

# TRADE (COMPREHENSIVE AND PROGRESSIVE AGREEMENT FOR TRANS-PACIFIC PARTNERSHIP) BILL [HL]

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Bill [HL] as introduced in the House of Lords on 8 November 2023 (HL Bill 4).

- These Explanatory Notes have been prepared by the Department for Business and Trade in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

## Table of Contents

Subject	Page of these Notes
<b>Overview of the Bill</b>	<b>3</b>
<b>Policy background</b>	<b>3</b>
CPTPP implementation	3
Technical barriers to trade	3
Government procurement	4
Intellectual property	4
<b>Legal background</b>	<b>5</b>
Technical barriers to trade	5
Government procurement	5
Intellectual property	6
<b>Territorial extent and application</b>	<b>6</b>
<b>Commentary on provisions of Bill</b>	<b>7</b>
Clause 1: Meaning of “the CPTPP”	7
Clause 2: Treatment of conformity assessment bodies etc	7
Clause 3: Procurement	7
Clause 4: Designations of origin and geographical indications	8
Clause 5: Performers’ rights	8
Clause 6: Extent	10
Clause 7: Commencement	10
Clause 8: Short title	10
Schedule 1: Amendments to procurement regulations	11
Part 1 – Amendments to procurement regulations for England and Wales and Northern Ireland	11
Part 2 - Amendments to procurement regulations for Scotland	11
Part 3 – Transitional provision	12
<b>Commencement</b>	<b>12</b>
<b>Financial implications of the Bill</b>	<b>12</b>
<b>Parliamentary approval for financial costs or for charges imposed</b>	<b>12</b>
<b>Compatibility with the European Convention on Human Rights</b>	<b>12</b>

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<b>Duty under Section 20 of the Environment Act 2021</b>	<b>13</b>
<b>Related documents</b>	<b>14</b>
<b>Annex A – Territorial extent and application in the United Kingdom</b>	<b>15</b>
Subject matter and legislative competence of devolved legislatures	16
<b>Annex B – Assessment of economic impacts on specific sectors</b>	<b>17</b>
National Treatment of Conformity Assessment Bodies	17
Benefits in relation to NTCABs	17
Costs in relation to NTCABs	19
Procurement	19
Geographical indications (GIs)	19
Copyright	19
<b>Annex C – Glossary</b>	<b>21</b>

## Overview of the Bill

- 1 The Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Bill (the “Bill”) provides measures to ensure the UK will be compliant with its international obligations pursuant to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (“CPTPP”) when the UK accedes to that treaty. In particular, the measures in the Bill will make changes to domestic law in three areas:
  - a. technical barriers to trade;
  - b. government procurement; and
  - c. intellectual property.

## Policy background

### CPTPP implementation

- 2 The UK concluded negotiations to join the CPTPP on 31 March 2023 and signed the Protocol on the Accession of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Trans-Pacific Partnership (the “Accession Protocol”) on 16 July 2023<sup>1</sup>. Entry into force of the agreement will take place once the UK and CPTPP Parties have finished their domestic processes. The Accession Protocol outlines the terms and conditions upon which the UK is acceding to the CPTPP. The CPTPP largely incorporates the provisions set out in the Trans-Pacific Partnership (done at Auckland on 4 February 2016), with a small number of provisions suspended upon entry into force of the CPTPP. References in these explanatory notes to Articles and Chapters of the CPTPP mean the relevant Articles and Chapters of the Trans-Pacific Partnership as incorporated into the CPTPP.
- 3 Certain parts of the CPTPP Chapters on Technical Barriers to Trade, Government Procurement, and Intellectual Property (Chapter numbers 8, 15, and 18 respectively) require the UK to create new primary legislation to provide for their implementation for the entry into force of the CPTPP. This legislative implementation of the obligations in the CPTPP is needed before entry into force of the Accession Protocol and the CPTPP for the UK to ensure that the UK is not in breach of them when they enter into force.

### Technical barriers to trade

- 4 Conformity assessment procedures provide assurance that products meet relevant regulatory requirements. Examples of conformity assessment procedures are testing, certification and inspection. Some products require conformity assessment procedures to be carried out by third-party organisations called conformity assessment bodies (“CABs”). Some of the UK’s legislation requires these CABs to be based in the UK, Great Britain, or in a country with which the UK has a mutual recognition agreement.
- 5 When the CPTPP enters into force for the UK, the UK is required by Article 8.6 of the Trans-Pacific Partnership, as it is incorporated into the CPTPP, to ensure that CABs established in the territories of CPTPP Parties are treated no less favourably than CABs located domestically. To comply with this obligation, the UK must amend its legislation to allow CABs established in CPTPP Parties (for which the CPTPP is in force as between the UK and that Party) to apply

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<sup>1</sup> <https://www.gov.uk/government/publications/accession-protocol-of-the-uk-to-the-cptpp>

for approval to carry out conformity assessment for the Great British market. The Bill therefore confers a power on the Secretary of State to amend relevant legislation to enable this to occur.

## Government procurement

- 6 The Government Procurement Chapter consists of (a) the text of the Chapter setting out the government procurement obligations and (b) the Schedules in an Annex to the Chapter, which set out the procurement market access coverage of each of the Parties. The text sets out rules for fair, transparent and non-discriminatory conditions of competition in government procurement. These rules do not automatically apply to all procurement activities of each Party. Rather, the Schedules determine which entities and procurements are covered by the scope of the Chapter and must follow the rules. Only government procurement activities by covered entities purchasing covered goods, services or construction services, of a value exceeding the specified thresholds, are within the scope of the CPTPP.
- 7 To implement the Chapter, the Bill amends the UK's government procurement legislative framework in two ways upon entry into force of CPTPP. Firstly, to give effect to the UK's market access commitments to CPTPP suppliers. Secondly, and where applicable, the Bill brings that framework into compliance with two technical rules of the Government Procurement Chapter. Those rules concern: (i) an exemption from the CPTPP rules for procurements organised and funded by international organisations, pursuant to Article 15.2.3(e)(ii) of the Chapter; and (ii) the information to be published following the award of a contract, pursuant to Article 15.16.3(d) of the Chapter. At introduction of this Bill, the UK's procurement legislative framework is set out in regulations. For England, Wales and Northern Ireland, those regulations will be replaced by the Procurement Act 2023 from substantive commencement of that Act, expected October 2024. For Scotland, the relevant regulations will endure. Accordingly, this Bill amends both the regulations and the Procurement Act 2023.

## Intellectual property

- 8 The Intellectual Property Chapter covers multiple forms of intellectual property ("IP"), including patents, geographical indications, copyright and related rights, trade secrets, trade marks and designs, as well as their enforcement. The text sets minimum standards of protection across these areas, creating a shared baseline of protection in CPTPP Parties' domestic regimes.
- 9 The Bill will make changes in relation to geographical indications, and copyright and related rights.
- 10 Geographical indications ("GIs") protect the names of products which have a special relationship with their geographical origin. A UK example is Melton Mowbray Pork Pies. Article 18.32 of the Intellectual Property Chapter sets out that procedures must be in place to allow interested persons to object to an application for the protection of a GI, and to seek the cancellation of a protected GI, on specified grounds.
- 11 To comply with this obligation, the Bill will amend domestic law (retained EU law, known as assimilated law after 31 December 2023) so that, in relation to agricultural products and foodstuffs ("agri-foods") only, an application to register a GI can be opposed on the ground it is likely to cause confusion with a pre-existing trade mark or application for a trade mark. The Bill will also introduce the ability to cancel a registered agri-food GI on the grounds that, as at the time the GI was applied for, it was likely to cause confusion with a pre-existing trade mark or application for a trade mark, or because it was a generic term. These new grounds will also apply at other stages related to applications to register a GI.

- 12 The amendments made by the Bill will apply to both agri-food protected geographical indications (“PGIs”) and agri-food protected designations of origin (“PDOs”). (PDOs and PGIs are both categories of agri-food GIs in domestic law). References in these explanatory notes to GIs mean PGIs and PDOs.
- 13 In relation to copyright and related rights, each CPTPP Party is required to provide certain rights to performers and producers who meet the eligibility criteria for protection as specified in the CPTPP. Article 18.62.1 of the Intellectual Property Chapter sets out that Parties are required to afford rights to:
  - a. performers and producers of phonograms that are nationals of another CPTPP Party; and
  - b. performances or phonograms first published or fixed in the territory of another CPTPP Party.
- 14 The eligibility criteria under the CPTPP by which performers can qualify for rights in their performances is wider than the criteria currently provided for in UK law. This means that some performers who should qualify for protection under the CPTPP would not get this. The Bill therefore expands the eligibility criteria by which performers can qualify for rights in their performances in the UK.

## Legal background

- 15 The relevant legal background is also explained in the policy background section of these notes. However, a summary of the relevant legal changes in each area of the Bill can be found below.

## Technical barriers to trade

- 16 The Bill confers a power on the Secretary of State to amend relevant subordinate legislation in order to comply with the UK’s obligations under Article 8.6 of the Trans-Pacific Partnership, as it is incorporated into the CPTPP.

## Government procurement

- 17 The procurement provisions of the Bill amend the following legislation:
  - a. the Procurement Act 2023;
  - b. the Public Contracts Regulations 2015 (S.I. 2015/102);
  - c. the Concession Contracts Regulations 2016 (S.I. 2016/273);
  - d. the Utilities Contracts Regulations 2016 (S.I. 2016/274);
  - e. the Public Contracts (Scotland) Regulations 2015 (S.S.I. 2015/446);
  - f. the Utilities Contracts (Scotland) Regulations 2016 (S.S.I. 2016/49); and
  - g. the Concession Contracts (Scotland) Regulations 2016 (S.S.I. 2016/65).

## Intellectual property

- 18 The GI provisions of the Bill amend the following legislation:
  - a. retained Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs;
  - b. retained Commission Delegated Regulation (EU) No 664/2014 of 18 December 2013 supplementing Regulation (EU) No 1151/2012 of the European Parliament and of the Council with regard to the establishment of the Union symbols for protected designations of origin, protected geographical indications and traditional specialities guaranteed and with regard to certain rules on sourcing, certain procedural rules and certain additional transitional rules; and
  - c. retained Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs.
- 19 The copyright provisions of the Bill amend the following legislation:
  - a. the Copyright, Designs and Patents Act 1988.

## Territorial extent and application

- 20 Clause 6 sets out the territorial extent of the Bill. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect rather than where it forms part of the law.
- 21 The Trade (CPTPP) Bill extends and applies to the whole of the UK, subject to:
  - a. Clause 3(4)(a) and Part 1 of the Schedule will extend to England and Wales and Northern Ireland only;
  - b. Clause 3(4)(b) and Part 2 of the Schedule which will extend to Scotland only;
  - c. Clause 4 will only apply to Great Britain; and
  - d. Secondary legislation made using the power in clause 2 will only apply to Great Britain.
- 22 There is a convention that the UK Parliament will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. Aspects of the Bill fall within devolved competence. In line with the Sewel Convention, the UK Government will seek the legislative consent of the Devolved Legislatures for the provisions that engage the Legislative Consent Motion process.
- 23 The Government will therefore seek legislative consent for certain provisions in Clause 3 and the Schedule .
- 24 See the table in Annex A for a summary of the position regarding territorial extent and application in the UK. The table also summarises the position regarding legislative consent motions.

# Commentary on provisions of Bill

## Clause 1: Meaning of “the CPTPP”

- 25 Clause 1 defines the meaning of “the CPTPP” and “the UK Accession Protocol” for the purposes of the Bill.

## Clause 2: Treatment of conformity assessment bodies etc

- 26 Clause 2(1) states that the Secretary of State may, by regulations made by statutory instrument, amend subordinate legislation in order to implement the UK’s obligations under Article 8.6 of Trans-Pacific Partnership as it is incorporated into the CPTPP.
- 27 Article 8.6 of the Trans-Pacific Partnership as it is incorporated into the CPTPP requires the UK to ensure that conformity assessment bodies located in CPTPP Parties’ territories are afforded treatment no less favourable than conformity assessment bodies located in the UK.
- 28 Clause 2(2) provides that regulations made under this section of the Bill may include consequential, supplementary, incidental, transitional or saving provision.
- 29 Clause 2(3) provides that statutory instruments made under this clause are subject to the made negative parliamentary procedure.
- 30 Clause 2(4) defines what “subordinate legislation” and “Article 8.6 of the CPTPP” means in this clause.

## Clause 3: Procurement

- 31 Clause 3 amends the domestic legislative framework that regulates procurement, namely the Procurement Act 2023 and six sets of procurement regulations.
- 32 Clause 3(2) amends Schedule 2 to the Procurement Act 2023. That Schedule concerns contracts that are substantively exempted from the procurement framework established under that Act. Paragraph 24 of that Schedule makes provision for contracts to be exempted when awarded under procedures adopted by international organisations. Subsection (2) replaces that paragraph to provide that an exempted contract includes a contract wholly or mainly funded by an international organisation of which the UK is a member and that is awarded under a procedure adopted by that organisation which is inconsistent in any material respect with the procedure for the award of the contract set out in the Procurement Act 2023.
- 33 Clause 3(3) amends Schedule 9 to the Procurement Act 2023. That Schedule lists international agreements to which the UK is a signatory. In accordance with Part 7 of that Act, where a supplier is entitled to the benefit of an international agreement specified in that Schedule they are treated as a “treaty state supplier”. Accordingly, the supplier benefits from the duties owed by contracting authorities to treaty state suppliers under the Act as well as the remedies available to those suppliers. Subsection (3) inserts a reference to the CPTPP in that list of specified international agreements thereby extending such duties and remedies to CPTPP suppliers and implementing the market access commitments of the UK to other CPTPP Parties.
- 34 Clause 3(4) gives effect to the Schedule, which provides as follows:
- a. Part 1 makes amendments to the procurement regulations for England and Wales and Northern Ireland;
  - b. Part 2 makes amendments to the procurement regulations for Scotland; and



- c. Part 3 makes transitional provisions for procurements commenced before the Schedule comes into force.

## Clause 4: Designations of origin and geographical indications

- 35 Clause 4 amends the domestic legislative framework that regulates agri-food GIs, namely retained EU law Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (Regulation 1151/2012), and two other retained EU Regulations<sup>2</sup>.
- 36 Clause 4(2) amends the definition of “application to register a trade mark” in Article 3 of retained Regulation (EU) No 1151/2012 to clarify the meaning of a trade mark that has been “applied for” or is “pending”.
- 37 Clause 4(3) amends Article 6(4) of retained Regulation (EU) 1151/2012, so that a name is not to be registered as a GI if it is likely to cause confusion with an existing trade mark (whether registered in good faith or established by use) or a trade mark which is the subject of a pre-existing good faith pending application for registration. At present, an application for a GI must be rejected if, broadly, it would be liable to mislead the consumer in the light of a pre-existing trade mark. In combination with Articles 51 and 10(1)(b) of retained Regulation (EU) 1151/2012, this has the effect of allowing an application for an agri-food GI to be opposed on this ground. This amendment will also have effect in other parts of the agri-food GI application process where the ground in Article 6(4) is referred to.
- 38 Clause 4(4) expands the grounds on which the Secretary of State may cancel the registration of an agri-food GI to include cases where, when the application for registration of the GI was submitted under Article 54 of retained Regulation (EU) 1151/2012, it was likely to cause confusion with a pre-existing trade mark or application for a trade mark, or it was a generic term.
- 39 Clause 4(5) to (9) make consequential amendments to two other retained EU Regulations, so that general provisions about opposition to a GI application and cancellation of a GI registration will apply in relation to the new and amended grounds.
- 40 Clause 4(10) provides that the amendments in clause 4(3) and (8) will apply only in relation to applications to register a GI or to applications to amend the product specification for a GI which involves changing the name of the GI (a “name-change application”) that are submitted on the day on which or after those amendments come into force.
- 41 Clause 4(11) sets out when and how clause 4(4), (5), (7) and (9) (which relate to the new grounds of cancellation) will apply. The grounds of cancellation in new Article 54(1A)(a) (no registration of generic terms) will apply regardless of when the application for the GI was submitted. The ground of cancellation in new Article 54(1A)(b) (conflict with trade mark) will apply only where the application for the GI or the name-change application (as the case may be), was submitted on or after the day on which clause 4(4), (5), (7) and (9) come into force.
- 42 Clause 4(12) defines terms used earlier in clause 4.

## Clause 5: Performers’ rights

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<sup>2</sup> Retained EU law will be known as assimilated law after 31 December 2023 pursuant to section 5(1) of the Retained EU Law (Revocation and Reform) Act 2023.

- 43 Clause 5 amends the Copyright, Designs and Patents Act 1988 (the “CDPA”) to extend the eligibility criteria by which performers can qualify for rights in their performances in the UK.
- 44 Clause 5(1) amends Part 2 of the CDPA by substituting section 181 and amending section 206, as set out in clauses 5(2) and 5(3) respectively.
- 45 Clause 5(2) substitutes section 181 (qualifying performances) of the CDPA and sets out what a “qualifying performance” is for the purposes of qualifying for rights in performances under UK law. Section 181 as amended provides that a performance is a qualifying performance if it meets any of the four specified conditions (Conditions A to D) set out in new subsections 181(2) to 181(7). Conditions A and B replicate the bases for protection in pre-existing law. Conditions C and D go beyond the effect of pre-existing law and expand the basis on which a performance can qualify for rights in UK law. The following sub-paragraphs deal with section 181 as amended.
- a. Subsection 181(2) sets out Condition A and provides that a performance is a qualifying performance if it is given by a qualifying individual. The meaning of a “qualifying individual” is set out in the CDPA under section 206 (1).
  - b. Subsection 181(3) sets out Condition B and provides that a performance is a qualifying performance if it takes place in a qualifying country. The meaning of a “qualifying country” for the purpose of Part 2 of the CDPA is set out in section 206 (1).
  - c. Subsection 181(4) sets out Condition C and provides that a performance is a qualifying performance if it is included in a sound recording, and either the producer of that sound recording meets certain criteria as set out in sub-section 181(4)(a), or the sound recording is either first published in a qualifying country, or published in a qualifying country within 30 days of the original publication. Sub section 181(5) provides for when Condition C will be considered to have not been met. The term “producer” used in Condition C in sub-section 181(4)(a) is defined in sub-section 181(7).
  - d. Subsection 181(6) sets out Condition D which provides that a performance is a qualifying performance where the performance has not been included in a sound recording, the performance has been broadcast and the broadcast is made from a qualifying country, or the headquarters of the broadcasting organisation are situated in a qualifying country.
- 46 Clause 5(3) amends section 206(4) of the CDPA to insert new paragraph (za) in subsection (4). It allows for the making of an Order in Council to make provision for specific restrictions to be applied in relation to rights afforded to performances as a result of qualifying for protection by virtue of meeting Condition C or Condition D in clause 5(2).
- 47 Clause 5(4) provides that the provisions in clause 5(2) apply to performances which have taken place before, on or after the Act comes into force.
- 48 Clauses 5(5) and 5(6) provide that any rights that arise as a result of these amendments are not to be regarded as infringed or affected by: any act done before the coming into force of the clause; or any act done on or after the coming into force of the clause, if the act done on or after the coming into force of the clause was in pursuance of arrangements made before that date, except where those arrangements are an agreement that attempts to exclude or restrict a right or to prevent a person from questioning such a right or to restrict the powers of the Copyright Tribunal in relation to such a right which Part 2 of the CDPA provides cannot be excluded or restricted or prevented by agreement.

- 49 Clause 5(7) provides that the amendments made by clause 5(3) enable an Order in Council made under new subsection 206(4)(za) of the CDPA to apply to performances taking place before, on or after the date on which the Order in Council comes into force or the Act comes into force.
- 50 Clause 5(8) provides definitions relevant to Clause 5.

## Clause 6: Extent

- 51 This clause confirms the extent of the legislation.
- 52 Clause 6(1) provides that the Bill extends to England and Wales, Scotland, and Northern Ireland subject to the following exceptions set out in clauses 6(2) and 6(3):
- a. Clause 3(4)(a) and Part 1 of the Schedule (amendments to procurement regulations for England and Wales and Northern Ireland) extend to England and Wales and Northern Ireland only; and
  - b. Clause 3(4)(b) and Part 2 of the Schedule to the Bill (amendments to procurement regulations for Scotland) extend to Scotland only.
- 53 The GI and Technical Barriers to Trade (TBT) provisions in this Bill will extend to but will not apply in Northern Ireland. This is because, under the terms of the Windsor Framework, EU legislation relating to geographical indications and conformity assessment of goods, as listed in Annex 2 of the Windsor Framework, continues to apply in Northern Ireland. Article 15 of the Accession Protocol ensures that the UK can fulfil its obligations under the Windsor Framework.

## Clause 7: Commencement

- 54 Clause 7 provides that the Bill comes into force on the day on which the CPTPP enters into force for the United Kingdom, subject to the following exceptions set out in clauses 7(2), 7(3) and 7(4):
- a. Clause 7(2) provides that the following sections come into force on the day on which the Bill receives Royal Assent:
    - i. clause 1 (meaning of “the CPTPP”);
    - ii. clause 2 (treatment of conformity assessment bodies etc);
    - iii. clause 5(3) and (7) (amendment to section 206 (4) of the Copyright, Designs and Patents Act 1988), and clause 5(1) in so far as it relates to clause 5(3);
    - iv. clause 6 (extent);
    - v. clause 7 (commencement);
    - vi. clause 8 (short title).
  - b. Clause 7(3) provides that clause 3(2) (and clause 3(1) so far as it relates to that provision) comes into force at the same time as Schedule 2 to the Procurement Act 2023.
  - c. Clause 7(4) provides that clause 3(3) (and clause 3(1) so far as it relates to that provision) comes into force at the same time as Schedule 9 to the Procurement Act 2023.

## Clause 8: Short title

- 55 Clause 8 provides that the short title of the legislation is the Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Act 2024.

## **Schedule 1: Amendments to procurement regulations**

### **Part 1 – Amendments to procurement regulations for England and Wales and Northern Ireland**

- 56 Part 1 makes similar amendments to each of the three sets of procurement regulations that apply for England and Wales and Northern Ireland to implement the CPTPP commitments. Paragraphs 1 to 4 amend the Public Contracts Regulations 2015; paragraphs 5 to 7 the Concession Contracts Regulations 2016; and paragraphs 8 to 11 the Utilities Contracts Regulations 2016.
- 57 Paragraphs 2, 6, and 9 amend similar provisions of each set of regulations concerning contracts awarded pursuant to international rules. The amendments make provision for the substantive procurement framework in the regulations not to apply to relevant contracts where the procurement rules under which the contract is being awarded do not restrict the participation of economic operators (that is, suppliers). A relevant contract in this case is one awarded in accordance with the rules of an international organisation or financing institution and is financed, fully or mostly, by the organisation or institution. Provision is made that if such rules do not restrict the participation of suppliers, then the only provision of each set of regulations that applies to that contract is the provision requiring equal treatment of suppliers.
- 58 Paragraphs 3 and 10 amend similar provisions of the Public Contracts Regulations 2015 and the Utilities Contracts Regulations 2016 concerning the information that contracting authorities must publish in a contract award notice. The amendments make provision for contracting authorities to publish the value of the successful tender, removing the option to publish either the value of the successful tender or a range of values (the highest and lowest tenders taken into account for the award of the contract).
- 59 Paragraphs 4, 7 and 11 amend similar schedules in each set of regulations to insert a reference to the CPTPP. Those schedules list international trade agreements to which the UK is bound. Pursuant to each set of regulations, where such agreement applies to a procurement (that is, is covered by it) suppliers of the signatories to that agreement are entitled to equal treatment as UK suppliers under the regulations and benefit from duties owed by contracting authorities. Accordingly, the rights and duties are extended to CPTPP suppliers.

### **Part 2 - Amendments to procurement regulations for Scotland**

- 60 Part 2 makes similar amendments to each of the three sets of procurement regulations that apply for Scotland. Paragraphs 12 to 15 amend the Public Contracts (Scotland) Regulations 2015; paragraphs 16 to 19 the Utilities Contracts (Scotland) Regulations 2016; and paragraphs 20 to 22 the Concession Contracts (Scotland) Regulations 2016.
- 61 Paragraphs 13, 17 and 21 make similar provision in the Scottish regulations to those described in paragraph 57 above for the equivalent England and Wales and Northern Ireland regulations, regarding contracts awarded pursuant to international rules.
- 62 Paragraphs 14 and 18 make similar provision in the Public Contracts (Scotland) Regulations 2015 and the Utilities Contracts (Scotland) Regulations 2016 to those described in paragraph 58 above for the equivalent England and Wales and Northern Ireland regulations, regarding the information to be published in a contract award notice.

- 63 Paragraphs 15, 19 and 22 make similar provision in the Scottish regulations to those described in paragraph 59 above for the equivalent England and Wales and Northern Ireland regulations, reflecting the CPTPP in the relevant schedule of international trade agreements in those regulations.

### **Part 3 – Transitional provision**

- 64 Part 3 makes transitional arrangements for those procurements commenced before the Schedule comes into force.

## **Commencement**

- 65 Clause 7 makes provision about when the provisions of this Bill will come into force.

## **Financial implications of the Bill**

- 66 The Bill enables the UK to meet obligations arising out of an international agreement when it enters into force for the UK. It does not create any new publicly funded bodies or make changes to the machinery of Government. Consequently, the Bill does not have any implications for the public finances beyond minimal expenditure involved in making regulations under the Bill and in contracting authorities and utilities familiarising themselves with changes to procurement rules made under the Bill. A further note on the assessment of economic impacts can be found at Annex B.

## **Parliamentary approval for financial costs or for charges imposed**

- 67 This section will be completed when the Bill transfers to the House of Commons. However, as stated above, the Bill does not have any implications for the public finances beyond minimal expenditure involved in making regulations under the Bill and in contracting authorities and utilities familiarising themselves with changes to procurement rules made under the Bill.

## **Compatibility with the European Convention on Human Rights**

- 68 The Government considers that the Bill is compatible with the European Convention on Human Rights (ECHR). Accordingly, Lord Johnson of Lainston, Minister of State (Minister for Investment) at the Department for Business and Trade, has made a statement under section 19(1)(a) of the Human Rights Act 1998 to this effect.
- 69 The European Convention on Human Rights (“ECHR”) rights which are considered to be relevant to the Bill are Article 6 (right to a fair trial) and Article 1 of the First Protocol of the ECHR (A1P1) (right to property), which are addressed below. The Government considers that the clauses of this Bill which are not mentioned below do not engage ECHR rights.
- 70 The proposed changes in the Bill would expand the eligibility criteria by which foreign performers can qualify for rights in their performances under UK law. While the extension of the eligibility criteria will take effect from the date the Bill comes into force, these changes would, in some instances, also apply to performances which have taken place before the commencement of these amendments. As a result of these changes, it is likely that a greater

number of performers will be entitled to rights in their performances in UK law including, in some instances, for performances given prior to these changes coming into effect. The copyright changes may therefore be relevant to A1P1 and the fact that the changes will apply both to future and existing works is relevant here.

- 71 These changes could potentially interfere with the rights of the owners of sound recordings of affected performances. For example, these changes will in some cases result in performers gaining a statutory entitlement to an equitable share of revenues paid by users to broadcast or play in public sound recordings of their performances (such as when recorded music is played on the radio or in a public venue). That entitlement may be enforceable against the owner of the sound recording (such as a record label), which may need to pay a greater share of these revenues to the performers involved on their recording than anticipated at the time the performance was recorded.
- 72 To the extent that these changes could result in any interference with property and thus be relevant to A1P1, the Government considers any such interference (if it arises) would be proportionate to the legitimate aim and justified. The changes are being made with the aim of bringing the UK law into compliance with its international obligations and protecting the rights of performers in a manner consistent with the CPTPP and other international agreements on copyright and related rights to which the UK is Party.
- 73 In relation to clause 4, the new “generic” ground of cancellation will apply to GIs which were registered or applied for before the Bill comes into force. The new opposition and cancellation grounds will apply to applications to amend the product specification of GIs which were registered before the Bill comes into force. The new grounds will also apply in appeals, but only in relation to applications for GIs that are submitted on or after the Bill comes into force.
- 74 Even though a GI does not constitute the personal property of an individual or group of individuals, it may amount to a “possession” under A1P1, so changing the law in relation to existing GIs may engage A1P1. Additionally, to the extent that changing the law in appeals relates to the determination of a civil right, this may engage Article 6.
- 75 The Government considers any potential interference with these rights to be limited and justified in the public interest. In particular, the new “generic” ground of cancellation will only apply if the name was generic as at the time of application for registration of the GI, and it is already the case that a name should not be registered as a GI if it is generic. The new grounds of opposition and cancellation are also not likely to be relevant to an amendment of a product specification unless it is proposed to change the name under which a GI is registered, which is very rare<sup>3</sup>, and in any event is a sufficiently significant change to justify fresh consideration under the new grounds in the Bill.

## Duty under Section 20 of the Environment Act 2021

- 76 Lord Johnson of Lainston, Minister of State (Minister for Investment) at the Department for Business and Trade is of the view that the Bill as introduced into the House of Lords does not contain provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021. Accordingly, no statement under this section has been made.

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<sup>3</sup> Since the launch of the UK GI schemes in 2021 there has only been one request made so far to amend the name of a UK GI.

## Related documents

77 The following documents are relevant to the Bill and can be read at the stated locations:

- CPTPP Free Trade Agreement
  - The UK's accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) .GOV document collection (including the text of the CPTPP and the text of the Chapters of the Trans-Pacific Partnership signed at Auckland, 4 February 2016 that are incorporated in CPTPP and associated documents)– <https://www.gov.uk/government/collections/the-uks-accession-to-the-comprehensive-and-progressive-agreement-for-trans-pacific-partnership-cptpp>
  - Protocol on the Accession of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership– <https://www.gov.uk/government/publications/accession-protocol-of-the-uk-to-the-cptpp>
  - Text of a draft Explanatory Memorandum – <https://www.gov.uk/government/publications/cptpp-draft-explanatory-memorandum>
  - Impact Assessment – <https://www.gov.uk/government/publications/cptpp-impact-assessment>
  - CPTPP: benefits for the UK – <https://www.gov.uk/government/publications/cptpp-benefits-for-the-uk>

## Annex A – Territorial extent and application in the United Kingdom

78 The Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Bill extends to the whole of the UK except for section 3(4)(a) and Part 1 (amendments to procurement regulations for England and Wales and Northern Ireland) and section 3(4)(b) and Part 2 of the Schedule (amendments to procurement regulations for Scotland).

79 The information provided is the view of the UK Government.

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	Yes	Yes	No	Yes	No	Yes	No
Clause 2 – 2(1) to 2(4)	Yes	Yes	No	Yes	No	Yes it so extends but no it does not so apply	No
Clause 3 – 3(1) to 3(3)	Yes	Yes	Yes	No	No	Yes	Yes
Clause 3 – 4(a)	Yes	Yes	Yes	No	No	Yes	Yes
Clause 3 - 4(b)	No	No	No	Yes	Yes	No	No
Clause 3 - 4(c)	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 4 – 4(1) to 4(12)	Yes	Yes	No	Yes	No	Yes it so extends but no it does not so apply	No
Clause 5 – 5(1) to 5(8)	Yes	Yes	No	Yes	No	Yes	No
Clause 6 – 6(1) to 6(3)	Yes	Yes	No	Yes	No	Yes	No
Clause 7 – 7(1) to 7(4)	Yes	Yes	No	Yes	No	Yes	No
Clause 8	Yes	Yes	No	Yes	No	Yes	No
Schedule, Part 1	Yes	Yes	Yes	No	No	Yes	Yes
Schedule, Part 2	No	No	No	Yes	Yes	No	No
Schedule, Part 3	Yes	Yes	Yes	Yes	Yes	Yes	Yes

*These Explanatory Notes relate to the Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Bill [HL] as introduced in the House of Lords on 8 November 2023 (HL Bill 4)*



## Subject matter and legislative competence of devolved legislatures

- 80 The UK Parliament does not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned.
- 81 The Government will seek legislative consent for certain provisions in Clause 3 and the Schedule of the Bill. This clause and the Schedule concern government procurement.
- 82 See the table above for a summary of the position regarding territorial extent and application in the UK. The table also summarises the position regarding legislative consent motions.

## Annex B – Assessment of economic impacts on specific sectors

- 83 This assessment of economic impacts focusses only on the impact of the measures in the CPTPP Bill, rather than the impacts of the UK's accession to the CPTPP itself. The overall impacts of the UK's accession to the CPTPP have already been assessed in an impact assessment that was published alongside the full text of the Accession Protocol (See the associated documents section "Impact Assessment").
- 84 Given that impact assessment for the UK's accession to CPTPP has been published this economic assessment has taken a proportionate, qualitative approach.
- 85 The impact assessment that was published alongside the full text of the Accession Protocol estimates that by 2040, CPTPP is expected to contribute an estimated increase in UK GDP of £2.0bn and an increase in bilateral trade with CPTPP member countries of £4.9 billion. It should be noted that these impacts cannot be disaggregated by individual chapters.

## National Treatment of Conformity Assessment Bodies

- 86 National Treatment of Conformity Assessment Bodies ("NTCAB" henceforth) is an approach to easing the burden of conformity assessment requirements.
- 87 Conformity assessment is any procedure used to determine that relevant requirements in product regulations or standards are met. It includes activities such as testing, inspection, and certification. The organisations that make these checks are called conformity assessment bodies ("CABs").
- 88 Currently, companies who want to export their products into another country's market that requires third-party conformity assessment must undergo said conformity assessment in the destination country.
- 89 NTCABs will allow UK CABs to apply for approval in CPTPP member countries, and vice versa. This could save time and money for UK manufacturers, who can get their products assessed by UK-based bodies prior to export to a CPTPP country. This does not affect the regulatory requirements for products sold in the UK.
- 90 These CABs would still need to satisfy the requirements and accreditation of authorities in the importing country regardless of whether they are located in the UK or in CPTPP countries. All CPTPP-based CABs will need to demonstrate that they meet UK requirements, such as being accredited by the UK's National Accreditation Body, UKAS. Accreditation of CABs ensures that they have the technical capability to perform their duties with impartiality.

## Benefits in relation to NTCABs

- 91 The government estimates that approximately £10 billion in UK exports to CPTPP members were affected by conformity assessment procedures in 2021, although not all of this will have required a CAB.
- 92 Easing conformity assessment requirements could generate economic benefits for the UK by enabling cost savings for UK businesses exporting to CPTPP countries, increasing UK exports, and reducing the cost of UK imports from CPTPP countries.
- 93 Conformity assessment costs vary significantly by product and regulation. In the UK, when conformity assessment by an external body is required, the average cost can be between £500 and £100,000 per product range, although engagement with businesses suggests that costs are likely to fall within the range of £2,000 to £15,000. The number of product ranges per business

and the frequency of conformity assessment vary significantly by sector<sup>4</sup>. Note that these average figures tend to reflect type examination rather than other conformity assessment procedures.

- 94 NTCAB can reduce the cost of conformity assessment. It enables CABs situated in one country to be accredited on specific regulations in another country. A UK-based CAB would therefore be able to provide conformity assessment services that would otherwise be provided by a CAB in the destination country. This can generate time and resource costs savings to UK businesses.
- 95 **Benefit to UK CABs:** UK CABs would be able to apply for foreign accreditation in sectors where they currently cannot. If they become accredited, they would be able to enter a new market and receive demand from UK exporters.
- 96 **Benefit to UK manufacturers:** Where UK CABs gain accreditation from partner countries, UK manufacturers will be able to have their products tested in the UK, rather than overseas. This can generate time and resource cost savings (e.g. searching for and engaging with CABs, translation services etc.). In instances where firms need to send goods abroad for assessment, this could generate significant resource cost savings as CPTPP countries are not geographically close to the UK.
- 97 **Benefits to UK trade:** NTCAB may increase trade (both exports and imports) by reducing the cost of accessing CPTPP markets and facilitating the process of conformity assessment. This will apply across all sectors using CABs.
- 98 In order for NTCAB to have impacts, CABs would need to take advantage of the agreement and gain accreditation by UK and CPTPP country accreditation bodies. Furthermore, the scale of the reduction in costs to business on a particular product will depend on the cost and frequency of conformity assessment requirements and on business take-up of the opportunities created by NTCAB.
- 99 No evidence exists on the trade impact of NTCAB. However, Mutual Recognition Agreements of Conformity Assessment (“MRAs”) creates similar effects. MRAs can generate significant increases in trade flows, although this will vary by sector, country, and depend on the agreement’s scope and final implementation. A World Bank study found MRAs were effective in encouraging businesses to become exporters and increased trade flows from 0%-20% across covered sectors<sup>5</sup>. As a policy, NTCAB is less trade enhancing than MRA because CAB uptake would likely be lower. This is because MRAs permit domestic CABs to be accredited by the domestic accreditation service whereas NTCAB requires accreditation by the foreign accreditation service.
- 100 It is also unclear to what extent NTCAB is used in CPTPP, although there is evidence of CABs based in CPTPP countries accredited by other CPTPP countries’ accreditation bodies. Because of these uncertainties, it is not possible to precisely quantify the benefits of CPTPP NTCAB.
- 101 The UK has MRAs with Australia, Japan, and New Zealand on specific product sectors. MRAs and NTCABs are not mutually exclusive and existing MRAs with CPTPP members can continue to function side by side with NTCABs. For the countries and products covered by MRAs, NTCAB will generate no benefit.

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<sup>4</sup> [Impact Assessment](#) for the Product Safety and Metrology etc. (Amendment etc.) (UK(NI) indication) (EU Exit) Regulations 2020.

<sup>5</sup> Baller (2007), ‘Trade effects on regional standards liberalization: A Heterogenous Firms Approach’, World Bank.

## Costs in relation to NTCABs

- 102 The policy does not impose any new obligations on business. CPTPP entering into force enables, but does not require, Conformity Assessment Bodies in the UK to apply to foreign accreditation bodies to be accredited and approved as competent to assess products across CPTPP Parties, and vice versa.
- 103 While there are no direct cost of any actions business need to perform, businesses could incur familiarisation cost associated with the regulations that are amended to implement NTCAB.
- 104 Following RPC guidance on time taken to read regulations and technical text<sup>6</sup> and applying this to a cautious 800-word assumption in line with previous analysis<sup>4</sup> provides a familiarisation time per business of 13.2 minutes as our central estimate (range with -10% / +20% words: 7.2 – 19.2 minutes).
- 105 Using an hourly total labour cost of £27.795 for a corporate manager gives a cost per business of £6.11 for familiarisation (£3.34 - £8.89 range).
- 106 For the analysis, we have assumed 71,922 affected businesses, with 10% fewer as a lower bound and 20% more as an upper bound (64,730 – 86,306). This figure will over-estimate the true number of businesses affected as it includes businesses in sectors that will not be impacted by NTCAB. However, we use it to perform the analysis because it is not possible to estimate the number of businesses that export products affected by NTCAB.
- 107 Applying this to the 71,922 affected businesses identified above gives a central estimate of £439,800 with a £215,900 - £767,600 range. This is an over-estimate and would be incurred as a one-off.
- 108 **Cost to UKAS:** UKAS would incur costs to assess, accredit, designate, and monitor foreign CABs. UKAS would seek to recover any costs from the government and foreign CABs. This cost is therefore nil.

## Procurement

- 109 The Government does not expect this Bill to result in significant changes to how UK procurements are run, and therefore expects it to have minimal, if any, direct impact on costs to business, as in practice most UK procuring entities are already carrying out procurements in a manner that is compliant with CPTPP. Where there are changes to procuring entity behavior, the Government does not expect these to impact businesses.

## Geographical indications (GIs)

- 110 It is possible there will be a monetary impact on GI producers if a registered agri-food GI that they are entitled to use is cancelled on the new grounds. On the other hand, businesses who own a trade mark or have made an application for a trade mark may benefit from the cancellation of a GI that causes confusion with that trade mark. No evidence exists on the number of businesses or products that this change could affect.
- 111 While there are no direct costs to businesses as a result of the change, there may be costs associated with the length of time needed to discover if a GI could be opposed or cancelled on the new grounds.

## Copyright

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<sup>6</sup> BEIS (2017), [Business Impact Target – Appraisal of guidance: assessments for regulator-issued guidance](#)

- 112 There may be monetary impacts on foreign performers (e.g. musicians) who were previously ineligible for rights under UK law and who will as a result of these changes become entitled to those rights; and on the owners of the copyright in the sound recordings (e.g. record labels) that contain performances given by those foreign performers.
- 113 Any impacts are likely to primarily arise in relation to the right to equitable remuneration for broadcasting and public playing. This is a statutory, unwaivable right for performers to receive 'equitable remuneration' when sound recordings of their performances (e.g., recorded music) are broadcast (e.g., played by a radio station) or played in public (e.g., in a shop or nightclub). This remuneration is paid by the owner of the sound recording (typically a record label) from the licence fees it collects from users of the recording; and 'equitable' is generally interpreted as meaning a 50/50 split between the owner of a sound recording and the performers whose performances are contained in the recording. Under pre-existing law, some foreign performers are ineligible for this right. This means that revenues from the broadcasting and public playing in the UK of recordings of their performances are largely or entirely retained by the owner of the copyright in the sound recording (subject to any contracts between individual performers and the owners of the recordings).
- 114 The changes to UK legislation in the Bill will result in more foreign performers becoming entitled to this right to equitable remuneration in the UK. This will mean that the owners of sound recordings containing performances given by those foreign performers may need to pay a greater share of UK broadcasting and public playing revenues to those performers. This will only affect revenues collected in relation to acts of broadcasting and playing in public taking place after these changes take effect, but will apply in respect of performances that took place before, on or after the date on which the changes take effect.
- 115 This is likely to result in reductions in future revenue for affected owners of sound recordings relative to the counterfactual. Those reductions in revenue are likely to primarily affect foreign record labels, rather than UK record labels (as UK record labels are more likely to engage UK performers or other performers that are already entitled to these rights under UK law and who are unaffected by the changes in the Bill).
- 116 We do not expect these changes to result in significant impacts on UK users of sound recordings (broadcasters, shops, nightclubs etc.), UK copyright owners or UK performers. However, there may be upfront costs for those affected by these changes in familiarising themselves with the changes, as well as upfront costs for the UK collecting society that administers and licenses broadcasting and public playing rights in the UK on behalf of copyright owners and performers, as this collecting society would need to adjust its distribution practices.
- 117 However, the impacts set out above could be substantially modified or limited by secondary legislation that may be used to refine how the expanded eligibility criteria apply to the rights of broadcasting and public playing. The Intellectual Property Office intends to launch a public consultation on these questions in winter to seek views from stakeholders.
- 118 Overall we expect the economic impacts of the Bill to be concentrated on a subset of foreign performers and producers. For most rights, the impacts will be minimal.

## Annex C – Glossary

<b>Term</b>	<b>Definition</b>
Act of Parliament	An Act of Parliament is a law that both Houses of Parliament and the King have agreed to. An Act may be enforced in all the areas of the UK where it is applicable.
Bill	A proposal for a new law or an amendment to an existing law that has been presented to Parliament for consideration. Once agreed and made into law, it becomes an Act.
Devolved administrations	The governments of the devolved nations of the UK. These are the Scottish Government, the Welsh Government and the Northern Ireland Executive.
Devolved competence	The areas in which the devolved legislatures are responsible for making laws (“legislative competence”) or the devolved administrations are responsible for governing or making secondary legislation (“executive competence”).
Devolved legislatures	The law making bodies of the devolved nations of the UK. These are the Scottish Parliament, the Senedd Cymru and the Northern Ireland Assembly.
Made negative procedure	The made negative procedure is a type of parliamentary procedure that applies to statutory instruments. Its name describes the form of scrutiny that the statutory instrument receives from Parliament.

*These Explanatory Notes relate to the Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Bill [HL] as introduced in the House of Lords on 8 November 2023 (HL Bill 4)*

	<p>A statutory instrument laid under the made negative procedure becomes law on the day the Minister signs it and automatically remains law unless a motion – or ‘prayer’ – to reject it is agreed by either House within 40 sitting days. Certain SIs on financial matters are only considered by the Commons.</p>
<p>Secondary legislation</p>	<p>Legal instruments (including regulations and orders) made under powers delegated to ministers or other office holders in Acts of Parliament. They have the force of law but can be disappled by a court if they do not comply with the terms of their parent Act or the Human Rights Act. Also called subordinate or delegated legislation.</p>
<p>Statutory instrument</p>	<p>A form of secondary legislation to which the Statutory Instruments Act 1946 applies.</p>

# TRADE (COMPREHENSIVE AND PROGRESSIVE AGREEMENT FOR TRANS-PACIFIC PARTNERSHIP) BILL [HL]

## EXPLANATORY NOTES

These Explanatory Notes relate to the Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Bill [HL] as introduced in the House of Lords on 8 November 2023 (HL Bill 4).

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