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UK Exit from the EU Briefing Paper Series Withdrawal Agreement, Protocol and Political Declaration - Some Employment Considerations for Northern Ireland

Paper 4 of 6

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This is paper 4 of a 6-part series. It highlights provisions under the Withdrawal Agreement, the Protocol and the Political Declaration, which concern employment rights and migrant workers, raising considerations for Northern Ireland. Throughout, it includes potential scrutiny points.

This information is provided to Members of the Legislative Assembly in support of their duties. It is not intended to address the specific circumstances of any particular individual. It should not be relied upon as professional legal advice, or as a substitute for it.

Introduction

This briefing paper is the fourth in a six-part series to support the Committee for the Economy (the Committee), as the United Kingdom (UK) transitions after its formal departure from the European Union (EU) on 31 January 2020. The Withdrawal Agreement,¹ the Protocol² and the Political Declaration³ all interrelate, to guide the UK's transition. Detail on each instrument can be found in papers 1 and 2 of this briefing paper series.

Collectively, all these instruments will serve to define the future relationship between the UK and the EU, defining how Northern Ireland (NI) will be governed in a number of important areas. Additionally, the outcome of the ongoing negotiations mandated by the Withdrawal Agreement⁴ and specified in the Political Declaration, will define further outstanding issues relating to the future relationship between the UK and the EU, which will determine the application of the Protocol under the Withdrawal Agreement following transition.

In light of the above, the Committee is interested in outstanding matters relating to the Protocol and the Political Declaration; in particular, those that are relevant to the Committee's portfolio, and inevitably will have implications for NI post transition. To support the Committee in its consideration in the above areas, this paper is part of a six-part series, which has been compiled to address various themes of apparent relevance to the Committee. Note that none of the papers in the series is intended to provide a comprehensive assessment of the noted outstanding matters, as that is beyond the scope of the series.

In line with the overarching purpose of the series, this paper addresses some employment considerations arising under the Withdrawal Agreement, the Protocol and the Political Declaration, in particular those concerning employment rights and migrant workers. To facilitate the Committee, section 1 of the paper briefly highlights two points for context: first, employment within the context of NI's devolved governance

¹ UK Government, Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (17 October 2019)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf

² UK Government, Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, Protocol on Ireland/Northern Ireland (19 October 2019)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840230/Revised_Protocol_to_the_Withdrawal_Agreement.pdf

³ UK Government, Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom (17 October 2019) paragraph 3

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840231/Revised_Political_Declaration.pdf

⁴ UK Government, Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (17 October 2019) Articles 184

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf

arrangements; and second, the significance of the EU having maintained a “level playing field” of employment rights amongst Member States. This section aims to inform subsequent discussion in sections 2-3 regarding provisions found in the Political Declaration, the Protocol and the Withdrawal Agreement that concern employment rights and migrant workers. Thereafter, section 4 provides concluding remarks, drawing on the earlier sections. Potential scrutiny points are highlighted in blue boxes throughout the paper, aiming to support the Committee in its scrutiny role.

To consider other Protocol proposals and related potential NI implications, the following papers in this six-part series are available, namely:

- Paper 1 – Overview of Governance Arrangements.
- Paper 2 – Customs and Trade;
- Paper 3 – Tax and Excise Duties;
- Paper 5 – State Aid; and,
- Paper 6 – Single Electricity Market

1 Context-setting information

Before discussing the provisions set out later in the paper, some context-setting information is helpful. First, this section provides a simple recap of key points concerning NI devolved governance arrangements; followed by short explanation of the significance that the EU has played in maintaining a “level playing field” in terms of employment rights and competitiveness amongst Member States.

1.1 NI devolved governance

Under the 1998 devolution settlement in NI, entitled the *Belfast (Good Friday) Agreement (BGFA)*,⁵ and later enshrined in the NI Act 1998,⁶ employment is a devolved matter. This means matters relating to employment in NI are within the “legislative competence” of the Assembly. However, under the Sewel Convention, the Assembly can consider a “legislative consent motion”, and decide either to consent or to withhold consent on motions seeking to enable the UK Parliament to pass legislation on devolved matters within the Assembly’s legislative competence, i.e. areas in which it is empowered to govern.⁷

Second, the *BGFA* provide for equality and rights of individuals in NI, specifically:⁸

⁵ (1998) *The Agreement reached in the multi-party negotiations:*

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf

⁶ Northern Ireland Act (1998) <http://www.legislation.gov.uk/ukpga/1998/47/contents>

⁷ Institute for Government (2020) *The Sewel Convention has been broken by Brexit.*

https://www.instituteforgovernment.org.uk/blog/sewel-convention-has-been-broken-brexit-reform-now-urgent?gclid=EAIaIQobChMlkvadqp7Z6QIVS7TtCh0dPQadEAAAYASAAEgK6BfD_BwE

⁸ (1998) *The Agreement reached in the multi-party negotiations:*

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf

...the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity.

The *BGFA* also established new institutions to safeguard the rights of individuals, for example, the NI Human Rights Commission (NIHRC) and the Equality Commission NI (ECNI). The NI Act 1998 subsequently placed the above equality and rights of individuals in NI, along with the noted institutions, on a legislative footing.⁹

1.2 “Level playing field” - Rights and competitiveness

A large part of employment law in NI is derived from and grounded in EU law, for example, maternity rights, working time and discrimination. The EU established a minimum level of requirements for each Member State to transpose and implement *via* its employment law, at both national and sub-national levels of government. The underlying intention is to establish a “level playing field”, so that the individual Member States keep their rules and standards generally in line with one another. This is to protect workers’ rights and to prevent Member States from giving their businesses a competitive advantage over other by allowing lower standards, and in turn allowing their businesses to incur lower costs. Nonetheless, Member States can enhance such rights if they choose to do so.

With the UK out of the EU, it remains to be seen whether the UK will seek to diverge from EU regulations in the area of employment in future, for example, to increase its economic competitiveness. Consequently, this could result in potential differences arising in future in NI, GB and the Republic of Ireland (RoI) in relation to employment.¹⁰ This in turn could impact the NI labour market in that potential employees could decide to find work in the jurisdiction that offers the most beneficial employment terms and conditions, for example, the most favourable limits on working hours or superior “in-work” pension benefits. In the alternative, businesses could seek to set up or to move to the jurisdiction that allows them to introduce lesser terms and conditions for their workers, to reduce costs. Both these factors could influence where businesses choose to locate their offices in future.

It also remains to be seen what will occur on this front in terms of NI, given employment is a devolved matter, and the fact that the Assembly withheld its consent on the 20 January 2020 legislative consent motion concerning the UK Government’s Withdrawal Bill – see below at the end of section 2.

⁹ Northern Ireland Act (1998) <http://www.legislation.gov.uk/ukpga/1998/47/contents>

¹⁰House of Commons Library (2019) *The October 2019 EU-UK Withdrawal Agreement*.
<https://researchbriefings.files.parliament.uk/documents/CBP-8713/CBP-8713.pdf>

Could the Department for the Economy (DfE) advise in relation to the following?

1. How will the DfE ensure that employment standards in NI do not fall below those of GB and/or the EU?
2. How will the NI Executive monitor EU law to check for potential divergence of employment rights in NI?
3. What structures are in place to ensure there is no diminution of employment rights in NI?
4. Are there any additional resources allocated to the DfE in this regard?
5. Have the DfE engaged with the Department of Finance regarding additional resources that may be needed, for example, from Her Majesty's Treasury to undertake appropriate monitoring in this regard?
6. How will the NI Executive assist employers and NI businesses to keep up to date with any relevant changes in EU employment law?
7. Have any assessments been undertaken by the DfE to examine the issue of potential employment differences arising in NI, GB and the RoI in terms of employment terms and conditions?
8. Have any such assessments sought to include examination of potential impacts arising from those types of differences, such as where businesses choose to locate their offices?

2 Provisions concerning employment rights

In terms of equality and rights, it is notable that the introduction to the UK's *Approach to the NI Protocol*, published on 20 May 2020, the UK Government expressed the importance of protecting the *BGFA* in the ongoing Protocol negotiations, stating:¹¹

Our approach will be guided at all times by our overall aims of preserving and strengthening Northern Ireland's place in our United Kingdom, and of protecting the huge gains from the peace process and the Belfast (Good Friday) Agreement 1998 ('the 1998 Agreement'). Protection of the 1998 Agreement is a grave and solemn responsibility for both the UK and Irish Governments as its cosignatories, and indeed both the UK and the EU have affirmed in the Protocol that the Agreement must be protected in all its parts, in the context of implementing the Withdrawal Agreement.

¹¹ Cabinet Office (2020) *UK's Approach to the NI Protocol*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886289/2020-05-20_Command_Paper_UK_s_Approach_to_the_Northern_Ireland_Protocol-gov.uk.pdf

This is evidenced in the Preamble to the Protocol:¹²

AFFIRMING that the Good Friday or Belfast Agreement of 10 April 1998 between the Government of the United Kingdom, the Government of Ireland and the other participants in the multi-party negotiations (the "1998 Agreement"), which is annexed to the British-Irish Agreement of the same date (the "British-Irish Agreement"), including its subsequent implementation agreements and arrangements, should be protected in all its parts.

More specifically, in terms of employment, the Political Declaration states:¹³

*...the Parties should uphold the common high standards applicable in the Union and the United Kingdom at the end of the transition period in the areas of state aid, competition, social and **employment** standards...*
[bolded emphasis added]

At the Protocol’s Article 2, it provides for the “Rights of Individuals”, which is relevant to employment rights. It stated:

The United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, including in the area of protection against discrimination, as enshrined in the provisions of Union law listed in Annex 1 to this Protocol, and shall implement this paragraph through dedicated mechanisms.

The EU directives contained in Annex 1 of the Protocol are listed in Table 1 below:¹⁴

Table 1: Provisions of EU Law Referred to in Article 2(1)

EU LAW Provisions	Summary
EU Directive 2004/113/EC of 13 December 2004.	Implementing the principle of equal treatment between men and women in the access to and supply of goods and services.
EU Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006	On the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.
EU Directive 2000/43/EC of 29 June 2000	Implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

¹² NI Protocol (2019)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf (Page 292)

¹³ UK Government, Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom (17 October 2019) Page 13.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840231/Revised_Political_Declaration.pdf

¹⁴ https://ec.europa.eu/commission/sites/beta-political/files/revised_withdrawal_agreement_including_protocol_on_ireland_and_northern_ireland.pdf

EU Directive 2000/78/EC of 27 November 2000	Establishing a general framework for equal treatment in employment and occupation.
EU Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010	On the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC.
EU Directive 79/7/EEC of 19 December 1978	On the progressive implementation of the principle of equal treatment for men and women in matters of social security.

All the listed directives will continue to apply in NI during the transition period, and thereafter, in perpetuity.¹⁵ This means they will continue to have legal effect in NI,¹⁶ including subsequent changes that could be made to those directives in future.

It also is noteworthy that the UK Government has committed to support the NIHRC and the ECNI in this regard. It stated:

*We will ensure that the NIHRC and ECNI have the resources they need to properly carry out their new statutory functions as part of the dedicated mechanism.*¹⁷

At Article 14 of the Protocol, the NIHRC and the ECNI are given a role in the negotiations *via* the NI Specialised Committee. It states that the Specialised Committee shall:¹⁸

...consider any matter of relevance to Article 2 of this Protocol brought to its attention by the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland, and the Joint Committee of representatives of the Human Rights Commissions of Northern Ireland and Ireland.

Consequently, both these bodies are empowered to monitor, report on, and enforce the commitments under Article 2.¹⁹ This is perhaps an important role in terms of ensuring NI's voice is heard in the Protocol negotiations.

Finally, it also should be noted that the Withdrawal Agreement includes powers for NI Ministers to make regulations to implement the Protocol. However, in January 2020, the Assembly withheld its consent on a legislative consent motion regarding the UK's Withdrawal Agreement Bill. The significance of this is that the Assembly did not agree to the UK Parliament making regulations when implementing the Protocol, including, for example, those relating to the Protocol's Annex 1. As a result, questions arise as to

¹⁵ House of Commons Library (2019) *The October 2019 EU-UK Withdrawal Agreement*. <https://researchbriefings.files.parliament.uk/documents/CBP-8713/CBP-8713.pdf>

¹⁶ The democratic consent mechanism only refers to Articles 5-10 of the Protocol.

¹⁷ Ibid.

¹⁸ UK Government, Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, Protocol on Ireland/Northern Ireland (19 October 2019) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840230/Revised_Protocol_to_the_Withdrawal_Agreement.pdf

¹⁹ Cabinet Office (2020) *UK's Approach to the NI Protocol*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886289/2020-05-20_Command_Paper_UK_s_Approach_to_the_Northern_Ireland_Protocol-gov.uk.pdf (page 16).

how the Assembly will consider, deliberate and decide on matters addressed by the UK Parliament in that regard, which are within the Assembly's legislative competence. An academic recently observed:²⁰

The NI Assembly withheld its legislative consent to the powers taken by the UK government in the Withdrawal Agreement Act (2020) in order for it to be able to legislate in areas within devolved competence through the use of statutory instruments. This means that there will be virtually no chance of NI MPs shaping the legislation that affects Northern Ireland vis-à-vis the implementation of the Protocol, let alone being able to annul that legislation if they object to it.

That academic further argued that regulations coming from the UK and the EU after transition will place NI in a unique position, which will require NI's representation within the UK to be enhanced.²¹

Could the Department for the Economy (DfE) advise in relation to the following?

9. How will the UK Government ensure that the NIHRC and the ECNI have the resources they need to fully and properly discharge their responsibilities in the context of employment matters?
10. Does this mean financial resources are to be offered to these bodies?
11. If so, will the NI Executive carry any of this extra burden *via* allocations from the NI Block Grant?
12. If the resources mentioned above refer to extra staff for the NIHRC and the ECNI, how will these extra be recruited? For example, will they be recruited externally or seconded from the NI Civil Service?

3 The Protocol, Migrant workers and UK Immigration Proposals

Article 3 of the Protocol maintains the "Common Travel Area" arrangements between NI and the Republic of Ireland (RoI). This means that RoI citizens will continue to have the right to work in the UK beyond 31 December 2020. In addition, there will be no change to the way EU citizens outside the RoI prove their right to work in NI until 1 January 2021, when they will have to provide their right to work.²² EU citizens and their family members who have been living in the UK before 1 January 2021 will be required to apply to the EU Settlement Scheme to continue living in the UK after 30 June

²⁰ Hayward. K et al (2020) *Anticipating and Meeting New Multilevel Governance Challenges in Northern Ireland after Brexit*: <https://ukandeu.ac.uk/wp-content/uploads/2020/05/UKICE-Post-Brexit-Gov-NI-Report.pdf>

²¹ Hayward.K et al (2020) *Anticipating and Meeting New Multilevel Governance Challenges in Northern Ireland after Brexit*: <https://ukandeu.ac.uk/wp-content/uploads/2020/05/UKICE-Post-Brexit-Gov-NI-Report.pdf>

²² NIBusinessinfo (2020) *Brexit : Employing EU, EEA and Swiss Citizens after 1 January 2021*: <https://www.nibusinessinfo.co.uk/content/brexit-employing-eu-eea-and-swiss-citizens-after-1-january-2021>

2021.²³ For those, the proposed new immigration system, if enacted, would apply to people arriving in the UK from 1 January 2021, requiring EU citizens outside RoI to get a visa in advance.²⁴

3.1 Proposed New UK Immigration System

In December 2018, the UK Government published a White Paper entitled *The UK's Future Skills-Based Immigration System*.²⁵ It contained recommendations from the Migration Advisory Committee (MAC), including the use of a points-based system for entry and a minimum annual salary threshold of £30,000 for skilled workers. In January 2020, the MAC published a report on salary thresholds and the points-based system. The report revised the minimum salary threshold downwards to £25,600. It, however, kept the points-based approach.²⁶

In relation to UK regional wage differentials, the MAC report stated:

The MAC considered the different arguments for and against regional salary thresholds. Outside of London, differences in earnings across regions are not large enough to justify the extra complication. Earnings differences within regions and devolved administrations are larger than those between them. Institutionalising some parts of the UK as 'lower wage' also does not seem to be the right way to reduce regional inequalities.²⁷

However, the MAC report suggested that NI should receive some special consideration in this regard, stating:²⁸

The situation of Northern Ireland is unique as the only part of the UK with a land border with the EU and a labour market more distinct from the rest of the UK. Special consideration could be given to Northern Ireland especially if it comes to have a different relationship with the EU compared to the rest of the UK.

In February 2020, the UK Government issued a policy statement on a new UK points-based immigration system.²⁹ The policy statement confirmed a commitment to the £25,600 salary threshold, but made no reference to NI and special consideration. At

²³ <https://www.gov.uk/guidance/employing-eu-eea-and-swiss-citizens-and-their-family-members-after-brexit#right-to-work>

²⁴ Ibid.

²⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766465/The-UKs-future-skills-based-immigration-system-print-ready.pdf

²⁶ Migration Advisory Committee (2020) A Points-Based System and Salary Thresholds for Immigration: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/873155/PBS_and_Salary_Thresholds_Report_MAC_word_FINAL.pdf

²⁷ Migration Advisory Committee (2020) A Points-Based System and Salary Thresholds for Immigration: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/873155/PBS_and_Salary_Thresholds_Report_MAC_word_FINAL.pdf

²⁸ Migration Advisory Committee (2020) A Points-Based System and Salary Thresholds for Immigration: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/873155/PBS_and_Salary_Thresholds_Report_MAC_word_FINAL.pdf

²⁹ <https://www.gov.uk/government/publications/the-uks-points-based-immigration-system-policy-statement/the-uks-points-based-immigration-system-policy-statement>

the time of writing, the *Immigration and Social Security Co-ordination (EU Withdrawal) Bill*, based on the MAC recommendation, is currently going through the House of Commons, having passed the Commons Stage on 18 May 2020.³⁰

3.2 Implications for the NI labour Market

Following the publication of the UK's White Paper³¹ on these proposals, the DfE issued a response. The DfE response highlighted key implications for the NI labour market and provided a summary of evidence and analysis on:³²

- Profound importance of migrant workers to the NI economy across the skills spectrum;
- Proposed migrant workers' salary thresholds and NI workers' earning levels; and,
- NI's unique land border position with RoI in the context of immigration, including migrant workers.

The analysis highlighted the disproportionate impact of restricting the flow of EU migrant labour on the NI economy, due to NI's heavy reliance on EU migrants in key sectors such as agri-food, social care, manufacturing and hospitality. It stated,³³

In 2018 for example, 65% of migrant workers in NI were from EU26 countries - the equivalent figure for the UK as a whole was just 40%.

And:

..the sectors with the highest share of EU workers are manufacturing, distribution and hotel and restaurants. In 2018 these sectors accounted for over half (54%) of EU26 jobs. In addition, [...] survey data for 2018/19 showed NI had the second highest share of EU workers in the manufacturing sector, after London, compared to the other UK regions.

The NI Minister for the Economy has reiterated the reliance of the NI labour market on EU migrant workers, stating:³⁴

Analysis undertaken by my Department highlights the significant contribution migrant workers make to the NI economy across the skills spectrum.

This is evident in a number of key sectors that currently rely significantly on EEA migrants, including agri-food, social care, manufacturing and

³⁰ [https://hansard.parliament.uk/commons/2020-05-18/debates/7FA826EF-0D2F-473A-B036-78D1A7F01A31/ImmigrationAndSocialSecurityCo-Ordination\(EUWithdrawal\)Bill](https://hansard.parliament.uk/commons/2020-05-18/debates/7FA826EF-0D2F-473A-B036-78D1A7F01A31/ImmigrationAndSocialSecurityCo-Ordination(EUWithdrawal)Bill)

³¹ <https://www.gov.uk/government/publications/the-uks-future-skills-based-immigration-system>

³² DfE (2020) *Northern Ireland evidence relevant to the UK Government's Immigration White Paper* <https://www.economy-ni.gov.uk/sites/default/files/publications/economy/Northern-Ireland-evidence-UK-government-immigration-white-paper.pdf>

³³ DfE (2020) *Northern Ireland evidence relevant to the UK Government's Immigration White Paper* <https://www.economy-ni.gov.uk/sites/default/files/publications/economy/Northern-Ireland-evidence-UK-government-immigration-white-paper.pdf>

³⁴ AQW 2419/17/22: <http://aims.niassembly.gov.uk/questions/printquestionssummary.aspx?docid=295567>

hospitality. In that context, future restrictions on access to EEA³⁵ migrants are likely to lead to recruitment challenges for these and other sectors.

NI has particular vulnerabilities given its sectoral structure. We have a higher concentration of manufacturing and agricultural jobs, and lower average wages.

Alongside Executive colleagues, I will continue to raise these issues with the UK Government.

The DfE also highlighted the risk of NI businesses relocating to the RoI, stating:

...the proposed immigration restrictions will potentially incentivise EU26 migration to Ireland, providing a competitive advantage on access to labour and skills within the all-island economy and increasing the risk of NI business relocating in the Republic of Ireland.

Perhaps the most significant of these is the salary threshold proposal of £25,600, as that threshold is above the level for the manufacturing and agriculture sectors? It therefore seems that migrants looking for work in NI in these sectors will not be allowed entry.

Could the Department for the Economy (DfE) advise in relation to the following?

13. How could the NI Executive mitigate against the potential for an undersupply of migrant workers in the manufacturing, agriculture and hospitality sectors?
14. Is there a NI “special case” scenario, given the importance of migrant workers in various sectors of the NI economy?
15. What potential amendments could be made to the UK Immigration Bill in this regard?
16. How could the DfE in particular, and the NI Executive in general, support employers which would have the additional financial burden of increased administration costs that could arise from the need to recruit from outside the UK?
17. How could the DfE ensure that Skills gaps resulting from an undersupply of migrant workers are filled?

³⁵ EEA Is the European Economic Area its countries include EU Member States plus Iceland, Liechtenstein and Norway.

4 Concluding Remarks

With the ratification of the Withdrawal Agreement, the UK exited the EU on 31 January 2020, and is currently in a transition period, which is due to end on 31 December 2020. At the time of writing, an extension of this transition period is still possible. However, an agreement for such an extension would need to be reached by 1 July 2020, to have effect under the Withdrawal Agreement. This is because at the end of the transition period, the Protocol provisions under the Withdrawal Agreement, along with those arising out of the Political Declaration, which currently are still to be agreed, will automatically enter into force.

The Protocol provides for the rights of individuals under Article 2, which is relevant to the context of employment. In particular, the six EU Directives listed in Annex 1 of the Protocol relate to equality and discrimination issues. These Directives will automatically apply in NI, and will continue to do so after transition. The UK has agreed, under Article 2, that none of the individual rights safeguarded under the *BGFA* that are enhanced or underpinned by EU law can be diminished.³⁶ The importance of this has been reiterated recently by academics, who stated:

..in such ways, the rights of all citizens in Northern Ireland are a not-insignificant part of the region's unique relationship with the EU post-Brexit.

The role given to the NIHRC and the ECNI in monitoring, reporting on and enforcing the commitments under Article 2 provides NI representation in the ongoing Protocol negotiations.

As employment matters are devolved to NI, the future of employment rights generally will be determined by within NI, with the exception of the six EU directives listed in Annex 1 of the Protocol. Questions will arise for the NI Executive in relation to future employment rights and standards after transition.

The Executive may choose to strengthen employees' rights or to strengthen the rights of the employer. For example, it may seek to tighten industrial action legislation, making striking more difficult. Or, it may decide to make it simpler, by removing the pre-industrial action balloting system currently in place, thus giving more freedoms to trade unions; or, it may seek to make changes in zero hours contracts, working time directives, parental rights, and so on, they all will be determined by NI's devolved government.

The manufacturing, agriculture and hospitality sectors of the NI labour market rely heavily on migrant workers from the EU. These sectors are traditionally among the lowest paid. The proposed new UK immigration system, due to come into force after transition, with its salary threshold of £25,600, will potentially affect the NI labour market disproportionately due to the important role EU migrants play in these low paid

³⁶ Hayward.K et al (2020) *Anticipating and Meeting New Multilevel Governance Challenges in Northern Ireland after Brexit*: <https://ukandeu.ac.uk/wp-content/uploads/2020/05/UKICE-Post-Brexit-Gov-NI-Report.pdf>

sectors. Additionally, the RoI may attain a competitive advantage in hiring these migrants, as it will not adopt this type of immigration system.

For NI, among the most important issues surrounding the UK exit are those addressing how the Executive can influence the ongoing discussion on outstanding matters and how it is to be accountable to the NI Assembly. Questions also exist in relation to how the NI Assembly will influence legislation directly affecting it.

It is essential that the Committee maintains a watching brief on employment-related developments arising from the Protocol and the Political Declaration, which could have implications for NI, particularly in light of the economic downturn currently in place due to the effect of Covid-19 on the NI labour market.