



Department for  
International Trade



Department for  
Business, Energy  
& Industrial Strategy

Lord Grimstone of Boscobel, Kt  
Minister for Investment

Department for International Trade  
King Charles Street  
Whitehall  
London  
SW1A 2AH

The Lord Purvis of Tweed  
Lord Lansley  
Lord Stevenson of Balmacara

House of Lords  
London  
SW1A 0PW

T +44 (0) 20 7215 5000  
E [grimstone.correspondence@trade.gov.uk](mailto:grimstone.correspondence@trade.gov.uk)  
W [www.gov.uk/dit](http://www.gov.uk/dit)

04 January 2021

My Lords,

### **Trade (Disclosure of Information) Bill**

Thank you for the constructive spirit in which you engaged with the debate on the Trade (Disclosure of Information) Act 2020. As recognised during the debate, this is an important piece of legislation, which contains measures necessary for the end of the Transition Period. I would like to reiterate the Government's thanks to the House for its support in facilitating the legislation's passage onto the statute book in an expedited manner.

I committed to write on a number of points raised in the debate, which I was not in a position to address in detail in my closing remarks. Firstly, Lord Lansley and Lord Stevenson asked about the differences in drafting between the clauses present in the Bill debated, and Clauses 8 to 10 of the Trade Bill. As I mentioned in my opening remarks, there are four key differences between the two sets of clauses. Three of these changes will be replicated in the Trade Bill, and amendments have already been tabled. This takes account of the inclusion of the Devolved Administrations on the face of Clause 1, drafting changes in relation to the investigatory powers legislation, and drafting changes in relation to sentencing powers in Clause 3. As Peers will be aware, the fourth, the sunset provision, is necessary to ensure the clauses within the Trade Bill form the permanent basis for data sharing.

Lord Lansley asked specifically about changes to the drafting of Clauses 1(6) and 2(8) of the Bill debated, the drafting changes which relate to the investigatory powers legislation. I should first note that the reference to the investigatory powers legislation remains consistent across both Bills - the specific sections of the Investigatory Powers Act 2016 in scope of the clauses have simply been moved from what are Clause 8(6) and 9(8) of the Trade Bill to Clause 5, the interpretation section, of the Bill debated.

Separately Lord Lansley also questioned the following language which is present in the Bill debated, but absent from the Trade Bill as presented at Committee Stage:

*'In determining whether a disclosure would do either of those things, the powers conferred by this section are to be taken into account.'*

Both data protection legislation and the investigatory powers legislation authorise disclosure in certain circumstances, if necessary, in exercise of a statutory function. The drafting in clauses 1(6) and 2(8) makes it explicitly clear that data protection legislation and the investigatory powers legislation (as defined in clause 5 of the Bill) take priority over the gateways. The wording identified by Lord Lansley, however, makes explicit that these statutory powers are to be taken into account when that is relevant to the question of determining whether a disclosure would contravene the data protection legislation and/or be prohibited under the investigatory powers legislation. The specific drafting is a response to an issue which arose in *The Christian Institute and others v The Lord Advocate* 2016 UKSC 51, where the Supreme Court referred to a “logical puzzle” in working out the true relationship between a statutory gateway and the constraints imposed by the (now superseded) Data Protection Act 1998. As noted above, an amendment to introduce wording to the same effect to the equivalent clauses in the Trade Bill has been tabled for Report Stage.

I can also confirm that while clauses 8(4), 8(5), 8(7), 9(6) and 9(11) in the Trade Bill will vary slightly in wording from the clauses in the Trade (Disclosure of Information) Act 2020, the legal effect is exactly the same. Consequently, I am happy to confirm that the amendments the Government has tabled in relation to the data clauses in the Trade Bill are the amendments which will be debated at Report on 6 January. I would also like to reassure you that once the Trade Bill achieves Royal Assent, the sunset provision in clause 4 of this Bill provides that the Secretary of State must make regulations to expire the clauses in the Trade (Disclosure of Information) Act and the legislative basis for these powers will be the Trade Bill.

Lord Lansley also noted that the Bill debated, and the equivalent clauses in the Trade Bill, contain a non-exhaustive list of functions relating to trade. I should make it clear that the listing of such functions is intended to outline functions relating to trade which the Minister of the Crown holds, and which may not be immediately obvious. It is not the intention of the clauses to outline all functions relating to trade for all bodies – as I am sure you will recognise; the sheer breadth and number of such functions mean it would not be possible to do this.

Turning to questions raised by Lord Purvis in relation to the Devolved Administrations, I would like first to reiterate that the Border Operations Centre will work closely with each of the Devolved Administrations, including Northern Ireland, and share information and analysis relevant to the management of flow at the border. In relation to the bodies on the face of the Bill in Clause 2, Lord Purvis is correct that no devolved bodies are currently listed. As I noted in my letter following Committee Stage of the Trade Bill, those bodies currently listed were identified as key sources of information in relation to the immediate requirements of the Border Operations Centre for the end of the Transition Period, and in particular to monitor flow at the locations where there is highest risk of disruption at the border. Were a restriction to the sharing of information from public bodies in the Devolved Administrations to be identified, they could be added to the gateway via the power created in Clause 2(9), following consultation with the relevant Devolved Administration. Clause 2(7) would at that point disapply existing statutory restrictions to the sharing of data, where this would support a Minister’s functions related to trade.

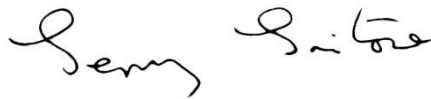
Finally, Lord Stevenson asked whether the Government had considered whether it would be more appropriate to commit to seeking the consent of the Devolved Administrations, rather than only consulting them. I should note that adding a devolved authority to the data sharing clause will only empower the authority to share information, rather than require it to. Requests could always be refused by the devolved body and so the Minister of the Crown would de facto require the consent of the specified devolved authority to share data

using the power. Furthermore, the Devolved Administrations have been engaged throughout the passage of the equivalent clauses in the Trade Bill, and the Scottish and Welsh Governments have indicated that they are content with the clauses as drafted and the commitments made by the Government.

I trust that this goes some way to addressing the points made by you raised in the debate. We will, of course, have an opportunity to debate the equivalent clauses in the Trade Bill further, when that Bill returns to your Lordships' House on 6<sup>th</sup> January. Should you have further questions relating to these clauses prior to that point, I and my officials will be happy to address them.

I am placing a copy of this letter in the library of the House.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Grimstone', written in a cursive style.

**Lord Grimstone of Boscobel, Kt**  
Minister for Investment  
Department for International Trade  
Department for Business, Energy and Industrial Strategy