

NI Protocol Bill

Overview of the stages of bringing it into effect

Note: In this overview, the NI Protocol Bill is described as both a 'Bill' and an 'Act'. Prior to Royal Assent, it is a Bill. After Royal Assent it is an Act.

Accordingly, when addressing matters which would apply post-Royal Assent, it is described as an Act, and when addressing matters pre-Royal Assent, it is described as a Bill.

The Protocol Bill in of itself does nothing, even at the point of Royal Assent. It cannot satisfy any of the DUP's key tests, because in of itself all that it does- at the point of enactment- is provide the mechanisms by which those tests can be satisfied- but does not satisfy them without further action by Ministers of the Crown.

Once the Bill receives Royal Assent and becomes an Act, section 21-26 comes into effect at this stage, pursuant to section 26 (2) of the Act. This brings into force only the final provisions of the Act and doesn't include any of the core provisions, such as excluding the effect of 'excluded provisions' of the Protocol in domestic law via stripping out the supremacy of section 7A of the European Union (Withdrawal) Act 2018.

Section 26 (3) of the Act provides:

26 Extent, commencement and short title

.....

.....

(3) The other provisions of this Act come into force on such day or days as a Minister of the Crown may, by regulations, appoint.

As can be seen, the core provisions of the Bill- including the exclusion from domestic law of the provisions of the Protocol- only come into force on "*such a day or day as a Minister of the Crown may, by regulations, appoint.*"

The inclusion of the word 'may' rather than 'shall' reinforces that this is a discretionary choice. In theory, a Minister may choose to never bring the core provisions into force at all.

Therefore, unless and until the commencement order is laid bringing into force the core provisions of the Act, then it in fact does absolutely nothing post-Royal Assent.

The Bill must not only receive Royal Assent and then subsequently be subject to a commencement order for its key provisions, but thereafter the changes envisaged by

the intent outlined in the Bill and by the Government can only take place once Regulations are laid by a Minister of the Crown.

In consequence, the DUP's key tests can only be seriously said to be potentially satisfied once three stages have been completed as follows:

(1) Bill receives Royal Assent

(2) Core provisions of the Act are brought into force via commencement order pursuant to section 26 (3)

(3) Regulations are laid to give effect to the intent of the Act

Absent the completion of all three stages, nothing happens. It is therefore intellectually dishonest and/or displays a fundamental misunderstanding as to the effect of the Bill, to suggest that its enactment in of itself has any impact on the Protocol. It plainly does not without further action to (i) bring the core provisions into force and (ii) the laying of Regulations to give effect to the purported intent of the Act.