

My intervention in the debate on the amendments for the Northern Ireland Protocol Bill

Rt Hon Sir John Redwood MP (Wokingham) (Con): Has the Minister ever heard the Opposition point out that the EU is breaking the protocol by diverting our trade and undermining the Good Friday agreement? Has he ever heard them asking to see the legal advice that the EU purports to use when it is so clearly violating the protocol?

Michael Ellis, Paymaster General, Minister of State, Cabinet Office: My right hon. Friend makes an excellent point, as usual. I have to say that I have never heard those requests.

Amendment 10, again tabled by the hon. Member for Foyle, relates to the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland. They are, of course, important and well-respected institutions. They were established on the basis of the Belfast/Good Friday agreement. They undertake important duties and any change to their remit should not happen arbitrarily. The Government engage regularly with the commissions and they have powers to provide advice to the Government on issues arising from article 2 of the protocol. The Government have engaged broadly on the issues created by the protocol with stakeholder groups across business and civic society in Northern Ireland, the rest of the United Kingdom and internationally. In fact, the engagement has been considerable. As the Committee will know, the Bill provides specific powers to establish a new regime in Northern Ireland which addresses the issues with the current operation of the protocol. We are consulting stakeholders on the detail of how the powers are to be used. We will give plenty of notice to those affected in due course. Therefore, amendment 10 would compel the Government to do what, in many cases, they already intend to do.

We are moving quickly with the Bill because the situation in Northern Ireland is pressing. The power in clause 15 that would, among other things, allow Ministers to reduce the amount of the protocol that is excluded is designed to ensure that we can get the final, detailed design of the regime right. Its use is subject to a necessity test against a defined set of permitted purposes. It is designed to provide stakeholders in Northern Ireland with certainty that the Government will deliver the solutions that we have outlined to the problems that the protocol is causing.

It is essential that the power can be used quickly if needed. Although, in normal cases, the Government will of course engage with stakeholder groups in Northern Ireland, there may be occasions when the urgency of a situation means that the Government need to act swiftly. This amendment risks tying the Government's hands behind their back, and that is why I ask the hon. Member for Foyle not to press it.

Amendment 40 is in the name of the right hon. Member for Tottenham, who I do not think is in his place. This is the first of a number of amendments from him in the same vein, to which the Government have a single view. The amendment would replace the test of “appropriateness” in the use of the Bill’s delegated powers with one of “necessity”. Members should not confuse this with the international law doctrine of necessity, as the right hon. Member is doing.

The question covers well-trodden ground. Members may remember the extended debates on this topic during the passage of the European Union (Withdrawal) Act 2018. The powers there are similar to those in this Bill, the European Union (Withdrawal Agreement) Act 2020 and the European Union (Future Relationship) Act 2020. I note that the House and their lordships in the other place ultimately accepted that the word “appropriateness” in this context was, in fact, appropriate.

The word “necessary”, which this amendment seeks to import, is a very strict legal test for a court to interpret. Where there are two or more choices available to Ministers as to what provision is appropriate to address the issues that the protocol has created, arguably neither one is strictly necessary, because there is an alternative. Ministers need to be able to exercise their discretion to choose the most appropriate course. That is why the word “appropriate” is the correct word.

There are clearly multiple choices in how to replace the elements of the protocol that no longer apply in our domestic law. The Government must propose that which would be the most appropriate choice. That is why we have chosen that word. I therefore ask the right hon. Member not to press his amendment.