Australia FTA, [Articles 16.2\(8\) and 16.2\(9\)](#)) (PDF). Under the current UK procurement rules the value of a contract of unknown duration is estimated over a period of 48 months (Public Contracts Regulations 2015, [6\(17\)b, 6\(19\)b](#)).

⁸⁰ [PBC Deb 18 October 2022 \[Trade \(Australia and New Zealand\) Bill \(Third sitting\)\]](#) cc 62, 66

⁸¹ [A letter of Sir James Duddridge KCMG MP, Minister for International Trade to Gareth Thomas MP on Trade \(Australia and New Zealand\) Bill](#), 21 October 2022

- assessment of the impact of procurement chapters on climate change, labour and human rights, and the devolved nations and English Regions (amendments 20 and 22).⁸²

In the opposition's view the amendments would enhance government engagement with stakeholders as compared to the negotiation processes with Australia and New Zealand.⁸³ MPs also asked for regional impact assessments for both FTAs.⁸⁴

The Minister, Sir James Duddridge, replied that the Government had established an Inter-ministerial Group for Trade where devolved Ministers discussed trade negotiations, including aspects of procurement. The forum had met eight times since its inception in 2020. Departmental officials regularly met with their devolved counterparts.⁸⁵

In response to Anum Qaisar's remarks on the need for "a high levels of dialogue between Scottish and UK Government Ministers", Sir James Duddridge said:

In respect of the content of the Bill, the procurement policy teams met with officials from the devolved Administration for roundtables on the text of the procurement chapters in both negotiations: for this Bill; and for the procurement regulations that are consequently developed from the Bill⁸⁶

In a separate letter, the Minister set out the Department's for International Trade (DIT) engagement with trade unions.⁸⁷

DIT has committed to producing a biennial monitoring report on both agreements. Within five years of the agreements coming into force, there will be an evaluation report. The Minister committed to assessing the effects on all the regions in these reports.⁸⁸

Responding to MP's criticism of the CRAG process and engagement of DIT with the International Trade Committee, the Minister said:

⁸² [PBC Deb 18 October 2022 \[Trade \(Australia and New Zealand\) Bill \(Third sitting\)\]](#) cc72-88

⁸³ [PBC Deb 18 October 2022 \[Trade \(Australia and New Zealand\) Bill \(Third sitting\)\]](#) c77

⁸⁴ [PBC Deb 18 October 2022 \[Trade \(Australia and New Zealand\) Bill \(Third sitting\)\]](#) cc79-80

⁸⁵ [PBC Deb 18 October 2022 \[Trade \(Australia and New Zealand\) Bill \(Fourth sitting\)\]](#) c104

⁸⁶ [PBC Deb 18 October 2022 \[Trade \(Australia and New Zealand\) Bill \(Third sitting\)\]](#) c74

[PBC Deb 18 October 2022 \[Trade \(Australia and New Zealand\) Bill \(Fourth sitting\)\]](#) c109

[A letter of Sir James Duddridge KCMG MP, Minister for International Trade to Gareth Thomas MP on Trade \(Australia and New Zealand\) Bill](#) (PDF), 21 October 2022

⁸⁷ Letter of Sir James Duddridge KCMG MP, Minister for International Trade to Derek Twigg MP, Rt Hon Mark Pritchard MP on [Department for International Trade engagement with the trade union movement](#) (PDF), 21 October 2022

⁸⁸ DIT, UK-Australia FTA: impact assessment, 16 December 2021, pp7, 56; [HC Deb 18 October 2022 \[Trade \(Australia and New Zealand\) Bill \(Fourth sitting\)\]](#) c105

Relations with the International Trade Committee have not been as good as the Government, the Committee or the House want. That is going to change. We will make ourselves fully available.^{89 90}

The Public Bill Committee voted against the amendments 3,4,5 and 22.

MPs also debated four new clauses, which would have introduced additional impact assessment of the procurement chapters. The amendments were proposed with a wider impact of the agreements with Australia and New Zealand in mind, for example, to consider their effects on UK agriculture and farmers.⁹¹

New Clauses 1, 2 and 3 (SNP) would have introduced assessment of impact on

- the four UK nations;
- social, economic and environmental aspects;
- hill farmers in Scotland, and
- the operation of geographical indications (GI).⁹²

Some MPs voiced disappointment about UK geographical indications not being recognised in Australia on the face of the agreement. The Minister said the deal allowed for agreeing GI protections in the future.⁹³

A Labour New Clause 4 would have required the Secretary of State to publish tri-annual impact assessments of the procurement chapters. The first assessment would have to be published twelve months after the regulations under Clause 1 of the Bill coming into effect.

The Public Bill Committee voted against New Clauses 1 to 4.

Parliamentary scrutiny of regulations

Another group of opposition amendments to schedule 2 (amendments 9 to 18) sought to enhance parliamentary scrutiny of draft procurement regulations made under the Bill. Several amendments would have replaced the [negative resolution procedure](#) with the [affirmative procedure](#) for making regulations. Others would have introduced an approval of draft regulations by the Senedd,

⁸⁹ [PBC Deb 18 October 2022 \[Trade \(Australia and New Zealand\) Bill \(Fourth sitting\)\]](#) c103

⁹⁰ [PBC Deb 18 October 2022 \[Trade \(Australia and New Zealand\) Bill \(Third sitting\)\]](#) c84

⁹¹ [PBC Deb 18 October 2022 \[Trade \(Australia and New Zealand\) Bill \(Fourth sitting\)\]](#) cc121-130

⁹² Geographical indications (GI) identify a product as coming from a particular location where the quality or reputation of the product is linked to that location. GIs therefore protect these products from imitation and allow producers to charge a premium.

⁹³ [HC Deb 18 October 2022 \[Trade \(Australia and New Zealand\) Bill \(Fourth sitting\)\]](#) c129; more information on the provisions covering recognition of GIs in the UK-Australia FTA is in Commons Library briefing, [UK-Australia Free Trade Agreement](#) (PDF), para 4.7

or the Northern Ireland Assembly, where relevant. Amendment 9 was negated, and the remaining amendments were withdrawn.⁹⁴

Interaction with other agreements

A further group of amendments to Clause 4 (Extent, commencement and short title) proposed to add a form of sunset clause to the Bill letting it expire at a certain future date (amendments 2, 8 and 21).

SNP Amendment 2, which proposed to let the future Act expire on 31 December 2027 and would have introduced a point in time “to judge the legislation’s effectiveness”, was negated on division.⁹⁵

Labour Amendments 8 and 21 were probing amendments to understand how the Australia and New Zealand trade agreements would interact with the World Trade Organization’s Agreement on Government Procurement (GPA) and the UK’s potential accession to the CPTPP.⁹⁶ The Minister set out in a letter to Gareth Thomas that the agreements with Australia and New Zealand go beyond the GPA baseline, by “strengthening procurement commitments towards transparency and small and medium enterprise participation”. In the same vein, he wrote, procurement provisions in the CPTPP would not prevent the UK from maintaining bilateral procurement commitments with Australia and New Zealand.⁹⁷

Earlier in the committee, Gareth Thomas had raised an issue of procurement provision of the two agreements arguably creating lesser commitments – a “GPA-minus” agreement – compared to the GPA (for further discussion see section 1.5 above). He referred to the 12 October evidence session of the Public Bill Committee, where Professor Sanchez-Graells of Bristol University Law School explained his concerns and presented several hypothetical examples of the provisions affecting businesses. One of the concerns was that the UK-Australia free trade agreement would exclude legal remedies completely on the basis of public interest.⁹⁸ Gareth Thomas said:

Professor Sanchez-Graells argued that there are a series of problems with the way in which the procurement chapter has been written that, in effect, create the GPA-minus problem, which could have a chilling impact on the appetite of British businesses to bid in Australia and New Zealand, unless Ministers can rectify those problems and provide comprehensive reassurance that Professor Sanchez-Graells may not have considered the whole picture.⁹⁹

⁹⁴ [PBC Deb 18 October 2022 \[Trade \(Australia and New Zealand\) Bill \(Fourth sitting\)\]](#) cc113-115

⁹⁵ [PBC Deb 18 October 2022 \[Trade \(Australia and New Zealand\) Bill \(Fourth sitting\)\]](#) cc117

⁹⁶ [PBC Deb 18 October 2022 \[Trade \(Australia and New Zealand\) Bill \(Fourth sitting\)\]](#) cc116-120

⁹⁷ [A letter of Sir James Duddridge KCMG MP, Minister for International Trade to Gareth Thomas MP on Trade \(Australia and New Zealand\) Bill](#), 21 October 2022

⁹⁸ [PBC Deb 18 October 2022 \[Trade \(Australia and New Zealand\) Bill \(Fourth sitting\)\]](#) cc92-101; For evidence of Prof Sanchez-Graells see [PBC Deb 12 October 2022 \[TRADE \(AUSTRALIA AND NEW ZEALAND\) BILL \(Second sitting\)\]](#) cc40-46

⁹⁹ [PBC Deb 18 October 2022 \[Trade \(Australia and New Zealand\) Bill \(Fourth sitting\)\]](#) c95

Sir James Duddridge said the Government respectfully disagreed with the witness's assessment. He set out in a letter to Gareth Thomas that the Government acknowledges the differences between the agreement texts, but does not consider the differently worded provisions alter the legal effect or give rise to legal uncertainty.¹⁰⁰

The Public Bill Committee passed the Bill without amendments.

¹⁰⁰ [A letter of Sir James Duddridge KCMG MP, Minister for International Trade to Gareth Thomas MP on Trade \(Australia and New Zealand\) Bill](#), 21 October 2022

Annex: members of the Public Bill Committee

Chairs: Mark Pritchard, Derek Twigg

Bim Afolami, Hitchin and Harpenden (Con)

Andrew Bowie, West Aberdeenshire and Kincardine (Con)

Sara Britcliffe MP, Hyndburn (Con)

Chris Clarkson MP, Heywood and Middleton (Con)

Sir James Duddridge, Rochford and Southend East, (Con), Minister of State,
Department for International Trade

Bill Esterson, Labour Sefton Central Commons (Lab)

Simon Fell, Barrow and Furness (Con)

Peter Gibson, Darlington (Con)

Lilian Greenwood, Nottingham South (Lab)

Dame Nia Griffith, Llanelli (Lab)

Drew Hendry, Inverness, Nairn, Badenoch and Strathspey (SNP)

Richard Holden, North West Durham (Con)

Mark Jenkinson, Workington (Con)

Tony Lloyd, Rochdale (Lab)

Dr Kieran Mullan, Crewe and Nantwich (Con)

Ms Anum Qaisar, Airdrie and Shotts (SNP)

Lloyd Russell-Moyle, Brighton, Kemptown (Lab)

Gareth Thomas, Harrow West (Lab)

Martin Vickers, Cleethorpes (Con)

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