



Public Law Project

The European Union (Withdrawal Agreement) Bill Briefing on the Independent Monitoring Authority (IMA) and EU Citizens' Rights Public Law Project, 07 January 2020

Introduction

1. This is a short briefing by the Public Law Project (PLP) concerning the provisions in the European Union (Withdrawal Agreement) Bill ('WAB') regarding the Independent Monitoring Authority (IMA).
2. PLP is an independent national legal charity. We work through a combination of research, policy work, training and legal casework to promote the rule of law, improve public decision-making and facilitate access to justice. We do not take a position on the UK's decision to leave the EU. Rather, our work on Brexit seeks to promote Parliamentary sovereignty, ensure that the executive is held to account and protect the interests of disadvantaged groups.
3. This briefing sets out:
 - a. What the IMA is and how it will protect EU citizens' rights;
 - b. PLP's concerns that the IMA could be undermined or abolished through delegated powers in the WAB;
 - c. Possible questions for Parliamentarians to raise in relation to the IMA.

What is the IMA?

4. Article 159 of the Withdrawal Agreement (WA) requires the UK to have an independent authority to monitor the implementation and application of the citizens' rights provisions of the WA after the end of the transition or implementation period. This is an important safeguard for the rights of EU27 citizens in the UK after the end of the implementation period and ensures that there is a single authority with responsibility for monitoring the implementation of the citizens' rights provisions of the WA. The IMA is required by Article 159 to have "powers equivalent to those of the European Commission", known as the "guardian of the Treaties".
5. Under the WA, the independent authority must have powers to receive complaints and conduct inquiries concerning alleged breaches of the citizens' rights provisions of the WA by UK public authorities. The independent authority must also be able to bring legal proceedings. The authority has to continue to have these powers for at least 8 years after the end of transition and can only be abolished following the Joint Committee's approval, after carrying out an assessment of the authority's functioning.
6. To give effect to Article 159, Clause 15 and Schedule 2 of the WAB make provision for the establishment of an Independent Monitoring Authority (IMA) and as to its functions. The IMA will be operational from the end of the transition period.
7. The IMA's functions as set out in Schedule 2 WAB will, in accordance with the WA, include receiving complaints (paragraph 29); undertaking inquiries (paragraph 25); preparing written reports following those inquiries (paragraph 26) and applying for

judicial review or to intervene in legal proceedings to promote the adequate and effective implementation of the citizens' rights provisions of the WA (paragraph 30).

Concerns

8. Paragraphs 39 and 40 of Schedule 2 of the WAB contain provisions that may allow the Secretary of State to make fundamental changes to, and even abolish, the IMA by secondary legislation.
9. **Paragraph 39 of Schedule 2** provides that the Secretary of State may, by regulations, transfer the functions of the IMA to another "relevant public authority". PLP is concerned that a Secretary of State may attempt, through regulations, to dissipate the functions of the IMA across several public authorities. The WA requires there to be a single, independent authority that is sufficiently empowered to monitor citizens' rights. Any dissipation of the IMA's powers would be inconsistent with the WA and could weaken the protection of citizens' rights which it is intended to ensure.
10. Paragraph 39(5)(a) states that the Secretary of State can even abolish the IMA through Regulations made under this power. It appears that this power could only be used if all of the IMA's functions had been transferred to another public authority which was exercising them effectively – otherwise the Secretary of State would be in breach of the WA if he made regulations abolishing the IMA before this had been authorised by the Joint Committee. However, no such limitation is stipulated in paragraph 39 of Schedule 2.
11. **Paragraph 40 of Schedule 2** allows the Secretary of State to remove functions of the IMA, or even abolish it, if it appears to her that doing so would be compliant with the relevant provisions of the WA, including the requirement for the approval of the Joint Committee.
12. The IMA will have a key role in monitoring and protecting EU citizens' rights after Brexit. As such, the Secretary of State should not be able to make fundamental changes, or even abolish it, by secondary legislation. Any amendments to the IMA must be by primary legislation and in accordance with the WA.
13. PLP therefore supports Amendment 37 to the WAB:
"Schedule 2, page 59, line 15, leave out paragraphs 39 and 40"

Questions

14. Parliamentarians may wish to raise the following questions to seek clarity on paragraphs 39 and 40 of Schedule 2 WAB:
 - a. If the Secretary of State makes regulations under paragraph 39 of Schedule 2 to transfer the IMA's functions to another public authority, would those functions have to be transferred in their entirety?
 - b. What constitutes a "relevant public authority" for the purposes of paragraph 39 of Schedule 2?
 - c. Will the Secretary of State be able to abolish the IMA under either paragraph 39 or 40 of Schedule 2 without approval of the Joint Committee as stipulated in Article 159(3) WA?

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