Twitter Thread by Joe Marshall



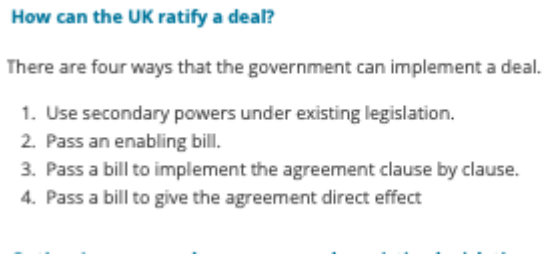
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Draft legislation to implement the UK-EU deal now published

A few quick thoughts (although very much first

It seems like the bill contains a mix of some of the options outlined in our @instituteforgov explainer on UK ratification

https://t.co/WUa3MSkABL



Clause 29 seems to be a catch all clause - so existing domestic law is treated as subject to the UK-EU deal where it has not been specifically amended to implement it (where this is required) (more from @ProfMarkElliott https://t.co/FEBrdG09Cy)

29 General implementation of agreements

(1) Existing domestic law has effect on and after the relevant day with such modifications as are required for the purposes of implementing in that law the Trade and Cooperation Agreement or the Security of Classified Information Agreement so far as the agreement concerned is not otherwise so implemented and so far as such implementation is necessary for the purposes of complying with the international obligations of the United Kingdom under the agreement.

(2) Subsection (1)—

(a) is subject to any equivalent or other provision—

(i) which (whether before, on or after the relevant day) is made by or under this Act or any other enactment or otherwise forms part of domestic law, and

(ii) which is for the purposes of (or has the effect of) implementing to any extent the Trade and Cooperation Agreement, the Security of Classified Information Agreement or any other future relationship agreement, and

(b) does not limit the scope of any power which is capable of being exercised to make any such provision.

(3) The references in subsection (1) to the Trade and Cooperation Agreement or the Security of Classified Information Agreement are references to the agreement concerned as it has effect on the relevant day.

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Cl 29 of the Future Relationship Bill is certainly interesting. If I\u2019ve understood correctly, it is, in effect, an automatic Henry VIII clause that requires existing domestic law to be treated as subject to the Agreements to the extent that they have not been implemented. pic.twitter.com/nyL52YOslD

— Mark Elliott (@ProfMarkElliott) December 29, 2020

Also seem to be separate provisions for the social security coordination protocol to form part of domestic law (clause 26)

26 Social security co-ordination

(1) *The following provisions of the Trade and Cooperation Agreement, in its English language version, form part of domestic law on and after the relevant day –*

(a) *the SSC Protocol;*

(b) *Title I of Heading 4 of Part 2 (Trade);*

(c) *Articles COMPROV.17 and FINPROV.2, so far as applying to the SSC Protocol.*

(2) *Any enactment has effect on and after the relevant day with such modifications as –*

(a) *are required in consequence of subsection (1) or otherwise for the purposes of implementing the provisions mentioned in that subsection, and*

(b) *are capable of being ascertained from those provisions or otherwise from the Trade and Cooperation Agreement.*

(3) Subsections (1) and (2) –

(a) are subject to any equivalent or other provision –

(i) which (whether before, on or after the relevant day) is made by or under this Act or any other enactment or otherwise forms part of domestic law, and

(ii) which is for the purposes of (or has the effect of) implementing to any extent the Trade and Cooperation Agreement or any other future relationship agreement, and

(b) do not limit the scope of any power which is capable of being exercised to make any such provision.

(4) The references to the Trade and Cooperation Agreement in –

Clause 31 includes a general implementating power (a big Henry VIII power, that allows the use of secondary legislation to do anything an act of parliament could do). Seems to be affirmative. Exercisable by gov and also devolved administrations. Inevitable given short time.

31 Implementation power

(1) A relevant national authority may by regulations make such provision as the relevant national authority considers appropriate –

(a) to implement the Trade and Cooperation Agreement, the Nuclear Cooperation Agreement, the Security of Classified Information Agreement or any relevant agreement, or

(b) otherwise for the purposes of dealing with matters arising out of, or related to, the Trade and Cooperation Agreement, the Nuclear Cooperation Agreement, the Security of Classified Information Agreement or any relevant agreement.

Also lots of other powers throughout the bill - e.g. amending the Customs and Excise Management Act 1979 to give the government powers to make regulations about movement of goods

21 Powers to make regulations about movement of goods

(1) The Customs and Excise Management Act 1979 is amended as follows.

(2) After section 166 insert—

"Powers to make regulations about movement of goods

166A Regulations about movement of goods

(1) The Commissioners may by regulations make provision for the purpose of monitoring, or controlling, the movement of goods that pose, or might pose, a risk to—

(a) public health or public safety,

(b) national security, or

(c) the environment (including the health of animals or plants).

(2) The Commissioners may by regulations make provision for the purpose of implementing any international obligation of the United Kingdom relating to the movement of goods.

(3) Regulations under subsection (1) or (2) may, in particular, include provision—

(a) requiring records to be kept or information to be provided,

(b) requiring declarations to be made,

(c) requiring or authorising persons or vehicles to be searched,

(d) requiring or authorising samples of goods to be taken,

(e) requiring or authorising goods to be examined, sealed, locked, marked, seized, detained or disposed of, or

(f) otherwise imposing restrictions or prohibitions with respect to the movement of goods.

DRAFT

As well as some provisions on the face of the bill that change UK law implement aspects of the deal - e.g. on extradition and road haulage

11 Member States to remain category 1 territories

(1) In the Extradition Act 2003 (Designation of Part 1 Territories) Order 2003 (S.I. 2003/3333) after Article 1 insert—

"1A The following territories are designated for the purposes of Part 1 of the Extradition Act 2003—

Austria,
Belgium,
Bulgaria,
Croatia,
Cyprus,
Czech Republic,
Denmark,
Estonia,
Finland,
France,
Germany,
Greece,
Hungary,

The bill overrides the usual CRAG parliamentary pre-ratification process - so this will not apply to the UK-EU treaty. So the bill is the only (proxy) vote MPs and peers will have on the treaty itself.

At this stage- is ultimately take it or leave it for parliament...

36 Requirements in Part 2 of CRAGA

Section 20 of the Constitutional Reform and Governance Act 2010 (treaties to be laid before Parliament before ratification) does not apply in relation to the Trade and Cooperation Agreement, the Nuclear Cooperation Agreement or the Security of Classified Information Agreement (but this does not affect

whether that section applies in relation to any treaty which modifies or supplements the agreement concerned).

Which is a pretty poor state of affairs - but given timing and nature of negotiations, was always going to be the case.

Raises big questions about the role parliament should have in scrutinising FTAs in future - e.g. more role in setting mandate/ reviewing as negotiations go...

Doesn't seem to be anything specific on new state aid role likely for the Competition and Markets Authority (where provisions in primary legislation might have been expected)