



Taxation (Cross-border Trade) Bill HL Bill 125 of 2017–19

Summary

The [Taxation \(Cross-border Trade\) Bill](#) is a government bill introduced in the House of Commons on 20 November 2017. It passed third reading on 16 July 2018. Its introduction follows the publication of a white paper on 9 October 2017 on legislating for the UK's future customs, VAT and excise regimes. All of the Bill's stages in the House of Lords are scheduled to take place on 4 September 2018, and as a supply bill the Lords is 'debarred' from making amendments.

Amongst its provisions, the Bill would provide for the establishment of an independent customs regime once the UK has withdrawn from the EU. It would also amend existing VAT and excise legislation to abolish the EU concept of acquisition VAT and introduce a range of delegated powers including the imposition, administration, collection and enforcement of customs duty. The explanatory notes to the Bill state that the Bill does not presuppose any particular outcome from the UK's negotiations with the EU and allows for a range of outcomes, including an implementation period or the UK leaving without a negotiated outcome. The Taxation (Cross-border Trade) Bill and the [Trade Bill](#) are linked through the creation, and operation of a new Trade Remedies Authority (TRA). The Trade Bill provides for the establishment of the TRA, but the implementation of trade remedy measures (which would be enforced by the TRA) would be provided for in the Taxation (Cross-border Trade) Bill. No amendments were made to the Bill during committee stage in the House of Commons. At the Bill's report stage, the Government accepted four backbench Conservative amendments (tabled by members of the European Research Group (ERG)) and two Scottish National Party (SNP) amendments. The SNP amendments and two of the ERG amendments were made without division. The other two ERG amendments (also not contested by the Government) were made on division, both by a majority of three. The Government made 46 of its own amendments to the Bill, all without division. There were three Labour Party amendments and one SNP amendment defeated on division.

This Briefing provides an overview of the purpose of the Bill and a summary of its report stage in the House of Commons. Further detail on the Bill's provisions, and a summary of the Bill's second reading and committee stages in the House of Commons is available in the House of Commons Library's briefing on the Bill.

Table of Contents

1. Taxation (Cross-border) Trade Bill: Summary of Provisions
2. Relationship with the Trade Bill
3. Taxation (Cross-border Trade Bill): Report Stage and the White Paper
4. Amendment to Second Reading Motion in the House of Lords
5. Further Information

Table of Contents

1. Taxation (Cross-border) Trade Bill: Summary of Provisions	1
2. Relationship with the Trade Bill	3
3. Taxation (Cross-border Trade Bill): Report Stage and the White Paper	4
3.1 European Research Group Amendments	8
3.2 Scottish National Party Amendments	17
3.3 Government Amendments	18
3.4 Third Reading.....	22
4. Amendment to Second Reading Motion in the House of Lords	22
5. Further Information	23

A full list of Lords Library briefings is available on the [research briefings page](#) on the internet. The Library publishes briefings for all major items of business debated in the House of Lords. The Library also publishes briefings on the House of Lords itself and other subjects that may be of interest to Members.

House of Lords Library briefings are compiled for the benefit of Members of the House of Lords and their personal staff, to provide impartial, authoritative, politically balanced briefing on subjects likely to be of interest to Members of the Lords. Authors are available to discuss the contents of the briefings with the Members and their staff but cannot advise members of the general public.

Any comments on Library briefings should be sent to the Head of Research Services, House of Lords Library, London SW1A 0PW or emailed to purvism@parliament.uk.

I. Taxation (Cross-border) Trade Bill: Summary of Provisions

The Bill consists of 58 clauses in six parts, alongside nine schedules, and includes provisions covering import duty, export duty, VAT, and excise duties. The Taxation (Cross-border Trade) Bill is a supply bill.

The *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords* (2017) explains that the House of Lords are unable to amend such bills:

Supply bills, or bills of aids and supplies, such as Consolidated Fund Bills and Finance Bills, may be passed or rejected by the Lords but, since the supply is granted by the House of Commons, the Lords are debarred from offering any amendment. Consequently, the committee stage is negative.¹

The Bill's introduction follows the publication of a white paper on 9 October 2017 on legislating for the UK's future customs, VAT and excise regimes.² In this white paper the Government stated that it had met with over 250 businesses, ports, airports and other organisations involved in international trade and discussed customs, VAT and excise.³ The Government said that contents of the white paper reflected much of the feedback that stakeholders had provided.⁴ The Government also encouraged further feedback and responses to the white paper.⁵

Parts 1 and 2 of the Bill relate to the establishment of a new customs regime for the UK. The Government has stated that the provisions are largely based on EU law in response to business representations.⁶ However, the Bill would allow for divergence from EU law where:

[T]he Government feels it is necessary to do so, or where it believes that there is a clear benefit to business to diverge from it and such divergence is consistent with whatever bilateral arrangements the Government agrees with the EU.⁷

In establishing an independent customs regime, the Bill would provide that, amongst other things:

- The UK can charge customs duty on goods (including on goods imported from the EU).

¹ House of Lords, [Companion to the Standing Orders and Guide to the Proceedings of the House of Lords](#), 2017, para 8.197.

² HM Treasury, [Customs Bill: Legislating for the UK's Future Customs, VAT and Excise Regimes](#), October 2017, Cm 9502.

³ *ibid*, p 23.

⁴ *ibid*.

⁵ *ibid*, pp 23–5.

⁶ [Explanatory Notes](#), p 6.

⁷ *ibid*.

- The UK can define how goods will be classified to establish the amount of customs duty due (known as the nomenclature).
- The UK can establish a new UK tariff and set out additional tariff-related provisions, for example the tariff applicable to developing countries (unilateral preferences).
- The UK can set and vary rates of customs duty, specify where goods are subject to quotas and where goods are relieved from duty.
The UK can vary or suspend duty at import in certain circumstances.
- The UK can implement arrangements to establish a customs union between the UK and another territory or country.
- HMRC can request and collect tax-related information from declarants and store and share it as appropriate.⁸

Parts 3 and 4 would make provision in the areas of VAT and excise duty. The Government has explained that the Bill would allow VAT and excise regimes to continue to function regardless of the outcome of negotiations between the UK and the EU, arguing that:

In relation to VAT and excise, it is necessary to amend existing legislation as a consequence of the UK's withdrawal from the EU with or without an agreement in order to ensure that these regimes work appropriately on withdrawal.⁹

As a consequence, the Bill would provide for a number of different powers, the following examples being given in the explanatory notes:

- The flexibility to give effect to an agreement with the EU on supplies or movements in progress on the day of EU exit and enable supplies or movements of goods and services by businesses and individuals to continue as freely as possible thereafter.
- The flexibility to deal with VAT on movements of goods and services between the UK and EU.
- The flexibility to allow HMRC to adapt IT systems, for example the Excise Movement and Control System, for UK internal excise duty suspended movements.
- The flexibility to vary the UK information sharing obligations to give effect to any new agreement about the continued exchange of information with EU member states to tackle avoidance and evasion.¹⁰

⁸ [Explanatory Notes](#), p 6.

⁹ *ibid*, p 5.

¹⁰ *ibid*, p 8.

The Bill also contains a range of provisions on delegated powers, with the Government arguing that this is not unusual in taxation matters:

[I]t is usual practice for primary legislation to set out a ‘framework’, and for secondary legislation to be used to set out rules concerning administration, collection and enforcement. This is the approach that the Government will also be taking to the new customs regime.¹¹

Further detail on the Bill’s provisions, and a summary of the Bill’s second reading and committee stages in the House of Commons is available in the House of Commons Library’s briefing on the Bill.¹²

2. Relationship with the Trade Bill

The Trade Bill is a government bill introduced in the House of Lords on 18 July 2018. It is scheduled to have its second reading on 11 September 2018. The Trade Bill and the Taxation (Cross-border Trade) Bill were both introduced to the House of Commons in November 2017. The Government stated that the aims of the Trade Bill were to:

- Create the necessary powers for the UK to transition trade agreements that currently exist between the EU and other countries (and which we are party to through our EU membership).
- Enable the UK to have continued access to £1.3 trillion worth of government contracts and procurement opportunities in 47 countries.
- Allow the UK to implement the Agreement on Government Procurement (GPA) as an independent member instead of as part of the EU.
- Establish a new independent UK body, the Trade Remedies Authority, to defend UK businesses against unfair trade practices.
- Ensure the UK Government has the legal ability to gather and share trade information, as evidence to support UK businesses against surges in imports and unfair practices.¹³

There is a relationship between the provisions of the two Bills. For example, the Trade Bill would establish a new statutory Trade Remedies Authority (the TRA), but the UK’s independent trade remedies framework—which the TRA would be responsible for administering—would be established by the Taxation (Cross-border Trade) Bill. The Trade Bill would allow the UK to implement non-tariff obligations flowing from international trade agreements, whereas tariff measures would be provided for under the Taxation

¹¹ [Explanatory Notes](#), p 8.

¹² House of Commons Library, [The Taxation \(Cross-border Trade\) Bill](#), 6 July 2018.

¹³ Department for International Trade, [‘Trade Bill’](#), accessed 3 August 2018.

(Cross-border Trade) Bill. The Government has stated that the two Bills “will together ensure that the necessary tools are in place to deliver an independent trading framework for the UK outside the EU”.¹⁴ The Taxation (Cross-border Trade) Bill will “impact upon and be impacted by the UK’s future international trade policy in so far as this directly relates to the applicable rate of customs duty”, whilst the Trade Bill “makes provisions relating to international trade which are not directly tax related”.¹⁵

The explanatory notes to the Trade Bill state that these provisions have been included in separate legislation because “the implementation of trade remedies measures impacts upon the financial privilege of the House of Commons”.¹⁶

3. Taxation (Cross-border Trade Bill): Report Stage and the White Paper

At report stage of the Bill in the House of Commons, the Government accepted four backbench Conservative amendments (tabled by members of the European Research Group (ERG)) and two Scottish National Party (SNP) amendments. The SNP amendments and two of the ERG amendments were made without division. The remaining two ERG amendments were made on division, both by a majority of three. The Government made 46 of its own amendments to the Bill, all without division. There were three Labour Party amendments and one SNP amendment defeated on division.¹⁷

Relevance of the White Paper

The Commons report stage of the Taxation (Cross-border Trade) Bill, on 16 July 2018, closely followed the publication of the Government’s white paper, *The Future Relationship Between the United Kingdom and the European Union*, published on 12 July 2018.¹⁸ This set out the Government’s proposals for the future relationship between the UK and the EU in the following areas:

- Economic partnership.
- Security partnership.
- Cross-cutting and other cooperation.
- Institutional arrangements.

The economic partnership put forward by the Government contained a number of proposals of direct relevance to the UK’s future customs

¹⁴ [Explanatory Notes](#), p 7.

¹⁵ *ibid.*

¹⁶ *Ibid*, p 4.

¹⁷ These were new clauses 11, 13 (Labour) and 16 (SNP), and amendment 21 (Labour).

¹⁸ HM Government, [The Future Relationship Between the United Kingdom and the European Union](#), 12 July 2018, Cm 9593.

arrangements. This included proposals for the phased introduction of a 'Facilitated Customs Arrangement' (FCA) which:

[W]ould remove the need for customs checks and controls between the UK and the EU as if they were a combined customs territory, which would enable the UK to control its own tariffs for trade with the rest of the world and ensure businesses paid the right or no tariff, becoming operational in stages as both sides complete the necessary preparations.¹⁹

The white paper gave further details on the design of the FCA:

Upon its withdrawal from the EU, the UK will leave the customs union. The UK has been clear that it is seeking a new customs arrangement that provides the most frictionless trade possible in goods between the UK and the EU, while allowing the UK to forge new trade relationships with partners around the world. The arrangement must also allow the EU to protect the integrity of the single market and the customs union.

Mirroring the EU's customs approach at its external border would ensure that goods entering the EU via the UK have complied with EU customs processes and the correct EU duties have been paid. This would remove the need for customs processes between the UK and the EU [...]

This would mean:

- a) where a good reaches the UK border, and the destination can be robustly demonstrated by a trusted trader, it will pay the UK tariff if it is destined for the UK and the EU tariff if it is destined for the EU. This is most likely to be relevant to finished goods; and
- b) where a good reaches the UK border and the destination cannot be robustly demonstrated at the point of import, it will pay the higher of the UK or EU tariff. Where the good's destination is later identified to be a lower tariff jurisdiction, it would be eligible for a repayment from the UK Government equal to the difference between the two tariffs. This is most likely to be relevant to intermediate goods. Under the UK's proposals it is estimated up to 96 percent of UK goods trade would be most likely to be able to pay the correct or no tariff upfront, with the remainder most likely to use the repayment mechanism.²⁰

¹⁹ HM Government, [The Future Relationship Between the United Kingdom and the European Union](#), 12 July 2018, Cm 9593, p 8.

²⁰ *ibid*, pp 16–17.

The white paper also set out the UK Government's view on the types of cooperation required between the UK and the EU in the operation of the FCA:

The UK recognises that this approach would need to be consistent with the integrity of the EU's Customs Union and that the EU would need to be confident that goods cannot enter its customs territory without the correct tariff and trade policy being applied. The UK therefore proposes a range of areas for discussion with the EU.

- a) The UK and the EU should agree a mechanism for the remittance of relevant tariff revenue. On the basis that this is likely to be the most robust approach, the UK proposes a tariff revenue formula, taking account of goods destined for the UK entering via the EU and goods destined for the EU entering via the UK. However, the UK is not proposing that the EU applies the UK's tariffs and trade policy at its border for goods intended for the UK. The UK and the EU will need to agree mechanisms, including institutional oversight, for ensuring that this process is resilient and verifiable. [...]

As a whole, the Government said its vision for a future economic partnership included:

- a common rulebook for goods including agri-food, covering only those rules necessary to provide for frictionless trade at the border—meaning that the UK would make an upfront choice to commit by treaty to ongoing harmonisation with the relevant EU rules, with all those rules legislated for by Parliament or the devolved legislatures;
- participation by the UK in those EU agencies that provide authorisations for goods in highly-regulated sectors—namely the European Chemicals Agency, the European Aviation Safety Agency, and the European Medicines Agency—accepting the rules of these agencies and contributing to their costs, under new arrangements that recognise the UK will not be a member state;
- the phased introduction of a new Facilitated Customs Arrangement [FCA] that would remove the need for customs checks and controls between the UK and the EU as if they were a combined customs territory, which would enable the UK to control its own tariffs for trade with the rest of the world and ensure businesses paid the right or no tariff, becoming operational in stages as both sides complete the necessary preparations;
- in combination with no tariffs on any goods, these arrangements would avoid any new friction at the border, and protect the integrated supply chains that span the UK and the EU,

- safeguarding the jobs and livelihoods they support;
- new arrangements on services and digital, providing regulatory freedom where it matters most for the UK's services based economy, and so ensuring the UK is best placed to capitalise on the industries of the future in line with the Modern Industrial Strategy, while recognising that the UK and the EU will not have current levels of access to each other's markets;
 - new economic and regulatory arrangements for financial services, preserving the mutual benefits of integrated markets and protecting financial stability while respecting the right of the UK and the EU to control access to their own markets—noting that these arrangements will not replicate the EU's passporting regimes;
 - continued cooperation on energy and transport—preserving the Single Electricity Market in Northern Ireland and Ireland, seeking broad cooperation on energy, developing an air transport agreement, and exploring reciprocal arrangements for road hauliers and passenger transport operators;
 - a new framework that respects the UK's control of its borders and enables UK and EU citizens to continue to travel to each other's countries, and businesses and professionals to provide services—in line with the arrangements that the UK might want to offer to other close trading partners in the future; and
 - in light of the depth of this partnership, binding provisions that guarantee and open an fair trading environment—committing to apply a common rulebook for state aid, establishing cooperative agreements between regulators on competition, and agreeing to maintain high standards through non-regression provisions in areas including the environment and employment rules, in keeping with the UK's strong domestic commitments.²¹

The white paper argued that “taken together”, all these elements of the partnership “would see the UK and EU meet their commitments to Northern Ireland and Ireland through the overall future relationship”.²² It said this would ensure that “the operational legal text the UK will agree with the EU on the ‘backstop’ solution as part of the withdrawal agreement will not have to be used”.

The publication of the white paper followed a meeting of the Cabinet at Chequers on 6 July 2018, with the Government subsequently issuing a statement outlining the proposals agreed by the Cabinet.²³ Although the Cabinet collectively signed up to this on 6 July 2018, on 8 July 2018, David Davis, then Secretary of State for Exiting the European Union, announced his

²¹ HM Government, [The Future Relationship Between the United Kingdom and the European Union](#), 12 July 2018, Cm 9593, pp 8–9.

²² *ibid.*

²³ HM Government, [Statement from HM Government](#), 6 July 2018

resignation. In his resignation letter, he said that “the current trend of policy and tactics is making [it] look less and less likely” that the UK would leave the customs union and the single market.²⁴ He said the “general direction of policy will leave us in at best a weak negotiating position, and possibly an inescapable one”. In his view, “the inevitable consequence of the proposed policies will be to make the supposed control by Parliament illusory rather than real”. He believed that the common rulebook policy would hand “control of large swathes of our economy to the EU” and was “certainly not taking back control of our laws in any real sense”. He also expressed concerns that this negotiating position would lead to the EU demanding further concessions from the UK.

The following day, Boris Johnson resigned his post as Secretary of State for Foreign and Commonwealth Affairs, also citing his objections to the policy agreed at Chequers. In his resignation letter, Mr Johnson argued that the UK appeared to be “heading for a semi-Brexit, with large parts of the economy still locked in the EU system, but with no UK control over that system”.²⁵ He explained his opinion that the proposal would “make it much more difficult to do free trade deals”, and would involve “having to argue for an impractical and undeliverable customs arrangement unlike any other in existence”, and possibly having to “make further concessions on immigration” or “end up effectively paying for access to the single market”.

The FCA and the wider proposals in the white paper formed much of the basis of debate at the Taxation (Cross-border Trade) Bill’s Commons report stage.

3.1 European Research Group Amendments (New Clauses 36 and 37, and Amendments 72 and 73)

During report stage of the Taxation (Cross-border Trade) Bill in the Commons on 16 July 2018, the Government accepted four Conservative backbench amendments relating to matters covered in the Government’s white paper, *The Future Relationship Between the United Kingdom and the European Union*, published on 12 July 2018.²⁶ Sir Bernard Jenkin (Conservative MP for Harwich and North Essex) explained the background to these amendments:

It was the intention of the European Research Group (ERG), a group of Conservative Back Benchers, to table four amendments—one or two of them in the light of the Chequers agreement and the white paper—to test our understanding of the intention of Government policy. Every single one of our amendments, we believe, reflects

²⁴ Sky News, ‘[David Davis Resignation Letter and Theresa May’s Response](#)’, 9 July 2018.

²⁵ BBC News, ‘[Boris Johnson’s Resignation Letter and May’s Reply in Full](#)’, 9 July 2018.

²⁶ HM Government, [The Future Relationship Between the United Kingdom and the European Union](#), 12 July 2018, Cm 9593.

Government policy. I do not imagine that the Government would have accepted any of them as calmly as they have if they did not reflect Government policy.²⁷

In a blog in the *Spectator* on 12 July 2018, Jacob Rees-Mogg (Conservative MP for North East Somerset), chair of the European Research Group), described the white paper as “the greatest vassalage since King John paid homage to Philip II at Le Goulet in 1200”.²⁸ He argued that the white paper would leave the UK subject to EU laws whilst having no say in their creation:

The common rule book will not be common, it will be EU law, interpreted by the EU Court with the UK subjected to EU fines for non-compliance. The UK has accepted it cannot diverge from ‘ongoing harmonisation’ without activating repercussions for Northern Ireland. In effect, Parliament will have no say over future EU laws implemented in the UK.²⁹

He described the UK Government’s proposal that it could collect customs duties on goods entering the UK, bound for the EU, on the EU’s behalf as an “unwarranted intrusion into the control of our border”.³⁰ Mr Rees-Mogg also said there was an absence of reciprocity and asserted that the cost of the arrangement was unknown. He said that the white paper was not something that he would vote for.³¹

All four ERG amendments were subsequently added to the Bill with the acceptance of the Government, two of them without division, and two in divisions that were passed with a majority of three. Some MPs expressed doubts about whether all the amendments were compatible with the white paper proposals. This section of the Briefing outlines the effect of these amendments and the Government’s reasons for accepting them in light of the white paper.

New Clause 36

New clause 36 would provide that:

- 1) Subject to subsection (2), it shall be unlawful for HM Revenue and Customs (HMRC) to account for any duty of customs or VAT or excise duty collected by HMRC to the Government of a country or territory outside the United Kingdom.

²⁷ [HC Hansard, 16 July 2018, col 121.](#)

²⁸ Jacob Rees-Mogg, ‘[The Brexit White Paper is a Bad Deal for Britain](#)’, *Spectator* Blog, 12 July 2018.

²⁹ *ibid.*

³⁰ *ibid.*

³¹ *ibid.*

- 2) Subsection (1) shall not apply if the Treasury declare by Order that arrangements have been entered into by Her Majesty's Government and that government under which that government will account to HMRC for those duties and taxes collected in that country on a reciprocal basis.³²

Speaking to new clause 36, tabled in her name and others, Priti Patel (Conservative MP for Witham), former Secretary of State for International Development, said that it would “cement into legislation the principle of reciprocity”.³³ Quoting from the white paper, she argued that the FCA did not deliver an “equal partnership” asserting that the policy did not require reciprocity:

It delivers one that does not put us on a level playing field. Because it states that:

“the EU would need to be confident that goods cannot enter its customs territory without the correct tariff and trade policy being applied”,

we would effectively adopt much of that policy and collect tariffs on behalf of the EU.

However, the white paper then states that:

“the UK is not proposing that the EU applies the UK's tariffs and trade policy at its border for goods intended for the UK”.³⁴

Priti Patel said that she was disappointed, that in her view, the “principle of reciprocity was not in the white paper”.³⁵ She argued that by the Government supporting new clause 36:

The EU would [...] know that it cannot attempt to steamroller the Government on this issue in the negotiations and that if it wants to benefit from the UK collecting its tariffs, it needs to adopt a similar reciprocal arrangement.³⁶

Jacob Rees-Mogg (Conservative MP for North East Somerset), chair of the European Research Group (ERG), further argued “it would actually allow the Government to run their trade policy”.³⁷

³² [HC Hansard, 16 July 2018, col 69.](#)

³³ *ibid.*

³⁴ *ibid.*

³⁵ *ibid.*

³⁶ *ibid.*

³⁷ *ibid*, col 127.

Mr Rees-Mogg also said he believed the point of reciprocity to be fair:

If we are to say to the European Union, “We will collect your taxes and remit them to you,” that is potentially a large amount of money to be sending to the European Union, giving up all the duties that would fall to us as a result of goods entering the 27 remaining MP states. Should we really be affording to do that? What is happening to that revenue, in terms of our independent trade policy, not if we want anti-dumping measures, but if we want to lower prices?³⁸

However, several MPs expressed the view that new clause 36 was not compatible with the white paper. For example, Dominic Grieve (Conservative MP for Beaconsfield), former Attorney General, argued that new clause 36 was designed to undermine the white paper. He also argued that the amendments did not “do the job, because they are inadequately drafted”.³⁹ He asserted that the Government had accepted amendments that it knew could not do what they were intended to do and that the movers had chosen to persist with them because they were “just an exercise in bullying”.⁴⁰ He stated that it was not his role as an MP to “put on the statute book clauses that are inadequate, incomprehensible and, on top of that, seek to undermine the Government”.⁴¹ Kirsty Blackman, SNP Spokesperson on the Economy and Deputy Westminster Leader, further argued that new clause 36’s requirement for reciprocity in the collection of taxes and duties directly contradicted the white paper’s text “the UK is not proposing that the EU applies the UK’s tariffs and trade policy at its border for goods intended for the UK”.⁴² Chris Leslie (Labour/Co-op MP for Nottingham East) described new clause 36 as a wrecking amendment to the facilitated customs arrangement in the Chequers agreement.⁴³ Speaking for the Labour Party, Peter Dowd, Shadow Chief Secretary to the Treasury, stated that “we will not countenance [...] new clause 36”.⁴⁴

Responding for the Government, Mel Stride, Financial Secretary to the Treasury, asserted that new clause 36 was consistent with the policies contained within the white paper. Quoting from the white paper, he argued that the Government was clear that under the proposed FCA:

[T]he UK and the EU would agree a mechanism for the remittance of relevant tariff revenue. The UK proposes a reciprocal tariff revenue formula taking account of goods destined for the UK entering via the EU and of goods destined for the EU entering via the UK. The white paper itself states:

³⁸ [HC Hansard, 16 July 2018, cols 127–8.](#)

³⁹ *ibid.*, col 123.

⁴⁰ *ibid.*

⁴¹ *ibid.*

⁴² *ibid.*, col 134.

⁴³ *ibid.*, col 87.

⁴⁴ *ibid.*, col 135.

“The UK and the EU should agree a mechanism for the remittance of relevant tariff revenue. On the basis that this is likely to be the most robust approach, the UK proposes a tariff revenue formula, taking account of goods destined for the UK entering via the EU and goods destined for the EU entering via the UK”.⁴⁵

Intervening, Amber Rudd (Conservative MP for Hastings and Rye), former Home Secretary, said that “there is some concern on this side of the House regarding new clause 36”.⁴⁶ She asked Mr Stride to confirm that new clause 36 would not impact the negotiating strategy of the UK Government. He responded saying that the “negotiating strategy of the UK Government is to seek reciprocity in this respect, and that is set out very clearly in the white paper”.⁴⁷

New clause 36 was agreed on division by 305 votes to 302.⁴⁸ New clause 36 is clause 54 in the Bill as introduced to the House of Lords.

New Clause 37

New clause 37 would provide that:

- 1) It shall be unlawful for Her Majesty’s Government to enter into arrangements under which Northern Ireland forms part of a separate customs territory to Great Britain.
- 2) For the purposes of this section “customs territory” shall have the same meaning as in the General Agreement on Tariffs and Trade, 1947, as amended.⁴⁹

Speaking to new clause 37, tabled in his name and others, Laurence Robertson (Conservative MP for Tewkesbury) said the amendment’s purpose was to:

[P]rovide a guarantee that shows we value the Union and recognise the importance of strengthening it, but also acknowledge the importance and the value of our most important trading arrangement, the UK internal market. Above all, it would contribute to upholding the constitutional integrity of the United Kingdom and safeguard the Union for the future.⁵⁰

⁴⁵ [HC Hansard, 16 July 2018, col 138.](#)

⁴⁶ *ibid.*

⁴⁷ *ibid.*

⁴⁸ *ibid.*, cols 156–9.

⁴⁹ *ibid.*, col 70.

⁵⁰ *ibid.*, col 108.

Mr Robertson said that he could not accept an agreement which would allow Northern Ireland to be considered a separate customs territory from Great Britain. He said: “I recognise that this is the view the Prime Minister has put at the forefront of our negotiations”.⁵¹ Mr Robertson argued that new clause 37 did not look to tie the Prime Minister’s hands, rather it would galvanise the Government’s position.⁵²

The Prime Minister has repeatedly said that the backstop proposals for Northern Ireland are something no Prime Minister of the United Kingdom could ever agree to, and this new clause will enshrine that policy in law.⁵³

Dominic Grieve argued that new clause 37 correctly identified that the Government had been obfuscating about Northern Ireland and that “we and the European Commission are talking different languages when it comes to the backstop”.⁵⁴ He said he had no difficulty emphasising the fact that, as he argued, “no Parliament of the United Kingdom is ever going to support a backstop that goes simply for Northern Ireland alone”.⁵⁵ Tom Brake (Liberal Democrat MP for Carshalton and Wallington) also argued that there were no political parties in the UK that wished to see a border in the Irish Sea. However, he expressed concern that “the purpose of new clause 37 seems to be to destroy the space in which discussions on the backstop arrangements can take place”.⁵⁶

Responding for the Government, Mel Stride described new clause 37 as a “straightforward statement of government policy”.⁵⁷ Mr Stride also argued that:

It ensures that the Government will not act in a manner incompatible with the commitments made in the joint report of December last year, when we committed to protecting the constitutional integrity of the United Kingdom, as well as to turning the joint report commitments into legally binding form. The Government also accept this new clause.⁵⁸

The white paper argued that the Government’s proposed economic partnership would prevent the need to use any agreed ‘backstop’ solution for Northern Ireland:

[S]uch a partnership would see the UK and the EU meet their

⁵¹ [HC Hansard, 16 July 2018, col 108.](#)

⁵² *ibid*, col 109.

⁵³ *ibid*.

⁵⁴ *ibid*, col 123.

⁵⁵ *ibid*.

⁵⁶ *ibid*, col 104.

⁵⁷ *ibid*, col 139.

⁵⁸ *ibid*.

commitments to Northern Ireland and Ireland through the overall future relationship: preserving the constitutional and economic integrity of the UK; honouring the letter and the spirit of the Belfast ('Good Friday') Agreement; and ensuring that the operational legal text the UK will agree with the EU on the 'backstop' solution as part of the withdrawal agreement will not have to be used.⁵⁹

New clause 37 was added to the Bill without division.⁶⁰ New clause 37 is clause 55 in the Bill as introduced to the House of Lords.

Amendment 72

Amendment 72 would amend clause 31 of the Bill to insert a new subclause (4A). The explanatory notes to the Bill explain that clause 31:

[W]ould enable the UK to give effect to a customs union arrangement with another territory or territories. A customs union is defined in subsection (2) as one in which there is no customs duty on goods moving between the two territories in question and where each territory applies substantially the same rules for charging import duty when goods are imported from outside either territory.⁶¹

Clause 31(4) states that:

If Her Majesty by Order in Council declares that it is expedient that the arrangements should have effect for the purposes of import duty, the arrangements have effect for those purposes despite any enactment.

Amendment 72 would make this subject to a new subclause (4A):

In the case of a customs union between the United Kingdom and the European Union, Her Majesty may not make a declaration by Order in Council under subsection (4) unless the arrangements have been approved by an Act of Parliament.⁶²

Sir Bernard Jenkin argued that the purpose of amendment 72 was to remove from the Bill "an extraordinarily powerful Henry VIII provision that we should be signed up to a customs union with the European Union simply by order".⁶³

⁵⁹ HM Government, [The Future Relationship Between the United Kingdom and the European Union, July 2018](#), Cm 9593, p 9.

⁶⁰ [HC Hansard, 16 July 2018, col 160](#).

⁶¹ [Explanatory Notes](#), p 24.

⁶² [HC Hansard, 16 July 2018, col 71](#).

⁶³ *ibid*, col 121.

Responding for the Government, Mel Stride, stated that the Government had no objection to the amendment's "enhanced level of parliamentary security" because the Government argued that leaving the EU meant leaving the EU's customs union.⁶⁴ The white paper stated that the Government was:

[D]etermined to build a new relationship that works for both the UK and the EU. One which sees the UK leave the single market and the customs union [...].⁶⁵

Amendment 72 was agreed without division.⁶⁶

Amendment 73

Amendment 73 would remove paragraph 14 of schedule 8. The explanatory notes to the Bill outlined the purpose of paragraph 14 as follows:

Paragraph 14 inserts new section 16A into the VAT Act, which provides a power to make regulations to govern the VAT treatment of goods entering the UK from another territory that is in a customs union with the UK.⁶⁷

Speaking to amendment 73, tabled in his name and others, Craig Mackinlay (Conservative MP for South Thanet) stated that "it now has to be a settled will that in future we are not going to be in the, or a, customs union with the European Union".⁶⁸ He argued that this was clear following debates on the European Union (Withdrawal) Bill and statements made by the Prime Minister:

[...] that became clear during the hours of debate on the European Union (Withdrawal) Bill in this place and the other place, and that Bill became an Act. It is clear in the Chequers deal and the white paper on the future relationship. The statement "we will not be in the customs union" has passed through the Prime Minister's Lancaster House and Mansion House speeches, and through her statements on the Floor of the House on occasions far too numerous to mention.⁶⁹

He also asked why the UK would want to maintain the EU's current arrangements for the administration of VAT, arguing that it "encourages buying from the EU in preference to buying from domestic markets".⁷⁰ Jacob Rees-Mogg argued that amendment 73 was consistent with government

⁶⁴ [HC Hansard, 16 July 2018, col 138.](#)

⁶⁵ HM Government, [The Future Relationship Between the United Kingdom and the European Union, July 2018](#), Cm 9593, p 7.

⁶⁶ [HC Hansard, 16 July 2018, col 166.](#)

⁶⁷ [Explanatory Notes](#), p 60.

⁶⁸ [HC Hansard, 16 July 2018, col 115.](#)

⁶⁹ *ibid.*

⁷⁰ *ibid.*

policy to “not be part of the EU VAT regime”.⁷¹ Chris Leslie questioned whether it could be compatible with the Government’s policy:

[G]iven that the Chequers white paper, which was published only last Thursday, states:

“To ensure that new declarations and border checks between the UK and the EU do not need to be introduced for VAT and Excise purposes, the UK proposes the application of common cross-border processes and procedures for VAT and Excise”.⁷²

Mr Rees-Mogg responded saying:

I can merely appeal to how this was set out by my right hon. Friend the Secretary of State for Environment, Food and Rural Affairs, who said that we would not be part of the EU’s VAT regime. VAT is not collected at the border; it is collected via statements from people who import and then send in returns in relation to their VAT. This would enforce a uniform system across all our VAT collection—that is the purpose. If a Government Minister states that that is Government policy, it is good enough for me.⁷³

He argued that “not having a clause [in the Bill] that is contradictory to government policy simply flows from that”.⁷⁴

In contrast, Chris Leslie also argued, whilst he had his issues with the white paper he believed that amendment 73 went “way beyond” the Chequers arrangement and it would restrict VAT acquisition arrangements in any future customs unions:

It would provide that if Britain ever entered into any future customs union with whatever territories, we could not have our current smooth VAT acquisition arrangements, whereby we avoid firms having to pay VAT upfront at the border and have frictionless trade, of which VAT is such an important part.⁷⁵

As with new clause 36, Dominic Grieve argued that amendment 73 was designed to undermine the white paper.⁷⁶ Anna Soubry (Conservative MP for Broxtowe) said it was “her firm view” that new clause 36 and amendment 73 “clearly seek to undermine, if not wreck, the great advances made in the white paper”.⁷⁷ She asserted that the white paper faced what

⁷¹ [HC Hansard, 16 July 2018, col 127.](#)

⁷² *ibid.*

⁷³ *ibid.*

⁷⁴ *ibid.*

⁷⁵ *ibid.*, col 87.

⁷⁶ *ibid.*, col 123.

⁷⁷ *ibid.*, col 80.

she viewed as the reality regarding trade:

The reality, which is faced in the white paper, is that if we do not deliver frictionless trade in the way in which companies such as Toyota need and demand, they will simply not be able to operate.⁷⁸

Responding for the Government, Mel Stride stated that amendment 73 would:

[R]emove a specific power that will enable HMRC to make regulations covering the application of VAT to goods in circumstances where we reach a customs union agreement with other customs unions or territories under clause 31.⁷⁹

However, he said that as the Chequers agreement did not propose such an arrangement with the EU in the future, the Government accepted the amendment.⁸⁰

Amendment 73 was agreed on division by 303 votes to 300.⁸¹

3.2 Scottish National Party Amendments (Amendments 33 and 34)

Clause 25 of the Bill contains provisions on the disclosure of information relating to import duty for customs duty purposes, the following example of which is given in the explanatory notes:

[The] HMRC currently exchanges information with other law enforcement partners so that it can more effectively target criminals or deliberate wrongdoers who are looking to evade import duty.⁸²

As introduced into the Commons, clause 25(7)(a) provided that nothing in clause 25 would authorise a disclosure which contravened the Data Protection Act 1998. During the Bill's Commons committee stage Kirsty Blackman, SNP Spokesperson for the Economy and Deputy Westminster Leader, referred to the Scottish Law Commission, saying that it had said the relevant data protection legislation for the purposes of the Bill would be the Data Protection Act 2018. The SNP had tabled an amendment to change the reference from the 1998 Act to the 2018 Act. Responding, Mel Stride, Financial Secretary to the Treasury, argued that because, at that time, the Data Protection Bill "was not yet in law it would be inappropriate to refer to

⁷⁸ [HC Hansard, 16 July 2018, col 82.](#)

⁷⁹ *ibid*, col 139.

⁸⁰ *ibid*.

⁸¹ *ibid*, cols 174–7.

⁸² [Explanatory Notes](#), p 21.

it in this Bill [the Taxation (Cross-border Trade) Bill]”.⁸³ Mr Stride said that the Government were committed to ensuring the appropriate data protection laws applied and would seek to make amendments “at the appropriate time”.⁸⁴ He asked Kirsty Blackman to withdraw the amendment at committee, which she did stating that:

[I]f the Government amended the Bill to specify “appropriate data protection legislation”, rather than “the Data Protection Act 1998”, that would fix the problem and ensure that the correct legislation is used.⁸⁵

At the Taxation (Cross-border) Trade Bill’s report stage in the House of Commons, the SNP tabled two further amendments on this issue. Amendment 33 would amend clause 25(7)(a) to change the reference to the Data Protection Act 1998 to “data protection legislation”. Amendment 34 would insert a new clause 25(8) which would define ‘data protection legislation’ in clause 25 as having the same meaning as the Data Protection Act 2018. At report stage, Mel Stride said that the Government would accept the SNP’s amendments 33 and 34 “which seek clarity” with regard to the application of data protection legislation to clause 25.⁸⁶

Amendments 33 and 34 were agreed without division.⁸⁷

3.3 Government Amendments

At report stage in the Commons, 46 government amendments were made to the Bill. Responding to the debate, Mel Stride, Financial Secretary to the Treasury, referred to five of the Government’s amendments directly. These related to the parliamentary procedure for certain powers under the Bill. Mr Stride argued that it was critical for the Government to have powers under the Bill to enable it to respond “flexibly” but that it accepted that “in some cases it may be considered proportionate to apply the made affirmative procedure”.⁸⁸ Mr Stride explained that:

It is on this basis that the Government have brought forward amendments 75, 76, 79, 81 and 23, which apply the made affirmative procedure to the powers under clauses 30, 42 and 47—the powers to make general provision in relation to import duty and to deal with retained EU VAT and excise law.⁸⁹

⁸³ [Public Bill Committee, Taxation \(Cross-border Trade\) Bill, 1 February 2018, session 2017–19, 7th sitting, col 255.](#)

⁸⁴ *ibid.*

⁸⁵ *ibid.*

⁸⁶ [HC Hansard, 16 July 2018, col 139.](#)

⁸⁷ *ibid.*, col 166.

⁸⁸ *ibid.*, col 139.

⁸⁹ *ibid.*

Table I lists all the government amendments made at report and provides the Government's explanatory statement for each.

Table I: Government Amendments Made to the Taxation (Cross-border Trade) Bill at Report Stage in the House of Commons

Amendment Number	Government Explanatory Statement
74	This amendment requires the Treasury, when considering what rate of import duty ought to apply to particular goods, to have regard to the interests of UK producers of those goods.
75	Amendments 75 and 76 provide that regulations under clause 30 (general provision for import duty purposes) cease to have effect if not approved by the House of Commons within 28 days of being made.
76	See the explanatory statement for amendment 75.
77	This amendment requires the Treasury, when considering whether to impose export duty and the rate of export duty that ought to apply to particular goods if it is to be imposed, to have regard to the interests of UK producers of those goods.
78	This amendment provides that the powers to make regulations under clause 42 (EU law relating to VAT) are not exercisable after 31 March 2023.
79	This amendment provides that regulations under Clause 42 (EU law relating to VAT) cease to have effect if not approved by the House of Commons within 28 days of being made.
80	This amendment provides that the power to make regulations under clause 47 (EU law relating to excise duty) is not exercisable after 31 March 2023.
81	This amendment provides that regulations under clause 47 (EU law relating to excise duty) cease to have effect if not approved by the House of Commons within 28 days of being made.
23	This amendment is consequential on amendment 81
82	This amendment provides that the power to make regulations under clause 51 (power to make provision in relation to VAT or duties of customs or excise) is not exercisable after 31 March 2022.
103	Amendments 103 and 108 provide that the Secretary of State may reject a recommendation by the TRA to apply an anti-dumping or anti-subsidy remedy only if the Secretary of State is satisfied that it is not in the public interest to accept the recommendation. In deciding that, the Secretary of State must accept the TRA's view that the economic interest test is met, unless satisfied that the TRA could not reasonably have come to that view.
108	See the explanatory statement for amendment 103.

104	Amendments 104 and 105 provide that the recommended period for the application of an anti-dumping amount or a countervailing amount is 5 years unless the TRA considers that a lesser period is sufficient to counteract the dumping, or the importation of subsidised goods, which has caused or is causing injury.
105	See the explanatory statement for amendment 104.
107	This amendment is consequential on amendment 105.
106	This amendment ensures that where it is recommended that an anti-dumping amount or a countervailing amount is applied to goods from a date on or before the day of publication of the relevant public notice under clause 13, the default recommended period of 5 years for the application of the amount (provided for by amendment 104) is extended by that prior period.
109	This amendment is consequential on amendments 104 and 105.
110	Paragraph 25(4)(a) of schedule 4 lists certain matters which the TRA and the Secretary of State must take account of, so far as relevant, when deciding whether the application of an anti-dumping or anti-subsidy remedy is not in the economic interest of the UK. Amendment 110 inserts an express reference in that list to the injury caused by the dumping of the goods or the subsidised imports to a UK industry in the goods and of the benefits to that industry in removing that injury.
111	Amendments 111 and 112 make clear that the references to “affected industries” in paragraph 25 of schedule 4 continue to include the injured UK industry referred to in amendment 110.
112	See the explanatory statement for amendment 111.
113	This amendment enables the TRA to waive the requirement for an application for the initiation of a safeguarding investigation to be accompanied by a preliminary adjustment plan.
85	This amendment enables the TRA, where it makes a provisional affirmative determination during a safeguarding investigation [investigations to establish whether increased imports are causing serious injury or threat thereof to UK producers], to recommend that goods be made subject to a provisional tariff rate quota as an alternative to recommending that a provisional safeguarding amount be applied to the goods.
84	This amendment is consequential on amendment 85.
86	This amendment is consequential on amendment 85.
87	This amendment is consequential on amendment 85. It has the effect that the TRA may recommend that goods in relation to which a provisional affirmative determination is made should be subject either to a provisional safeguarding amount or a provisional tariff rate quota, but not both, although some of the goods may be subject to one type of provisional remedy whilst the rest are subject to the other type of remedy.
88	This amendment is consequential on amendment 85.
89	This amendment is consequential on amendment 85.
90	This amendment is consequential on amendment 85.
91	This amendment is consequential on amendment 85.

93	This amendment is consequential on amendment 85.
94	This amendment is consequential on amendment 85
95	This amendment is consequential on amendment 85.
99	This amendment is consequential on amendment 85.
100	This amendment is consequential on amendment 85.
101	This amendment is consequential on amendment 85.
102	This amendment is consequential on amendment 85.
97	This amendment is consequential on amendment 85. It explains what effect the period of a provisional tariff rate quota is to have where the TRA later recommends the application of a definitive safeguarding amount. The amendment also incorporates the existing provision about the effect of the period of a provisional safeguarding amount.
98	This amendment is consequential on amendment 85. It explains what effect the period of a provisional tariff rate quota is to have where the TRA later recommends that goods be subject to a tariff rate quota. The amendment also incorporates the existing provision about the effect of the period of a provisional safeguarding amount.
92	This amendment makes provision about the content of a TRA recommendation that goods should be subject to a provisional tariff rate quota. See the explanatory statement to amendment 85 concerning the making of such a recommendation.
96	This amendment makes provision about what the Secretary of State is to do if the TRA recommends that goods should be subject to a provisional tariff rate quota. See the explanatory statement to amendment 85 concerning the making of such a recommendation.
114	Paragraph 14(5)(b) of schedule 5 to the Bill requires the TRA to be satisfied that an adjustment plan is in place before recommending to the Secretary of State, following the making of a final affirmative determination in a safeguarding investigation, that a definitive safeguarding amount should be applied or a tariff rate quota imposed. This amendment disapplies the paragraph 14(5)(b) requirement in cases where the requirement to provide a preliminary adjustment plan was waived at the point when the application was being made for the initiation of a safeguarding investigation.
115	This amendment is consequential on amendment 114.
116	Paragraph 21(3)(a) of schedule 5 lists certain matters which the TRA and the Secretary of State must take account of, so far as relevant, when deciding whether the application of a safeguarding remedy is in the economic interest of the UK. Amendment 116 inserts an express reference in that list to the serious injury caused by the importation of the goods in increased quantities to UK producers of the goods and of the benefits to those producers in removing that injury.

117	Amendments 117 and 118 make clear that the references to “affected industries” in paragraph 21 of schedule 5 continue to include the injured UK producers referred to in amendment 116.
118	See the explanatory statement for amendment 117.
83	This amendment is consequential on the replacement of EU customs duties by provisions of part 1 of the Bill.

3.4 Third Reading

There was no further debate at the Bill’s third reading, and it was passed by 318 votes to 285.⁹⁰

4. Amendment to Second Reading Motion in the House of Lords

Lord Tunnicliffe (Labour) has tabled the following amendment to the motion to give the Taxation (Cross-border Trade) Bill a second reading:

Lord Tunnicliffe to move, as an amendment to the motion that the Bill be now read a second time, at end to insert “but expresses grave concern that the Government agreed to accept, without detailed parliamentary scrutiny, substantial measures that contradict both the United Kingdom’s stated negotiating position and commitments already entered into with the European Union; and that the Bill introduces additional barriers to securing a United Kingdom–European Union customs union”.⁹¹

⁹⁰ [HC Hansard, 16 July 2018, cols 177–82.](#)

⁹¹ House of Lords Business, ‘[Amendment to Motion](#)’, accessed 10 August 2018.

5. Further Information

- House of Commons Library, [The Taxation \(Cross-border Trade\) Bill](#), 6 July 2018.

House of Commons Library briefing providing a summary of the Bill's provisions and background issues and a summary of the Bill's second reading and committee stage in the Commons.

- House of Lords Library, [Trade Bill](#), 30 August 2018

House of Lords Library Briefing on the Trade Bill, which has linkages with the Taxation (Cross-border Trade) Bill.

- Mel Stride, Financial Secretary to the Treasury, '[Letter to Karen Buck MP and Anne Main MP, Chairs, Public Bill Committee, Taxation \(Cross-border Trade\) Bill](#)'; and [Summary of the Bill](#) [Taxation (Cross-border) Trade Bill], January 2018, DEP2018-0048

Letter and accompanying document setting out the secondary legislation making powers under the Bill. This includes a summary of the parliamentary procedures applied to the powers, their wider context and the Government's justification for it requiring them.

- HM Treasury, [Taxation \(Cross-border Trade\) Bill: Delegated Powers Note](#), 10 January 2018
- HM Treasury, [Impact Assessment: Taxation \(Cross-border Trade\) Bill](#); [Impact Assessment: Taxation \(Cross-border Trade\) Bill: Trade Remedies](#); and [Impact Assessment: Taxation \(Cross-border Trade\) Bill: Unilateral Preferences](#), 20 November 2017
- HM Government, [Future Customs Arrangements: A Future Partnership Paper](#), August 2017
- HM Treasury, [Customs Bill: Legislating for the UK's Future Customs, VAT and Excise Regimes](#), October 2017, Cm 9502
- Department for International Trade, [Preparing for Our Future UK Trade Policy](#), October 2017, Cm 9470
- HM Government, [The Future Relationship Between the United Kingdom and the European Union](#), July 2018, Cm 9593

- House of Commons International Trade Committee, [UK Trade Remedies Authority](#), 10 May 2018, HC 743 of session 2017–19; and [UK Trade Remedies Authority: Government Response to the Committee’s Third Report](#), 17 July 2018, HC 1424 of session 2017–19
- House of Lords Constitution Committee, [Taxation \(Cross-border Trade\) Bill](#), 23 February 2018, HL Paper 80; and Financial Secretary to the Treasury, ‘[Letter to the Chair of the House of Lords Constitution Committee](#)’, 23 July 2018

The Constitution Committee does not ordinarily report on supply or money bills and this report does not comment on the financial matters provided for in this Bill. However, the Committee argued that the wider issues raised by the Bill meant it was appropriate for it to draw attention to these issues before the Bill completed its passage through the Commons. Issues which the Committee examined included the delegated powers under the Bill, in particular those involving the made affirmative procedure and powers to legislate by ‘public notice’. The Financial Secretary to the Treasury, Mel Stride, wrote a letter to the chair of the Constitution Committee, Baroness Taylor of Bolton, in response to the report.

- House of Lords Delegated Powers and Regulatory Reform Committee, [Taxation \(Cross-border Trade\) Bill](#), [Laser Misuse \(Vehicles\) Bill \[HL\]](#), [Secure Tenancies \(Victims of Domestic Abuse\) Bill \[HL\]](#), [Sanctions and Anti-Money Laundering Bill \[HL\]: Government Response](#), 17 January 2018, HL Paper 65 of session 2017–19; and [Taxation \(Cross-border Trade\) Bill: Government Response, Registration of Marriage Bill \[HL\]: Response](#), 24 July 2018, HL Paper 181 of session 2017–19

The House of Lords Delegated Powers and Regulatory Reform Committee stated, given the Bill’s significance and the fact that it will not be amended in the Lords, it wished to draw its concerns about the delegated powers in the Bill to the attention of the House of Commons and the Government. The Committee examined the Bill under five thematic headings:

- The balance between affirmative and negative instruments, with examples of powers which we consider should be subject to the more rigorous affirmative procedure.*
- Those Henry VIII powers which, despite enabling Ministers by delegated legislation to amend primary legislation, are subject only to the negative procedure.*
- The appropriateness of a sunset provision for some delegated powers, as in the European Union (Withdrawal) Bill.*
- The radical concept of making law by “public notice”, a modern*

form of ruling by proclamation, without any opportunity for Parliamentary scrutiny.

- e) *The inclusion in the Bill of tertiary legislative powers, made and published without any opportunity for Parliamentary scrutiny.⁹²*

The Government's response to the Committee was published on 24 July 2018.

⁹² House of Lords Delegated Powers and Regulatory Reform Committee, [Taxation \(Cross-border Trade\) Bill](#), [Laser Misuse \(Vehicles\) Bill \[HL\]](#), [Secure Tenancies \(Victims of Domestic Abuse\) Bill \[HL\]](#), [Sanctions and Anti-Money Laundering Bill \[HL\]: Government Response](#), 17 January 2018, HL Paper 65 of session 2017–19, p 2.