



EU Withdrawal Bill - General Points of concern in advance of 2nd Reading

The process of leaving the European Union (EU) represents the largest constitutional change in the United Kingdom (UK) since the establishment of a devolved system of governance which placed greater political control in the hands of elected representatives and legislators in Scotland, Wales and Northern Ireland in the late 1990s. The move to devolved governance in Northern Ireland was also a cornerstone of the Belfast/Good Friday peace agreement. It is therefore of serious concern that as the UK seeks to leave the EU that the stated method of retaining the *acquis* of EU law in domestic UK legislation, the **EU Withdrawal Bill**, has the potential to undermine the basis of the devolution settlements and negatively influence the peace process in Northern Ireland.

An initial, but non-exhaustive summary of our concerns about the EU Withdrawal Bill is as follows:

The Bill gives no formal recognition or protection to the Belfast/Good Friday Agreement or any assurances that its full implementation and enjoyment is a priority as the UK exits the EU. This is concerning in a democracy founded upon the Belfast/Good Friday Agreement and with political institutions that are delicately balanced and maintained through adherence and compliance with scrutiny and oversight mechanisms such as those provided by the EU.

The Bill will amend the Northern Ireland Act which establishes the powers and functions of the Northern Ireland Assembly (NIA) so as to remove the restriction on the Assembly to act in accordance with EU Community Law. This currently provides an important overarching human rights framework and was part of the political and confidence building context within which the B/GFA was delivered. **Clause 11(3)**

The Bill fails to replicate in domestic law the protections of the European Charter of Fundamental Rights (CFR) which is an important current source of human rights and equality protections across the UK. **Clause 5(4)**

The legislation proposes that the UK will lose its formal compliance link with judgments of the European Court of Justice (ECJ) and will not allow any references to the ECJ and instead provides for domestic courts only to have regard to ECJ judgments 'if it considers it appropriate'. In doing so it creates a risk of a lag between human rights development in the

EU and the UK, with similar compatibility impacts across a range of cross border relationships. **Clause 6**

Currently there are significant amount of direct EU legislation (e.g. such as elements of employment, equality and disability) that are administered in Northern Ireland by the devolved Assembly, which itself is currently restricted from deviating from compliance with EU law. These powers would naturally, upon repeal of the European Communities Act 1972 (provided for in Clause 1), fall under the authority of the Assembly and result in an accrual of additional powers by the Assembly in those areas. However, the Withdrawal Bill prevents this by repatriating powers that would naturally fall to Edinburgh, Cardiff or Belfast back instead to Westminster centrally. These powers can then only be released to the devolved administrations through an Order in Council. This is particularly worrying in Northern Ireland where any perceived power grab by London could undermine trust and confidence in the governance structures locally. **Clause 11**

We are also concerned that Clause 11 and Schedule 2 (3) could restricted the existing ability of the NIA to legislate in a way that is different from the UK Government and other devolved areas. The Bill seems to suggest that the NIA will no longer have this power as regards to any retained EU legislation. **Schedule 2(3)**

The Withdrawal Bill gives UK Ministers wide powers to amend, repeal or replace retained EU law by making use of regulatory powers which are not subject to full parliamentary scrutiny under the Bill. The Henry VIII clauses available in the Bill do not provide sufficient oversight, either by Parliament, the NI Executive or NI Assembly of the ability of Ministers to change retained EU law. There is no condition within the Bill that would prevent Ministers either in London or Belfast from altering the operation of fundamental rights through this process. **Clause 7**

Likewise, the Bill also confers similar powers on the (NIA) and accordingly its Ministers. **Clause 10 and schedule 2 (3).**

The Bill also gives Ministers disproportionately wide powers to make any changes to law it deems necessary to implement the Withdrawal Agreement. It will do this by decree and without due Parliamentary scrutiny or involvement of Northern Ireland in any way. This could potentially include the Northern Ireland Act, which implements the Constitutional settlement for Northern Ireland. **Clause 9.**

Developed by the **Human Rights Consortium** with input from a wide range of civil society organisations in Northern Ireland.

September 2017

For further information please contact:

Kevin Hanratty, Director
Human Rights Consortium
kevin@humanrightsconsortium.org
02890313780

www.humanrightsconsortium.org