

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Eighth Delegated Legislation Committee

DRAFT PROTOCOL ON IRELAND/NORTHERN
IRELAND (DEMOCRATIC CONSENT PROCESS)
(EU EXIT) REGULATIONS 2020

Thursday 26 November 2020

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Monday 30 November 2020

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The Committee consisted of the following Members:

Chair: ESTHER McVEY

† Afriyie, Adam (*Windsor*) (Con)
 † Bacon, Gareth (*Orpington*) (Con)
 Begum, Apsana (*Poplar and Limehouse*) (Lab)
 † Benton, Scott (*Blackpool South*) (Con)
 Burgon, Richard (*Leeds East*) (Lab)
 Butler, Dawn (*Brent Central*) (Lab)
 Byrne, Liam (*Birmingham, Hodge Hill*) (Lab)
 † Davison, Dehenna (*Bishop Auckland*) (Con)
 † Dines, Miss Sarah (*Derbyshire Dales*) (Con)
 † Elmore, Chris (*Ogmore*) (Lab)
 † Higginbotham, Antony (*Burnley*) (Con)

† Hughes, Eddie (*Walsall North*) (Con)
 Jarvis, Dan (*Barnsley Central*) (Lab)
 † Mangnall, Anthony (*Totnes*) (Con)
 † Smyth, Karin (*Bristol South*) (Lab)
 † Stevenson, Jane (*Wolverhampton North East*) (Con)
 † Walker, Mr Robin (*Minister of State, Northern
 Ireland Office*)

Ben Rayner, *Committee Clerk*

† **attended the Committee**

Eighth Delegated Legislation Committee

Thursday 26 November 2020

[ESTHER McVEY *in the Chair*]

Draft Protocol on Ireland/Northern Ireland (Democratic Consent Process) (EU Exit) Regulations 2020

11.30 am

The Chair: Before we begin, I will mention social distancing again, although you are all sitting in the correct allocated spaces, and when the main Benches were full everybody correctly sat in the Public Gallery at the back.

The Minister of State, Northern Ireland Office (Mr Robin Walker): I beg to move,

That the Committee has considered the draft protocol on Ireland/Northern Ireland (Democratic Consent Process) (EU Exit) Regulations 2020.

It is a pleasure to serve under your chairmanship, Ms McVey. I put on record my thanks to House staff for the work that they have done to make this Committee Room safe for Members in the current difficult circumstances and, indeed, for doing so for the many statutory instrument Committees that we have dealt with recently.

The regulations fulfil a simple but important task: to reflect in domestic law the consent mechanism set out in the Ireland/Northern Ireland protocol and the UK Government's unilateral declaration of 17 October 2019. The Belfast/Good Friday agreement is built on the principle of consent. It was ratified by referendums in Northern Ireland and Ireland, and the agreement is crystal clear that any change in the constitutional position of Northern Ireland within the United Kingdom can come about only if the majority in Northern Ireland consents to that change. The vital importance of consent is recognised in the provision for alignment in the protocol to be disapplied if Northern Ireland's political representatives conclude that it is no longer desirable. Embedding that recognition of consent in the protocol was intrinsic to its acceptance by the Government.

The protocol was designed as a practical solution to avoiding a hard border on the island of Ireland, while ensuring that the UK, including Northern Ireland, could leave the European Union as a whole. The protocol necessarily included a number of special provisions that apply only in Northern Ireland for as long as the protocol is in force. That is why it is for elected representatives in Northern Ireland to decide what happens to the protocol alignment provisions in a consent vote that can take place every four years, with the first vote taking place in 2024. Only elections to the Northern Ireland Assembly and the vote of Members of that Assembly will decide the outcome.

If the draft regulations are approved, the first consent process will take place in 2024. If consent is given at that point, the process will then be repeated every four

or eight years—four years if consent is given with a simple majority, eight years if consent is given with cross-community support. This demonstrates that the mechanism is designed to encourage cross-community support, giving the Assembly the opportunity to provide eight years of certainty to Northern Ireland's businesses and individuals through cross-community agreement.

I have heard arguments that this approach is somehow contrary to or not compatible with the Belfast agreement, and I do not accept that that is so. Our approach is entirely compatible with the agreement. The principle of cross-community support set out in the Belfast agreement applies to internal matters for which the Northern Ireland Assembly is responsible. The consent mechanism, contained as it is in the Northern Ireland protocol, relates to the UK's continued relationship with the EU, an excepted matter in Northern Ireland's devolution settlement. That means that the matter at hand falls outside the remit of the Assembly and outside the principle of requiring cross-community support to pass. We have taken the steps we have, with four versus eight years, to incentivise that support.

The regulations implement both the default consent process and an alternative consent process. The default consent process will apply if the First Minister and Deputy First Minister are in office on the day the Secretary of State issues the notification to begin the process—that is, for the first occasion, on 31 October 2024. By contrast, the alternative process will apply if at that point or any future such points the First Minister and Deputy First Minister are not in office. It should be recalled that the protocol was drafted at such a time, and although we welcome the restoration and subsequent stability that the Executive has achieved, it is right that we have such a fall-back in place.

The alternative process enables any MLA to bring forward the consent motion in the absence of the First Minister and Deputy First Minister. It also puts in place a process to enable the consent vote to take place under the alternative process, even if the Assembly were unable to elect a Speaker when required to do so. That ensures that MLAs will always be able to take a decision on a consent motion, discharging the obligation in international law to facilitate that process.

The Government remain fully committed to implementing the withdrawal agreement and protocol, which were specifically designed to protect the Belfast/Good Friday agreement and the huge gains of the peace process. That is why the alignment provisions within the protocol depend for their legitimacy on consent. That ensures that democratically elected local politicians will decide the future of the protocol in Northern Ireland. By making the regulations, we will ensure that this can be delivered for the people of Northern Ireland, and I therefore commend them to the Committee.

11.35 am

Karin Smyth (Bristol South) (Lab): It is a pleasure to serve under your chairmanship, Ms McVey. I echo the Minister's thanks to the various House staff who have allowed us to meet today and on other occasions.

We are here today because we have with the Irish Government a joint and solemn responsibility to the people of Northern Ireland. Although Brexit divides the UK and Ireland into different economic blocks, the

protocol sets out our need to have regard to the historic ties, recognises the unique and significant challenges that exist on the island of Ireland, and emphasises that to ensure democratic legitimacy there should be a process of consent—the subject of the regulations before us today, which we support. The instrument looks like a dry, technical piece of process legislation, but it is much more than that.

We have real concerns on which I seek assurances from the Minister. They centre on the unsatisfactory nature of the fact that we are agreeing here in Westminster a process for those elected to Stormont to agree a voting mechanism on a deal that we do not yet have. It invokes the principle of consent and notions of democracy, on which I take issue with the Minister. We also have concerns about the destabilising nature of the timing of the votes.

First, we are agreeing a process today for consent to something that we do not know: the operation of articles 5 to 10 on customs and goods across the island of Ireland. I will not rehearse all the things that we do not know with only 36 days to go, but, as has been the case in the past four years, the lack of certainty and the way in which the delicately balanced unique circumstances of Northern Ireland have been treated does not bode well, and it is not acceptable for the Government to ask us to agree legislation without having agreed what the arrangements are in 36 days' time.

Secondly, I want to highlight the use of the word “consent” by the Government. In the Command Paper, “The UK’s Approach to the Northern Ireland Protocol”, published in May 2020, the foreword highlights on page 3 that,

“The Belfast Agreement is built on the principle of consent.”

The next paragraph states:

“The vital importance of consent is recognised in the provision for alignment in the Protocol to be disappplied”,

as the Minister has said, and that

“Embedding that recognition of consent...was intrinsic to its acceptance by this Government.”

That is a clear signal, as the Minister outlined, of the linkage of the 1998 agreement and this SI. On the next page, the Chancellor of the Duchy of Lancaster talks about protecting the “Belfast (Good Friday) Agreement”, which is referred to on page 5.

Language matters, particularly in the context of Northern Ireland. The Minister knows that every word of every document is carefully crafted and rigorously studied. There are many examples from the past year of how this democratic consent mechanism has been used to placate the Brexiteers in his own party and the entirely legitimate concerns of Unionists about what the Prime Minister agreed to in order to secure the withdrawal agreement.

This SI deliberately invokes the carefully crafted principle of consent about the constitutional issue from the 1998 treaty, but it is a different mechanism. It is designed for a different purpose and it would have been better to have perhaps used different nomenclature. I know the Minister argues that the mechanism is different. It is passable by a majority vote, because one is part of an international treaty and one enacts something into domestic law, but, having linked the two for political expediency, retreating into legalese and hair splitting is not helpful to trust in the Government’s intent.

The word “democratic” is also invoked carefully here. Indeed, writing in *The Belfast Telegraph*, the Chancellor of the Duchy of Lancaster and the Secretary of State said of this proposal,

“Critically, any arrangements for implementing the Protocol will only be able to last as long as they command the support of democratically-elected local politicians. The future is firmly in Northern Ireland’s hands.”

Patently, that is not the case. In this negotiation between the UK and the EU, Northern Ireland has never been in control, and this statutory instrument simply allows Assembly Members to agree—or not—to what others have negotiated. The UK Government’s proposal to mitigate the impact of UK Government policy and future alignment—or not—with the European Union is also a UK Government political decision.

To reverse some of the damage to trust in relationships in the past four years, there has to be a more serious commitment by the UK Government to real democratic oversight of the entire protocol, within the context of the 1998 agreement, by the people of Northern Ireland. I have asked several times of this and previous Governments how the enactment of the backstop and now the protocol interplays with the provisions of the north-south and east-west provisions of the Belfast/Good Friday agreement, and I have never had a good answer.

The Joint Committee, the Specialised Committee and the joint consultative working group, plus the process to consent to something that we do not already know, make the whole issue much more problematic and in need of resolution. We need a commitment to be clear on the interrelationships of those bodies and how the Northern Ireland voice is heard and counts, and an assurance that the future really is in the hands of the people of Northern Ireland. I would like the Minister to outline any further thoughts that the Government have on how and when that can happen.

We are also concerned about the destabilising nature of the process, which the Minister has outlined without the context. Article 18 offers the opportunity of a vote, but the SI essentially forces one—it says there will be a vote. The Minister may wish to clarify that, but we might need to consider some flexibility, because the timing and process of a vote within the current electoral cycle is concerning. We have Assembly elections in 2022 and the consent vote that we are debating in November or December 2024. I remind hon. Members that we are also due a general election at that time.

If there is a simple majority in the consent vote in 2024, a two-year review of the articles in the protocol takes us to 2026. It is then two more years to another vote in 2028. If it is rejected in 2024, there will be a need to reopen negotiations on avoiding a hard border, repeating the circular and damaging debate of the last four years, between 2024 and 2026. There is also the prospect of more Assembly elections in 2027. If the consent vote that is part of the SI is approved in 2024, there will be another vote in 2032. That is a long process and a deeply concerning prospect.

There are too many opportunities for division. As we hear from the Government that they are seeking to move away from alignment with the European Union, it appears inevitable that, under their watch, those divisions will continue to be laid bare in Northern Ireland. How much consideration have the Government given to the

[Karin Smyth]

electoral cycle and the timetable proposed in the SI? What will they be doing to avoid the economic and political instability it portends?

We all need a deal, and one that means that all the difficulties of separation between our two countries are minimised and that the provisions in the SI are part of the dull and technocratic process that the Government are keen for us all to believe in. The signs are not promising, however, and I hope that the Minister will reflect on the issues I have raised. I hope he is assured, however, that the Opposition are ready to do all we can to ensure that we uphold our solemn commitment to the people of Northern Ireland to a strong economy and to peace, stability and reconciliation in the coming difficult years.

11.42 am

Mr Walker: I am grateful to the hon. Member for Bristol South, who spoke, as always, with great knowledge and passion on these issues. She has made a number of important points. I agree about our responsibilities to the people of Northern Ireland and about working in a constructive way. She referred, a little unfairly, to a deal that we do not yet have. It is important to reflect that, when we are talking about the protocol, this is the deal that was negotiated and agreed between the UK and the EU, and that we are implementing and delivering on. That is part of the fact that we left the European Union with a deal in place earlier this year. I recognise, however, that her point is really that the nature of its impact will depend on the overall deal. Of course, we all hope that there is progress on that in the coming days and weeks.

The hon. Lady made the point about the importance of timing in the process. I recognise that whatever the timing we announced for it, there would be sensitivities and an interaction with the electoral cycle. The regulations that we are debating achieve it in the simplest way by saying that we agreed to a four-year consent mechanism, which applies four years after the deal was effectively done. However we designed it, there would be some interaction with elections somewhere in the UK. It is right, therefore, to default to a simple process.

Of course, we want to support and incentivise the opportunity for cross-community support through the design of the system, which allows for an eight-year process. That would separate it perhaps a little further from the regular patterns of elections across the UK or in Northern Ireland. That provides the opportunity, if

it can be demonstrated that the protocol is working effectively, that it can win cross-community support and that it has Assembly Members behind it, to separate it from some of the challenges.

The review mechanism also plays an important part in that and is part of the way in which the consent process encourages the best possible cross-community agreement. That is why if the resolution passes with cross-community support, the next consent decision would be eight years after the first. There is a strong incentive there, not just for Northern Ireland parties, but for the UK Government, to generate the widest possible support for the protocol and Northern Ireland's unique arrangements.

If the consent mechanism passes with only a simple majority, the UK Government will initiate an independent review into the functioning of the protocol and the implications of any decision to continue or terminate alignment on social, economic and political life in Northern Ireland. The hon. Lady rightly made the point that there are already many Committees and independent reviews to discuss and look into these matters, but the key to the review is in paragraph 8 of the unilateral declaration:

“The independent review will make recommendations to the Government of the United Kingdom, including with regard to any new arrangements it believes could command cross-community support.”

That provides an opportunity to foster and build support. Cross-community support is our aim. We want the protocol to command the widest support possible across Northern Ireland. If in 2024 the consent resolution passes with only a simple majority, we would use the outcome of the independent review to continue to work towards further cross-community support for what would then be a subsequent consent decision in 2028.

As I said in my opening speech, the Government remain fully committed to implementing the withdrawal agreement and the protocol. As ever, our intent and our purpose is to protect the Good Friday/Belfast agreement. That intent was at the heart of our negotiations with the EU last year and is reflected in this consent mechanism. It is something that we will always uphold. Through the mechanism, we ensure that the question of continued alignment with EU law will be decided by those democratically elected to represent the people of Northern Ireland.

Question put and agreed to.

11.46 am

Committee rose.