



Briefing on the Internal Market Bill

September 2020

Background

- 1.1 This Bill is designed to create mechanisms the UK Government feel are necessary for the UK internal market once the UK leaves the EU based on the principles of mutual recognition and non-discrimination.
- 1.2 In New Decade, New Approach, the UK Government committed to "legislate to guarantee unfettered access for Northern Ireland's businesses to the whole of the UK internal market and ensure that this legislation is in force for 1 January 2021".¹

UK Internal Market Bill

- 1.3 Clause 42 of the Bill empowers the Minister to make regulation to ensure that NI goods have unfettered access to the rest of the UK to "maintain and strengthen the smooth operation" of the UK Internal Market, including the power to disapply any rights, powers, liabilities, etc of relevant international or domestic law.
- 1.4 Clause 43 empowers the Minister to make regulations disapplying or modifying Article 10 of the Ireland/Northern Ireland Protocol to the UK-EU Withdrawal Agreement and any associated EU measure or jurisprudence and clarifies power to disapply any rights, powers, liabilities, etc of relevant international or domestic law.
- 1.5 Clause 45 confers on Ministers the power to deviate from the Protocol in sections 42(1) and 43(1) will have effect "notwithstanding any relevant international or domestic law with which they may be incompatible or inconsistent". Any regulations under sections 42(1) and 43(1) of the Bill "are not to be considered unlawful on the grounds of any incompatibility or inconsistency with relevant international or domestic law". This clause also excludes section 7A EU (Withdrawal) Act 2018, the residual clause which is used to give effect to Article 4 of the UK-EU Withdrawal Agreement.

¹ NI Office, 'New Decade, New Approach', (NIO, 2020) at Annex A, paragraph 10

Government Amendments to Clause 45

- 1.6 Amendment 12 will dis-apply s6 of the Human Rights Act in relation to the making of regulations under section 42(1) or 43(1)).
- 1.7 Amendment 13 will ensure that any regulations made under 42(1) and 43(1) are treated as primary law for the purposes of the Human Rights Act, therefore they cannot be set aside by the courts, nor can there be direct relief for individual applicants. Instead, the Court will be restricted to issuing a Declaration of Incompatibility. The remedy will require Ministerial or Parliamentary action.
- 1.8 Amendment 14 excludes the questioning of validity of any regulations made under 42(1) and 43(1) other than by way of a relevant claim or application for judicial review.
- 1.9 Amendment 15 clarifies that the power to make regulations that may breach 'relevant international or domestic law' does not include the power to interfere with rights contained in the ECHR.

Commissions Advice

- 1.10 In the Belfast (Good Friday) Agreement the UK Government committed to the "incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of the Convention"
- 1.11 In Article 2(1) the Ireland/Northern Ireland Protocol to the UK-EU Withdrawal Agreement, the UK Government committed to ensuring that:

No diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, including in the area of protection against discrimination.
- 1.12 **The Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland (the Commissions) advise that the proposed amendments undermine the Belfast (Good Friday) Agreement commitment to ensure incorporation of the ECHR, including access to courts and remedies for breach of the ECHR rights.**
- 1.13 **The Commissions are further concerned that the proposed amendments risk diminishing the commitment in Article 2(1) of the Ireland/Northern Ireland Protocol to ensure there is no diminution of rights, safeguards or equality of opportunity as the UK leaves the EU.**
- 1.14 **The Commissions note that the proposed Government amendments dis-apply the scope of the ECHR in relation to this Bill and thus are regressive measures which risk diminishing their mandate as the dedicated mechanism to oversee Government's implementation of its commitment, as legislated for in Schedule 3 of the EU (Withdrawal Agreement) Act 2020.**

Contact Us

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