



Withdrawal Agreement Bill – Initial Analysis

22nd October 2019

The UK's withdrawal from the EU is the biggest constitutional shift in Northern Ireland since our devolution settlement. The EU (Withdrawal Amendment) Bill is a major piece of constitutional law and the UK Government's planned agenda will push this through parliament with minimal scrutiny and no time for MPs and Peers to engage with the issues and to understand its impact on our economic and social lives.

Insufficient Time

This Bill is creating a new relationship between NI and the EU. Unlike the rest of the UK, the Northern Ireland specific provisions in the revised Backstop Protocol to the Withdrawal Agreement create a permanent relationship between Northern Ireland and the EU, until such time as the Assembly votes to opt out of these arrangements. It is therefore essential that sufficient time is given to scrutinise these provisions and to understand their impact on the lives of people in Northern Ireland. It is worrying that the UK Government is effectively rushing through this law in advance of the 31st October, making it impossible to adequately review, analyse and understand the implications of this Bill for our constitutional settlement, our rights and peace process.

Ministerial Overreach

In clause 21 the Bill gives UK Ministers wide powers to change Northern Ireland laws without parliamentary oversight. These 'Henry VIII powers' give UK Ministers broad and wide-ranging powers with very few limits to amend primary law via secondary legislation to implement the revised Protocol and 'matters arising, or related to, the Protocol'. It allows for UK Ministers to make any changes to implement the single market and customs rules without further consultation or agreement.

Democratic Consent

Article 18 of the revised Protocol sets out a mechanism whereby the NI Assembly can consent to Northern Ireland's continuing relationship with the EU. The Withdrawal Agreement Bill makes no specific reference to this procedure, instead it is included within the scope of the sweeping Henry VIII powers in clause 21. This means UK Ministers can change the provisions relating to the Petition of Concern and cross-party consent mechanisms in the Northern Ireland Act with minimal oversight and scrutiny.

Protecting Rights

The commitment in article 2 of the revised Protocol to protect the human rights safeguards in the Belfast/Good Friday Agreement underpinned by EU law as the UK leaves the EU is

incorporated via schedule 3. This provision prohibits the NI Assembly and Ministers from legislating contrary to article 2, however no such limitation applies in relation to the powers of the Westminster Parliament or UK Ministers. Given the broad and sweeping powers given to UK Ministers under this Bill, it is very worrying that this limitation does not apply. By way of comparison, in Schedule 4 on the Protection of Workers Rights, a UK Minister is required to make a statement of non-regression with EU law when a Bill is presented in the UK Parliament. There is no similar requirement here.

Powers of the NIHRC and ECNI

Schedule 3 empowers the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland to have specific oversight of the UK's commitment to ensuring there is no diminution of rights as a result of its withdrawal from the EU. Both NIHRC and ECNI have the power to advise the UK Government or NI Assembly on the compatibility of proposed or existing legislation with the Article 2(1) non-diminution provisions of the revised Protocol. But it is unclear what action, if any, the UK Government or NI Assembly must take in response. In addition, the Commissions have powers of judicial review and to assist people in litigation, which require further scrutiny. Despite these new powers for the two Commissions in Northern Ireland, they run the danger of being rendered ineffective unless they are accompanied by adequate budgetary support.

Level Playing Field

The UK government has maintained that it wants to ensure that the highest standards of environmental regulation and workers' rights are preserved as the UK leaves the EU. It is therefore worrying that there is no reference to maintaining environmental standards in the Bill at all. The provisions on workers' rights only extend to a UK Minister making a statement at the introduction of any bill which may impact on those rights. This is a very weak form of enforcement. This requirement does not acknowledge that employment law is uniquely devolved in Northern Ireland and no such provision is made to protect social and labour law in Northern Ireland.