

Civil Society Alliance -Written evidence (FUI0008)

Civil Society Alliance submission to Protocol on Ireland/Northern Ireland Sub-Committee: Follow-up inquiry into impact of NI Protocol

Introduction

1. The Civil Society Alliance is a new project set up to empower civil society organisations from across the UK to scrutinise and influence constitutional, administrative and legal changes in the complex, multidimensional regulatory landscape following the UK's withdrawal from the European Union (EU).

2. The aims of Civil Society Alliance UK are:

Open and accountable law-making that respects democratic processes, including the devolved nature of the UK constitution; subject to robust parliamentary scrutiny, transparency, and debate.

A high standards UK, in which constitutional or legislative changes do not weaken standards, diminish rights, or lead to a loss of funding.

A strong, active civil society voice, with a culture of government engagement that is collaborative, consistent, open, effective, and accountable.

Overview of submission

3. The Government's proposals to bring forward domestic legislation that would unilaterally revoke parts of the Northern Ireland Protocol ('Protocol') were not included in the Queen's Speech on Tuesday 10 June 2022, but announced separately in a statement from the Secretary of State for Foreign, Commonwealth and Development Affairs ('Foreign Secretary') to the House of Commons on 17 May 2022.

4. In a recent forward planning meeting, Civil Society Alliance members were keen to respond to the Protocol on Ireland/Northern Ireland Sub-committee's ('Committee') invitation to submit evidence to highlight the importance of gathering civil society views of the socio-political impacts. In particular, the need to highlight the potential impacts of any actions taken in relation to the Protocol, including the links between Westminster and Northern Ireland institutions, especially if the Assembly is prevented from sitting longer term.

5. The lack of proper engagement by the UK Government with civil society organisations was frequently cited as an issue during the negotiations of the Withdrawal Agreement and Protocol A review of that process undertaken by the

Brexit Civil Society Alliance refers to consultations that were too short, and/or with insufficient notice provided and issues raised by civil society in response not being fully addressed.

6. An opinion poll commissioned by Queen's University Belfast in March 2021, revealed that 73 percent of those polled were "*concerned or very concerned about Northern Ireland's voice being heard on the implementation of the Protocol.*" The Protocol on Ireland/Northern Ireland Sub-committee reached similar conclusions in its initial report, published on 29 July 2021.

"There is a widespread perception that the Protocol was imposed on Northern Ireland without meaningful engagement with its communities, and without a full and transparent explanation of the impact it would have. Where there was engagement, it was perceived as uneven.

Given the implications of the Protocol for people in Northern Ireland, both the UK Government and the EU must develop and expand formal mechanisms for long-term engagement with all sectors of Northern Ireland civic society. As part of this, there should be a particular effort to engage those who have so far felt side-lined in discussions of Brexit and the Protocol, including young people and women."

7. We note the UK Government's response to the Committee's report, where reference is made to the Northern Ireland Office having held "*eight specific civic conversations in addition to regular engagement with a range of civic society actors and groups*", with assurance that "*engagement is ongoing.*" It would be helpful to open such conversations to a broader forum and ensure that a wider range of civil society groups have ample opportunity to contribute in a meaningful way.

Questions being addressed

8. This submission focuses on the Social and Political Implications of the Protocol (questions 9, 10, and 11) in the context of the EU and UK's overall approach to the Protocol (questions 12 and 13).

9. A more detailed response setting out the concerns of the communities in Northern Ireland to the proposals, is set out in a separate submission from the Human Rights Consortium Northern Ireland and in a comprehensive briefing paper published in December 2021.

Social and Political Implications of unilateral changes to the Protocol

10. In her update to the House of Commons on 17 May 2022, the Foreign Secretary advised Parliament to expect the new Protocol Bill in the "*coming weeks,*" which would then progress through Parliament as "*normal.*" There has since been speculation that the Bill could be published as soon as 6 June 2022; and that

'technical changes' may be implemented through a 'fast track' procedure, alongside the wider review of Retained EU Law (REUL) in the 'Brexit Freedoms Bill'.

11. It is now almost eighteen months since the UK left the EU's single market and customs union, but there remains uncertainty over what changes the government plans to make to go "further and faster" to "maximise the benefits of Brexit" and how this will be implemented in practice. Civil society organisations remain in the dark about how these changes will impact on their organisations and their work, and the interlinks between the suite of Bills proposed. There does not appear to be any evidence that the new Bills announced in the Queens Speech are being screened for their impact on the Northern Ireland Protocol.

12. Article 2.1 of the Ireland/Northern Ireland Protocol commits the UK government to the non-diminution of rights set out in the Rights, Safeguards and Equality of Opportunity section of the Belfast/Good Friday Agreement. It is likely that parts of REUL that the government may wish to remove, or reform will intersect with the rights that the article 2.1 powers seek to defend and retain in Northern Ireland.

13. In his oral evidence to the European Scrutiny Committee on 20 April 2022, the Minister for Brexit Opportunities and Government Efficiency, the Rt Hon Jacob Rees-Mogg MP, referred to the difficulties around the issue of ensuring 'Brexit freedoms' apply to Northern Ireland. He gave the example of alleviation of VAT on certain environmental products not extended to Northern Ireland because of the Protocol. However, neither he, nor the Minister for Europe and North America, the Rt Hon James Cleverly MP, in his evidence to the Protocol on Ireland-Northern Ireland Subcommittee on 26 May 2022, mentioned the potential risks arising through the intersection between REUL and the Protocol and the implications for the rest of the UK.

14. The indications are that the REUL Bill will give the government greater scope to change retained EU law through delegated legislation, making it easier to revise, weaken or remove domestic standards without proper parliamentary oversight, including the possibility of the retrospective application of sunset clauses.

15. It is essential the review of REUL takes account of the impact on Northern Ireland, as well as how the proposed changes relate to civil society across the whole of the UK. The Rt Hon Jacob Rees-Mogg MP indicated that an interactive list of the 1400 items subject to review would be published well ahead of the introduction of the REUL Bill to Parliament. Early sight of this list is essential to help civil society identify areas where policy makers need to be made aware of the risks of "*unintended consequences*," arising through the removal of the principle of supremacy of EU law, "*especially when there is nothing certain to replace it, and because it could change the rights of citizens*" - a concern raised by Sir Jonathan Jones QC to the European Scrutiny Committee' in the first oral evidence session of its thematic inquiry into retained law, held on Wednesday 9 February 2022.

16. For example, whilst REUL on citizens' rights is currently part of UK legislation, the EU Scrutiny Committee has suggested that all REULs are part of the review, which could potentially impact negatively on equality and non-discrimination legislation.

17. Open and transparent lawmaking, with effective scrutiny, is needed amid growing concerns about the government's use of delegated legislation as the principal legislative vehicle for delivering the government's agenda on critical policy areas. Recent Acts of Parliament on agriculture, fisheries, customs, and immigration have contained wide-ranging delegated powers for ministers. Delegated legislation may also be an essential vehicle for delivering policy in emerging fields such as AI, drones, driverless cars, and lab-grown meat.

18. The Hansard Society is currently undertaking a review of delegated legislation. This calls for a major rethink of the current approach to address the many problems long known about but brought into stark focus through both Brexit and Covid-19, which reduce the tools available to MPs to properly hold the government to account and to make sure that policy decisions are well-evidenced, widely supported and deliver benefits now and into the future.

19. It is therefore critical that, as the government develops its plans for diverging from EU law, there is effective scrutiny to ensure these are delivered through a fair and open process.

Distinguishing between passive and active divergence

20. UK in a Changing Europe compiles a quarterly UK-EU Regulatory Divergence Tracker, which seeks to draw a distinction between 'active' divergence (where UK or devolved policymaking entails changes to EU-derived law) and 'passive' divergence (changes in EU policy with which the UK does not keep pace).

22. The latest edition of the tracker gives several examples of EU changes, ranging from reducing permitted amounts of certain pollutants in waste, to banning the E171 food additive, amending its Energy Taxation Directive, and changing the 'pharmacovigilance' system for reporting adverse effects in veterinary medicines. As Northern Ireland must follow the new EU regulation this leads to further divergence between Great Britain and Northern Ireland, and a growing distance between the two economies.

21. In a recent article for Encompass magazine, the author of the Tracker, Joel Reland, highlights the need to take a strategic approach to managing regulatory divergence, given the potentially serious implications for the UK economy and the Union, primarily due to the interaction with the Northern Ireland Protocol.

23. By way of example, environmental policy in Northern Ireland now falls under three distinct categories. As with the rest of the UK, it has its own domestic rules (either UK-wide or devolved), REUL and EU Protocol Law. All the EU rules that

Northern Ireland must continue to comply with, under the supervision of EU governance mechanisms, cover a wide range of environmental concerns, including waste, chemicals, pesticides, GMOs or eco-design. A [policy briefing paper](#) from Queens University Belfast highlights the many considerations that need to be taken in relation to future environmental policy across the different governance functions across the devolved nations, including full use of future opportunities for civic engagement.

24. From a civil society perspective it is essential that the UK Government actively monitors and tracks future EU changes and consults widely with civil society to fully understand the implications for both Northern Ireland and the UK, before deciding whether to follow suit. Similarly, if the UK chooses not to follow EU rules, for example in food regulatory standards, it will need to consider carefully about how to offset any negative impacts. This will require maximum openness and transparency and close working with civil society groups who do not have the resources needed to undertake such a complex task.

Concluding remarks

25. Given the short time frame for submissions and the limited resources available to our members to provide a detailed response, the Civil Society Alliance requests that the Committee seeks further evidence following the publication of both Northern Ireland Protocol Bill and the Retained EU Law Bill. We understand these are scheduled for presentation to Parliament before summer recess, possibly as soon as 6 June 2022.

1 June 2022