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# LEGAL FACTSHEET

REVISED GENOCIDE AMENDMENT TO THE TRADE BILL 2019-2021

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ACCOUNTABILITY  
UNIT

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## REVISED GENOCIDE AMENDMENT TO THE TRADE BILL 2019-2021

### A. SUMMARY

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1. The **Genocide Amendment to the Trade Bill 2019-2021** will allow an independent and impartial Parliamentary Judicial Committee (“PJC”) to make a preliminary determination on genocide should a relevant committee of Parliament find credible evidence of genocide in the territory of a UK trading partner (“Revised Genocide Amendment”).
2. Genocide is a crime as defined and codified in the UN Convention on the Prevention and Punishment of the Crime of Genocide (“**Convention**”).
3. The prohibition, prevention and punishment of genocide constitute binding obligations on the UK and all other States.<sup>i</sup>
4. The Revised Genocide Amendment brings the UK ever-closer to developing a comprehensive framework in responding to allegations of genocide and meaningfully engaging its obligations to prohibit, prevent and punish (perpetrators of) genocide.
5. Under the Revised Genocide Amendment:
  - i. the Government will have to consider its binding obligations engaged the moment a relevant committee of Parliament (“Relevant Committee”) found credible evidence of genocide in the territory of a trading partner (with whom the UK has a bilateral agreement). If the Government had already made such a determination, then it would obviate the need for any committee to do so.
  - ii. as a failsafe to inaction, the Government will also have to *formally* respond to any preliminary determination on genocide, made by an independent panel of parliamentarians (who previously held high judicial office) sitting as the PJC. In response to a preliminary determination, the Government would be required to set out a course of action to the Relevant Committee. If the Committee was not satisfied with the Government’s response, then Parliament would debate and vote on a motion, as drafted by the Relevant Committee.
6. A proposed course of action by the Government (in response to a preliminary determination) in no way precludes other international legal options (where available). In fact, the Revised Genocide Amendment seeks to complement and reinforce existing international legal options and invites the Government to actively exercise them.

### B. PROCEDURAL AND SUBSTANTIVE BACKGROUND

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1. The Trade Bill 2019-2021<sup>ii</sup> is currently in the process of parliamentary ping-pong, over disagreements between the House of Lords and the House of Commons on the Genocide Amendment to the Trade Bill.<sup>iii</sup>
2. The Government opposed the Genocide Amendment in its original form and it was defeated by a rival amendment moved by Sir Bob Neill.<sup>iv</sup>

3. The rival amendment proposes to 'empower' parliamentary committees, rather than courts, to make genocide determinations after which a vote may be held in Parliament on the Government's proposed course of action, if any ("Neill Amendment").<sup>v</sup> The Neill Amendment only applies to States that are negotiating bilateral free trade agreements with the UK in the future. Other agreements or existing agreements are not caught.
  - i. The Neill Amendment, in practice, will not apply to any situation in which credible allegations of genocide have been made (relating to any State with which the UK has bilateral relationships). It would also allow the Government to sign other forms of trade agreements to bypass the Neill Amendment.
4. In supporting the Neill Amendment, the Government has abandoned a 50-year policy, which incidentally had no basis in international law, that genocide: could *only* be determined by courts or tribunals; and such determinations were necessary *before* the UK's duties to prohibit, prevent or punish were engaged.
5. In response to the Neill Amendment, cross-party parliamentarians, on 19 February 2021, moved the Revised Genocide Amendment to ensure that:
  - i. there is a backstop to prevent the Government from reverting to its previous position that only courts or tribunals must determine genocide before duties are engaged.
  - ii. the Government responds meaningfully to credible allegations of genocide as early as possible to prevent genocide.
  - iii. a formal, independent, and impartial panel of judges can make a preliminary determination to credible allegations to avoid contestation and politicisation of the term genocide.<sup>vi</sup>
  - iv. there are formal steps required of the Government, including that it set out its proposed course of action to Parliament, in responding to genocide.
  - v. there are not lacunae in UK trading arrangements, so that provisions in the Trade Bill relating genocide apply to all bilateral trading relationships equally.
6. The Revised Genocide Amendment takes as its starting point the Neill Amendment and makes minimal, but necessary, changes to it.

### C. HOW THE REVISED GENOCIDE AMENDMENT WILL WORK

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1. A relevant committee of the House of Lords or House of Commons ("Relevant Committee") will make a public finding that there are credible allegations of genocide in the territory of a trading partner (subsections (1) and (6)).
  - i. The obligations of the Government under the Convention will be engaged immediately unless the Government had already made a determination itself (which would obviate need for the process under any Amendment).
2. The Relevant Committee will make a referral of the credible allegations to the PJC for a preliminary determination on genocide (subsections (2) and (7)).
  - i. The PJC is an ad hoc committee comprised of five members of Parliament who have previously held "high judicial office."
  - ii. A preliminary determination by the PJC must be made public.
3. If a preliminary determination of genocide is made, the Government must prepare a response to the determination to the Relevant Committee (subsections (3) and (8)).

4. If the Relevant Committee is not satisfied with the Government's response, then it will publicly say so and draft a motion, with recommendations, which the Government will be obliged to present to Parliament for a debate and a vote (subsections (4), (5) and (9), (10)).
5. The Government's course of action may include the cessation of trade negotiations in respect of a future trade agreement, or amendment, withdrawal or termination of an existing agreement.<sup>vii</sup> The Government must consult Parliament and it must decide whether it wishes to continue to trade and, if so, to what extent, with a State in which genocide is occurring.
6. It is for Parliament, and ultimately the Government, to decide whether the legal interests of the other State are affected. A conflict of interests – including related to trade – is for the Government to resolve.
  - i. The Revised Genocide Amendment does not detract in any way from the Government's obligation to prevent genocide and to continually assess the risk of genocide being committed.
7. Referrals by Relevant Committees to the PJC must only relate to genocides that have occurred or are occurring after the Amendment comes into force (subsection (16)).
8. The PJC will follow the procedural rules and rules of evidence prescribed by the Government and may allow the admission of exculpatory evidence to allow full investigation of credible allegations (subsection (12)(b)).<sup>viii</sup>
9. The Government may also make provision for the establishment and funding of, and appointments to, the PJC (subsections (11) and (12)(b)).
10. Any preliminary determination of genocide by the PJC will not constitute a binding judgment (as it is not a court) though it will have great persuasive force as a preliminary determination of highly-respected former judges exercising, in essence, a tribunal like function (the form and nature of which will be set by the Government in regulations).
11. The Revised Genocide Amendment does not preclude further action such as referral by the Government of the issue of genocide to international courts or tribunals (where they exist and have jurisdiction) for a final determination of a dispute.<sup>ix</sup>

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This legal factsheet, drafted by [Aarif Abraham](#), is provided as an explanatory note only. Aarif has advised on the genocide amendment.

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## Endnotes

- i Those obligations bind States Parties to the Convention and also bind all States under customary international law.
- ii UK Parliament, [Trade Bill 2019-2021](#).
- iii The Genocide Amendment was moved by Lord David Alton and sponsored by Baroness Kennedy QC, Lord Forsyth, and Baroness Falkner. It received significant support of 287 to 161 in the House of Lords on 7 December 2020. The Genocide Amendment was rejected by the House of Commons by a vote of 318 to 309 on 19 January 2021. A revised Genocide Amendment was re-tabled and, on 2 February 2021, increased its support in the House of Lords by a vote of 359 to 188. On 9 February 2021, the revised Genocide Amendment was in essence defeated (in its revised form) for a second time after a rival amendment, supported by the Government, was approved in the House of Commons by 318 to 303 votes. See further, International Bar Association's Human Rights Institute (IBAHRI). 2021. [High-Level Briefing Paper: Genocide Amendment to the UK Trade Bill](#). London: IBAHRI, January 15, 2021; Accountability Unit (AU). 2021. [Legal Factsheet, Genocide Amendment to the Trade Bill 2019-2021](#). AU, Briefing Series No. 0121, January 31, 2021.
- iv In its original form the Genocide Amendment allowed survivors and victims of genocide to make an Application to the High Court for a Preliminary Determination on whether a current or prospective UK trading partner is committing or has committed genocide.
- v Relevant committees, such as the Foreign Affairs Committee (FAC), already have powers of assessment and recommendations. The FAC found credible evidence of genocide in its reports on the Daesh atrocities (2016), Burmese's military atrocities (2016), alleged CCP atrocities (2020). In relation to the Yazidis a motion was passed in Parliament. The UK Government did not follow up.
- vi There is no basis in international law to suggest only international courts or tribunals can determine genocide. Such a position would render meaningless the obligations under international law on States to prohibit, prevent and punish perpetrators of genocide. Obligations fall on State officials to provide a credible mechanism for a determination, so obligations are fulfilled. Allowing an impartial mechanism such as a committee of judges to determine the issue depoliticises and formalises a mechanism which already should already be in existence.
- vii See further, International Bar Association's Human Rights Institute (IBAHRI). 2021. [High-Level Briefing Paper: Genocide Amendment to the UK Trade Bill](#). London: IBAHRI, January 15, 2021.
- viii The Government, drawing upon international and domestic practice, can consider various precedents to allow the admission of exculpatory or contradictory evidence. These precedents include: appointment of special advocates to advocate for a contradictory or alternative case; invitation to interested parties to intervene on public interest grounds; invitation to a foreign state, which believes its legal interests may be affected, to intervene in or be a party to any committee process. These procedures may be augmented by allowing an investigatory role for the war crimes team of the Metropolitan Police Counter Terrorism Command (SO15) who may provide relevant evidence in any case.
- ix The Genocide Amendment also does not preclude or prevent further consideration of the issue by international organisations including the United Nations.