**The United Kingdom’s withdrawal from the European Union and its impact on human rights and business**

Dr David Russell

Chief Executive

Northern Ireland Human Rights Commission

Notification of the UK’s withdrawal from EU has initiated a two year political process during which the domestic legal and regulatory framework will be reconfigured. Negotiations will also take place on further changes to be implemented after the two year period which will determine the future relationship between the UK and the EU, as well as bi-lateral relationships between the UK and the remaining 27 member states.

This seismic constitutional flux cannot be overstated. It both poses challenges and presents opportunities for businesses currently operating from within the UK or those seeking to establish trading.

The UK government has stressed the need to achieve a stable and smooth transition. Its overall approach to reconfiguring the domestic legal and regulatory framework is to convert the body of existing EU law into domestic law, after which the Westminster Parliament (and, where

appropriate, the devolved legislatures in Scotland, Wales and Northern Ireland) will be able to decide which elements of that law to keep, amend or repeal.

There is no single figure for how much EU law already forms part of UK law. The government White Paper published in March 2017 cites that there are currently over 12,000 EU regulations in force and approximately 7,900 statutory instruments which have implemented EU legislation. This does not include statutory instruments made by the devolved administrations which also observe and implement EU obligations in areas within their competence.

If, after exit, a conflict arises between two pre-existing laws, one of which is EU-derived and the other not, then the EU-derived law will, we are told, continue to take precedence. Any other approach would change the law and create uncertainty as to its meaning.

This approach, we are also told, will give coherence to the statute book and simultaneously restore a sovereignty that has been eroded over time by EU institutions, or all but lost in the opinion of Euro-sceptics. The aim is to ensure that, as a general rule, the same laws will apply after the UK leaves the EU as did before. The official message, for the minute, at least regarding regulations appears to be: everything is about to change and yet nothing is going to change.

One area of law that will be affected by the withdrawal from the EU is human rights. The UK has ratified the Charter of Fundamental Rights of the European Union, which according the government White Paper will no longer apply. The UK will however continue to honour its commitment to follow international law, which includes many United Nations human rights treaties that replicate the provisions of the Charter. Crucially, the justiciability of these international instruments is significantly different from the framework created by the EU.

At the moment any alleged breach of the Charter of Fundamental Rights can result in an legal challenge before the UK domestic courts when attached to any matter of EU law. This includes provisions such as the right to protection of personal data, freedom to conduct a business, the right to property, consumer protection and the right to access to services of general economic interest, as well as workers rights like the right of collective bargaining and action, and protection in the event of unjustified dismissal.

There is no suggestion that these rights will disappear following EU withdrawal. On the contrary, the government has stated that the rights in the EU treaties that can be relied on directly in courts by an individual will continue to be available in UK law and the historic case law of the EU Court of Justice in Luxemburg will be given the same binding, or precedent, status in domestic courts as decisions of the UK Supreme Court. But, once withdrawal has happened the position going forward is much less clear.

The proposed Great Repeal of the European Communities Act 1972 will remove the supremacy of EU law including the requirement that the domestic courts follow the rulings of the Court of Justice when making judgement in cases that address human rights. The UK will be free to increasingly determine its own path separate from the remaining 27 EU member states albeit within the confines of any negotiated relationship. The doctrine of Parliamentary sovereignty will come to the fore and in this regard, the terms ‘soft’ and ‘hard’ BREXIT are of central importance.

To crash out of the EU may result in full autonomy for the UK to act as is sees fit, taking little or no cognisance of the Court of Justice. Everything between this position however and the current obligations as a member of the EU is speculation. At the minute only one reasonable conclusion can be drawn about the future; namely, that we are in a period were the only certainty is that we are facing the unknown.

Outside of the legal and regulatory framework of EU membership the UK government is correct to point out that all other obligations, both domestic and international will remain. For the purpose of human rights and business this means the requirements of the Human Rights Act 1998, the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights at Strasbourg, the other treaties of the Council of Europe and the United Nations. Any company wishing to maximise opportunities and mitigate risks when operating within the UK in the future should therefore be concerned with ensuring compliance with the principles and duties that derive from human rights law and that will continue to have legal force following EU withdrawal.

A good starting point in this regard is the United Nations Guiding Principles on Business and Human Rights adopted by the Human Rights Council in 2011. This soft law instrument is the most definitive and widely recognised commentary on how business should be conducted to protect, respect and remedy human rights.

In 2013 the UK was the first state to produce a business and human rights National Action Plan as called for by the UN Guiding Principles. In 2016 the UK updated the plan focusing largely on the states duty to protect human rights when engaging with the private sector.

The financial industry has also begun to consider how a range of products and services can affect human rights. A number of banks that formed the “Thun Group,” released a report in 2013 that explored the responsibilities of banks under the UN Guiding Principles with respect to specific activities, such as retail and private banking, corporate and investment banking, and asset management. The report concluded that banks should consider creating risk management models for human rights that encompass a wide array of services and products.

To be human rights compliant companies are expected to conduct due diligence to identify whether they cause an adverse impact; contribute to it; or whether their operations, products, or services are directly linked to an adverse impact through their business relationships. Financial institutions may usefully conduct due diligence by building on existing anti-money laundering, anti-corruption, and sanctions compliance systems, as well as relevant risk management frameworks, some of which already identify actors and contexts that may be linked to significant adverse human rights impacts.

Work started within the financial sector is now supported by the United Nations, which has production a guidance tool specifically designed for financial institutions to provide information on how to identify and manage human rights risks. For those wishing to operate in the UK post EU withdrawal, there must be awareness that outside the EU increasing domestic reliance may be on the legal and regulatory framework of international law.