

<b>Committee(s):</b>	<b>Dated:</b>
Public Relations & Economic Development Sub-Committee	19 <sup>th</sup> February 2020
<b>Subject:</b>	<b>Public</b>
European Union (Withdrawal Agreement) Act 2020	
<b>Report of:</b>	<b>For Information</b>
The City Remembrancer	

### **Summary**

This report provides Members with an update on the EU (Withdrawal Agreement) Act 2020, which received Royal Assent on 23<sup>rd</sup> January 2020.

### **Recommendation**

Members of the Public Relations and Economic Development Sub-Committee are asked to note the update.

### **Main Report**

#### **Background**

1. The Bill for the European Union (Withdrawal Agreement) Act 2020 (“the Act”), was the second incarnation with the programme motion for the previous (October) Bill in the 2017-19 session voted down by MPs. As a result, the Government put the legislation on hold, and it was lost following dissolution. A second (December) Bill was subsequently introduced, which culminated in the Act.
2. The Act implements and ratifies the Withdrawal Agreement between the UK and EU in domestic law, without the need for further primary legislation for consequential provisions. Additionally, it amends the EU (Withdrawal) Act 2018 and delays the repeal of the European Communities Act 1972. This provides the domestic legal basis for the transition period and the means of implementing EU law during that period.
3. The Act grants a wide-ranging power for Ministers to make regulations in order to implement the provisions of the Withdrawal Agreement. This includes the amendment of primary legislation but does not extend to the creation of criminal offences, fines or fees, retrospective provisions, the creation of public bodies, or modifications to the Human Rights Act 1998. This was the subject of much criticism in the House of Lords.

#### **Immigration**

4. The Act implements Part 2 of the Withdrawal Agreement, which relates to UK and EU citizens’ rights after the transition period. This provides the legal basis

for the settled status scheme and the continuation of residence rights pending settled status. This includes powers to make regulations to implement the Withdrawal Agreement's provisions which relate to the continued recognition of professional qualifications. Other immigration provisions include the ability for Ministers to establish a permit scheme for frontier workers (those who are economically active in the UK but not resident) after the end of the transition period.

5. The Act establishes an Independent Monitoring Authority, which will assess the UK's compliance with the citizens' rights provisions of the Withdrawal Agreement.

### **Financial Measures**

6. The Act requires the UK to pay into the EU budget during the implementation period and the UK will continue to receive EU funding during this time. Following the end of the implementation period, the UK will make a payment towards the extent of the EU's financial commitments and liabilities at that date. After 31<sup>st</sup> March 2021, separate parliamentary authorisation will be required for expenditure. Originally, this date could be extended by regulations. This provision was, however, omitted from the second Bill. It has been estimated that 2/3<sup>rd</sup> of sums payable by the UK could fall after 31<sup>st</sup> March 2021.

### **The Northern Ireland Protocol**

7. Following an alteration to the terms of the Withdrawal Agreement relating to Northern Ireland, changes were made to enable Ministers and the devolved administration to give effect to the protocol through regulations to avoid a 'hard border', including through the amendment of primary legislation. Additionally, the Act imposes a restriction on the ability of UK Ministers from supporting a proposal of the Joint Committee (a UK-EU committee established to assess the functioning of the Withdrawal Agreement and make proposals), if it would alter arrangements of North-South co-operation. Other measures include a restriction on the legislative competence of the devolved administration through a requirement that all legislation is compatible with the protocol.

### **City Corporation Activity**

8. A briefing was supplied to Sir Bob Neil MP who raised the issue regarding clause 26 (interpretation of retained EU law) and the potential for this to cause legal uncertainty, particularly in commercial contract cases. Sir Bob Neil has been amongst the most proactive members in supporting issues of concerns to the financial services sector throughout the Brexit debates.

### **Changes from the original (October) Withdrawal Agreement Bill**

9. New clauses include:

- a. A provision that as a matter of domestic law, a Minister may not agree to an extension of the implementation period;
- b. A requirement that a Minister is to be present during the making of decisions and recommendations of the Joint Committee, which oversees the implementation of the Withdrawal Agreement and a prohibition of the (alternative) written procedure;
- c. A requirement for a Minister to make a written statement where, after the end of the implementation period, the dispute settlement mechanism is used;
- d. A role for the House of Lords EU Select Committee in scrutinising EU legislation during the implementation period. This represents an increase in the House of Lord’s scrutiny role.

10. Removed clauses include:

- a. The non-regression clause on workers’ retained EU derived rights;
- b. The obligation in section 17 of the EU (Withdrawal) Act 2019 to seek an agreement with the EU on unaccompanied children seeking asylum. In its place is a requirement for a Minister to make a statement setting out the government’s policy intentions on the subject within two months of Royal Assent;
- c. The ability for MPs to veto a Ministerial extension of the implementation period;
- d. The oversight role for Parliament in future trade negotiations with the EU.

**Section 26 – Interpretation of Retained EU law**

- 11. Section 26 of the Act grants Ministers the power to make regulations on how courts other than the Supreme Court should “not be bound by retained EU law” or “depart from interpretations of EU case law.” This could include the creation of a test by Ministers, which courts “must apply” and any relevant considerations. Concerns were expressed on the potential effects of this provision and the consequences for legal certainty, which led to several defeats in the House of Lords. Four former Lord Chief Justices expressed their concerns during the debates – an unprecedented action. Notably, in the October Bill, the original clause 26 only contained a power for the UK Supreme Court and the Court of Session to depart from interpretations of retained EU law.
- 12. The five Lords’ amendments were subsequently overturned in the Commons and the Bill passed unamended after 11 days of scrutiny. The Government has emphasised the power will only be exercised after consultation with the senior judiciary.

**Appendices**

None

**Background Papers:**

None

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