

Brexit and immigration control in Northern Ireland

Securing control over the UK's borders was the dominant theme of the "Leave" campaign in the run up to the 2016 EU referendum. A campaign which operated against an unashamedly anti-immigration narrative and centred on the politics of increased immigration control. Fast forwarding to the June 2017 UK general election, the Conservative Party Manifesto set out the government's commitment to reduce net migration figures to the tens of thousands, in part by continuing to "bear down on immigration from outside the European Union." This article will consider what such "bearing down" could look like in a post Brexit Northern Ireland.

The Common Travel Area (CTA) covers Ireland, Northern Ireland, Britain, the Isle of Man and the Channel Islands. First established in 1922 to facilitate the free movement of Irish and British citizens, it has been developed via administrative arrangements which are bilateral agreements between Ireland and the UK. The agreements allow passport free movement for Irish and British citizens on journeys within the UK and between the UK and Ireland. So what impact will Brexit have on the CTA? In her March 2017 letter triggering Article 50, Theresa May stated a commitment to maintaining the CTA and avoiding a hard border on the island of Ireland. The UK's Brexit Position Paper on Northern Ireland confirmed that the government is:

....firmly committed to protecting and maintaining the CTA and associated rights.... This means protecting the ability to move freely within the UK and between the UK and Ireland with no practical change from now."

The Belfast Good Friday Agreement (the Agreement) enshrines the right of people born in Northern Ireland to self identify as British or Irish or both. The Strands of the Agreement contain specific North/South and East/West dimensions which, taken alongside the complex constitutional context of Northern Ireland in light of the CTA, and mutual recognition of rights in relation to British/Irish citizens, provides conditions whereby the right to free movement should be considered as applying across the CTA.

The UK's Position Paper recognises this *"unique constitutional framework."*

It is therefore important that the negotiations achieve our shared objective of upholding the Agreement itself, and also that, crucially, the UK and the EU do not do anything to obstruct the wide range of cooperation between Northern Ireland, Ireland and Great Britain in the future partnership.

It recognises that any restrictions imposed on the movement of Irish and British citizens within the CTA would raise issues regarding compliance with the Agreement. The objective of a seamless border, with no return to the hard border of the past, has been repeated by the Prime Minister, the Secretary of State for Northern Ireland, and fully endorsed by politicians in Ireland, North and South. The Position Paper states:

The development of our future immigration system will not impact on the ability to enter the UK from within the CTA free from routine border controls.

contd overleaf...

Contents

Brexit and immigration control in Northern Ireland	1-2
Recent developments around the 8th Amendment in Ireland	3
Johnston Price	4-5
Sharing the Island: Brexit, Constitutional Imagination and the Right of Self-Determination	5-6
Report on the Brexit negotiations- all still to play for	7
Civil Liberties Diary	8



Brexit Law NI Group

While welcoming commitments to a frictionless border, it raises the question as to how immigration control will be carried out if there will be no physical border between the North and South. We believe a number of different means will be perused and measures will be implemented which could have serious human rights implications for minority ethnic communities here. For example, ad-hoc checks conducted on the basis of racial profiling (the form of racial discrimination whereby persons are singled out on the basis of skin colour or other ethnic indicators), increased use of detention for persons who cannot 'satisfy' immigration officers as to their status and the possibility for increased criminalisation of the BME communities. Racial profiling has been criticised by the Northern Ireland Human Rights Commission and the House of Lords in relation to Operation Gull, which targets domestic UK flights and ferries to and from Northern Ireland to identify and arrest undocumented immigrants who may intend to cross the border. The Operation, which arrested 775 people in 2015/2016, has also been criticised for its lack of transparency.

The Position Paper sets out another tool to be used in the absence of border controls, i.e. the extension of immigration control functions and duties into the private and public sector:

When considering the nature of the CTA as a border-free zone, it is important to note that immigration controls are not, and never have been, solely about the ability to prevent and control entry at the UK's physical border... controlling access to the labour market and social security have long formed an integral part of the UK's immigration system.

UK's immigration legislation increasingly imposes duties on non-state actors, e.g. landlords and driving licence agencies, to check one's immigration status at risk of penalty or criminalisation for failing to properly do so. The extension of immigration control functions into sectors where there is little or no oversight risks the use of racial profiling to determine eligibility, and possible denial of essential services.

Northern Ireland could become the most 'immigration policed' part of the UK. Devolved institutions do not have legislative control over immigration law, and related policy is predominantly a matter for the UK Home Office. However, we do have legislative competency in relation to health, for example, and can protect those who are subject to, and impacted by immigration control through the adoption of a more human rights focused approach. Also, there is a growing call across the UK for immigration law to become a devolved matter so as to enable the creation of immigration systems which are more responsive to the needs of the local community. The development of regionally-led immigration systems would enable devolved administrations to adopt a more humane approach. Northern Ireland must join this debate and support the call for control over immigration laws and policies in order to push against a regression of rights and enable us to progress towards increasing respect for human rights and equality for all in a post-Brexit world.

Recent developments around the 8th Amendment in Ireland

Article 40.3.3, the 8th Amendment to the Irish Constitution, was introduced in 1983 and equates the life of a pregnant person with the life of the embryo/foetus. Taoiseach Leo Varadkar has announced that a referendum will be held in 2018 on the 8th Amendment. This announcement follows decades of pro-choice activism, numerous criticisms from international Human Rights bodies, and the direct impact on the lives of tens of thousands of people. In July 2016 there were resolutions in both the Dáil and Seanad that a Citizens' Assembly be formed to consider the 8th Amendment of the Constitution, along with other issues.

The Citizens Assembly

The Citizens' Assembly is a group of 99 people selected randomly to represent Irish society. They have been convened to discuss matters of ethical and political importance, including abortion law. The Citizens' Assembly is an advisory body only. The members of the Citizens' Assembly heard presentations and evidence from a wide range of experts and organisations on all sides of the debate, over a number of meetings from November 2016 to April 2017, producing a report in June 2017. Overall, the members voted in favour of repealing the 8th Amendment, and replacing it with an Amendment providing that legislation on abortion should be made by the Oireachtas. This would mean any future changes would be a legislative rather than a constitutional issue. The Citizens' Assembly also made recommendations on what future legislation might include. They voted 64% to 36% in favour of having no restrictions on the provision of abortion in early pregnancy. They also voted with a majority in favour of liberalising abortion law where the pregnancy is the result of a sex crime, where there is a fatal foetal abnormality, socio-economic reasons for not wanting to continue with a pregnancy, and risk to life and health of the woman. Other recommendations were also made on broader policy changes in relation to improving sex and relationship education and broadening access to reproductive healthcare.

The Joint Committee on the Eighth Amendment

The committee is made up of 6 Senators and 15 TDs from across the parties in the Oireachtas. They have voted – by 15 votes for to three against with two abstentions – for the 8th Amendment not to be retained in full in the Constitution. The committee will recommend what question will be put before the people in next year's referendum. They are considering 6 options, including deleting the 8th Amendment, replacing the 8th Amendment with provision in the constitution, and transferring power to legislate on abortion to the Oireachtas. The 6 options are:

- 1st: Repeal simpliciter
- 2nd: Repeal based on published legislation entrenched in the Constitution
- 3rd: Repeal based on legislation published in tandem with the referendum
- 4th: Repeal and replacement on specific grounds
- 5th: Repeal and replace on broad grounds and/or expressing a re-balancing of rights
- 6th: Repeal and replace with provision conferring exclusive power on the Oireachtas to regulate

What's next?

On 14th December the committee voted to propose the repeal of article 40.3.3 of the Constitution and allow the Oireachtas to legislate for abortions up to 12 weeks without restriction and in cases of rape, incest and fatal foetal abnormality. The Taoiseach and the leader of Fianna Fail have declined to say whether they will support that position but the referendum is likely to be held on May 14th or June 8th next year.

While these discussions are ongoing it is estimated that 12 people a day will travel to Britain for abortion healthcare. Unknown others will risk 14 years in prison by using safe but illegal abortion pills or more dangerous methods to procure their own abortion. Others still will be forced to continue with an unwanted, unviable or dangerous pregnancy. The 8th Amendment will also continue to have an impact on every pregnant person in Ireland, restricting their right to consent to or refuse treatment.

More information: <https://www.citizensassembly.ie/en/The-Eighth-Amendment-of-the-Constitution/Final-Report-on-the-Eighth-Amendment-of-the-Constitution/Final-Report-incl-Appendix-A-D.pdf>
http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/eighthamendmentoftheconstitution/

Johnston Price

Johnston Price was born on 21st July 1954 to Harold and Beth. Together with younger brother Gerald, the family lived in Stranmillis. Early influences were his Presbyterian family background and the Boys Brigade. His was a close and warm family; a solidarity which only intensified with his mother's early death, in 1973.

He went to Methodist College where he found the mainstream educational programme restrictive. He felt little for the elitist grammar school culture, though he nevertheless credits Methody for some early exposure to wider political questions, particularly as the civil rights movement developed at Queen's University nearby. His intellectual capacity was undoubted; he was reading advanced literary and philosophical texts from his early teens.

A degree in philosophy and politics from Jordanstown was followed by an MA in Warwick and a PhD in Marxist theory from the University of Sussex in Brighton in the mid-1980s. It was during his time in Brighton that he met Maggie Pierce who was to become his partner. Their son – Fionn – was born in 1995.

The thesis he successfully defended in 1985 was succinctly named: "Marxism and Ethics". This title encapsulates his abiding interests and motivations: left-wing ideology and politics; and how individuals and communities should behave towards each other. The first of these, of course, involved the matter of personal and community identity in Ireland and how these interact with socialism – an issue of crucial and continuing relevance from the time of Connolly. His political commitment led him to join the Communist Party of Ireland (CPI) and he visited the Soviet Union with a party delegation shortly before the collapse of the Berlin Wall.

Like many Ulster Protestants, life in England brought out his sense of Irishness. Thatcher's Britain fixed his political activism and cultural interests. The anti-war and anti-racism movements, combined with reggae and punk music, created a mix of interests and enthusiasms that influenced his views, placing him with the marginalised and downtrodden: women, ethnic minorities, victims of rights violations and the working classes; seeking their empowerment; working for equality; documenting their struggles; and celebrating their achievements.

In the late 1980s, he wrote a weekly column for Unity, the CPI newspaper. He also had a weekly slot on BBC Radio Ulster's Talkback in the early 1990s.

His great professional skills were in adult education and group facilitation. During 20 years at the Ulster Peoples College – where he eventually became Director – he encouraged community development believing that local empowerment was the key to ending inequality and encouraging more mature dialogue. His staff and students will remember his humour, empathy, humanity and commitment to the development of the whole person rather than some narrow impartation of discrete skill-sets. He retained this capacity for warmth and interest in the lives of the people in his final years, collecting personal testimonies for his Five Decades oral history project, connected to Forthspring, in west Belfast.



Two of the very last books Johnston read were biographies of two other Protestant Irishmen, George Bernard Shaw and Samuel Beckett. They reminded him of his deep interest in the life of William Thompson, another – sadly neglected – radical Protestant from Cork who influenced Marx and a very early supporter of equality for women. As well as a common radical Protestant Irish identity, he recognised in Thompson, Shaw and Beckett a similar humanity, a delight in words and a commitment to ever greater tolerance and equality in the face of imperialism and inhumanity.

The final words of Johnston's PhD thesis sum up his life, loves and goals: "The first step is to know what Marxism aims for – a radical increase in human freedom". This was what he lived for and why he will be sorely missed.

Johnston died suddenly, aged 63, on 27th November 2017. He had been a member of CAJ's Executive for the last four years and was elected Deputy Chair in 2016. He will be much missed by CAJ.

Mike Ritchie

Sharing the Island: Brexit, Constitutional Imagination and the Right of Self-Determination

Who would have guessed that Brexit would result in EU-wide endorsement of the Belfast/Good Friday Agreement 1998? It is hard to read the 'Ireland/Northern Ireland' section of the Joint Report on Phase 1 of the negotiations in any other way. Everyone appears to admire the Agreement just now; well, perhaps not everyone. The risk in this adulation is that it might discourage attention to detail, and avoidance of hard constitutional, legal and political realities. There are a few things to recall.

First, readers of Just News do not need to be told of the centrality of human rights and equality. CAJ played a leading part in that. But reminders are necessary. Why? Because there is a risk that human rights and equality will continue to be regarded as inconvenient and unwanted guests. The dominant narrative for many years in Northern Ireland was that they were divisive irritants standing in the way of a glorious shared future. The Agreement, and the hard work that followed, tried to shift that distorted thinking; with only partial success. Substantial projects from 1998, including a Bill of Rights and a Charter of Rights, are adrift with no responsibility being taken for their practical advancement. Once the Conservative Party has delivered on Brexit it plans to revisit its promise to repeal and replace the Human Rights Act 1998. With what? A British Bill of Rights. Their failure to achieve this thus far should not deceive us into complacency. Where will attention turn once the Brexiteers have secured their eventual liberation from the EU? It would be foolish to believe that rights and equality guarantees will necessarily stick or to trust in promises that are not nailed down. Future enforcement and implementation must be in our minds right now. We all know the limits of the UK's flexible constitution.

Second, the Agreement is structured through relationships across these islands. Its values and principles are intended to be embedded within linked institutions, including the Assembly and Executive, the North-South Ministerial Council, the British-Irish Council and the British-Irish Intergovernmental Conference (among others). There have been changes since 1998, and the political dynamic has altered significantly. But that sort of relational thinking is badly needed again. Brexit has rocked the foundations and plunged everyone into a state of heightened constitutional anxiety. Those who suggest that this is an overreaction miss how much faith people had invested in the 'constitutional fundamentals' of the peace process. It is only by securely returning to those 'fundamentals' that a sustainable future is possible.

Third, there is a neglected and misunderstood human rights component. The reaction to it often reveals the true status of the Belfast/Good Friday Agreement. It is the option of 'the people of the island of Ireland' to exercise 'their right of self-determination'. The formula is complex. There must be no 'external impediment' and it must be based on 'consent, freely and concurrently given' in both jurisdictions.

NI has a lock on the process, 'as this right must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland'. The current democratic will rests NI within the UK (for now), and 'status as part of the United Kingdom reflects and relies upon that wish'. If, however, the right of self-determination is exercised in the way outlined, and the outcome is agreement in both jurisdictions, then there is a 'binding obligation' on both governments to 'introduce and support legislation ... to give effect to that wish'. The right is anchored in international law (British-Irish Agreement) and reflected in domestic law in both states (in the Irish Constitution and in the Northern Ireland Act 1998). As is well known, the Northern Ireland Act 1998 gives the Secretary of State a key decision-making role for NI ('the Secretary of State shall exercise the power ... if at any time it appears likely to him that a majority of those voting would express a wish that Northern Ireland should cease to be part of the United Kingdom and form part of a united Ireland'). The adopted formulation remains intriguing. Why is this right so significant now? Because one way for NI to remain in the EU is to leave the UK. Stating this is likely to invite strong reactions, and that is troubling. If, as so many never tire of observing, the constitutional status of NI rests on consent only then what is the problem with testing it? The negative responses can be unintentionally revealing, because they suggest that this component of the Agreement is not really accepted. Let us consider some of the arguments. It has not been thought through so it is premature. Simply raising the right of self-determination will provoke division and violence in NI. If held the Irish unity proposition would be heavily defeated (so do not bother). There is no current evidence it would succeed, so the Secretary of State is under no obligation to bother testing it. A simply 'majority' should not be enough. The result would not be accepted and might well be resisted (perhaps violently). The South might not agree. The merits of all these are open for discussion, and the challenges are real. The point is that Ireland and NI have an agreed mechanism for exercising this right of self-determination (in a world where even that is a fundamentally contested notion). It is time to normalise this aspect of the 'consent conversation', especially when there is such apparent respect for the Agreement.

What better way to do so than accept that Brexit alters the nature of the question? If no specific solutions can be found to accommodate the unique circumstances of NI what is the precise problem with asking people if they want to remain in one union by leaving another? This novel context must generate a new conversation about how we share this island, and how we relate to each other across these islands, for the next 100 years. Accepting the Belfast/Good Friday Agreement in all its parts should mean what it says.

Professor Colin Harvey, Queen's University Belfast



Report on the Brexit negotiations – all still to play for

BrexitLawNI – the collaboration between CAJ, Queen’s and Ulster University – has agreed its preliminary views on the Ireland and Northern Ireland section of the Joint Report from the negotiators of the EU and the UK Government on Progress during Phase 1. We summarise it here – the full document can be found on www.BrexitLawNI.org. Subject to the principle that “nothing is agreed until everything is agreed” and other listed caveats, the idea is that the commitments listed in the Report will be reflected in the legally binding Withdrawal Agreement. The centrality of the Good Friday or Belfast Agreement is notable from the beginning, both in terms of protecting it and applying it in practice. The Agreement is now at the heart of the negotiations and this is a welcome recognition of its significance; its principles, values and institutions will frame the discussions to come.

Paragraph 46 is central to understanding the implications for Ireland and Northern Ireland. The first sentence indicates that agreements reached so far will not “pre-determine” the outcome of the overall negotiations. However, the next sentence contains the “written guarantee” that the Irish Government was demanding – the commitments made relating to Ireland and Northern Ireland will be upheld “in all circumstances” whatever happens in the broader discussions.

The UK’s commitments to North-South cooperation and to avoiding a hard border is repeated and states that: “Any future arrangements must be compatible with these overarching requirements.” The Report then lays out how it is intended to implement these commitments. The UK hopes that an overall agreement with the EU will meet these requirements but, if not, it will propose bespoke solutions for Ireland. If there is no agreement on those “the United Kingdom will maintain full alignment with those rules of the Internal Market and the Customs Union which, now or in the future, support North-South cooperation, the all-island economy and the protection of the 1998 Agreement.” The UK also promises that there will be no new regulatory barriers between NI and the rest of the UK.

The “back-stop” commitment then is to maintain “full alignment” with those rules of the internal market and the customs union which support North-South cooperation, the Agreement and the all-island economy. However, there is no real indication of how the guarantees of no economic or regulatory borders between Northern Ireland and both Ireland and Britain can be implemented.

The Report notes that those of the people of Northern Ireland who choose to be Irish citizens will “continue to enjoy rights as EU citizens.” Paragraph 52 commits to exploring, in the next round of negotiations, “arrangements required to give effect to the ongoing exercise of, and access to, their EU rights, opportunities and benefits.”

The UK makes an important commitment to “ensuring that no diminution of rights is caused by its departure from the European Union, including in the area of protection against forms of discrimination enshrined in EU law”. That is welcome, but it does not explain how this will be done, or how that ambition relates to the current refusal to include the Charter of Fundamental Rights in the body of EU law that will be retained.

Finally, it has been agreed that Ireland will remain the subject of a “distinct strand” of the continuing negotiations between the UK and EU. It is important to stress what is not in this Report. The question of free movement of all people (not just Irish and British citizens) across the border is not dealt with, nor the danger of an enhanced and racially discriminatory immigration regime on the border, on the territory of Northern Ireland or, indeed, across the whole island. The overall conclusion must be that, while aspects of this Report are very welcome, there is no certainty how far it binds the parties. It is clear that there is much still to play for – especially in the “distinct strand” of the next phase of negotiations – and so more intense work for BrexitLawNI.

Civil Liberties Diary - October/ November

2nd October

An estimated 40,000 took part in the March for Choice in Dublin, demanding a change to the strict abortion laws. The march was the first demonstration to take place since the government announced a timescale of early 2018 for a referendum on the 8th Amendment which imposes tight legal controls on terminations.

10th October

A group of mental health charities in Northern Ireland has called for the release of funds agreed as part of the DUP's deal with the Conservatives. The Together for You partnership includes nine leading mental health charities and has called for the release of £50m of funding agreed as part of the £1.5bn pact to relieve the strain on mental health services in Northern Ireland.

10th October

Humanists UK has been given permission to intervene in a court case on abortion. The Supreme Court has granted permission for Humanists UK to intervene in support of the Northern Ireland Human Rights Commission. The case is being brought to the Supreme Court by NIHRC after a previous ruling at the Court of Appeal overturned a verdict that the restrictions on abortion in Northern Ireland were incompatible with human rights legislation.

19th October

Kevin Hyland, the UK's independent anti-slavery commissioner visited Belfast in support of the Department of Justice's campaign against modern slavery. The campaign is run in partnership with public and private organisations and aims to

raise awareness of the issue of modern slavery and tackle various forms of exploitation including forced labour, sexual exploitation and domestic servitude.

31st October

Survivors of historical sexual abuse have urged politicians in Northern Ireland to release compensation which has been blocked following Stormont's collapse. Savia – Survivors and Victims of Institutional Abuse has called for Secretary of State James Brokenshire to make provisions for victims' compensation in the event of talks collapsing and a budget being introduced in Westminster.

6th November

The General Secretary of the Ulster Teachers' Union has claimed that sexism and inequalities are "insidious" within the most respectable professions. Avril Hall Callaghan continued to note that a lack of women in top school posts shows that there is a lot of work that still needs to be done. Recent figures from the General Teaching Council for Northern Ireland revealed that 76.8% of the profession was female; however only 56.1% of principals were female.

6th November

A new report has highlighted Northern Ireland as one of the worst parts of the UK to suffer from "in-work poverty" due to wages being insufficient to live on. NI has the highest proportion of jobs earning below the voluntary rate of £8.45 per hour, which campaigners say amounts to a struggle to make ends meet as the cost of living and inflation rises.

7th November

Women from Northern Ireland can now access abortions free of

charge from NHS Scotland. Scotland's Public Health Minister welcomed the move as a means to ensure that "women are always able to access clinically safe services". However, pro-life group Precious Life called the news "a complete betrayal" and labelled the move an attack on the democratic process of Northern Ireland.

9th November

The charity Advice NI has raised concerns regarding the number of Disability Living Allowance claimants that have had their payments stopped following reassessment for the new Personal Independence Payment. More than a third of the 21,000 recipients for DLA were 'disallowed' from PIP, an amount that is considerably higher than the 27 per cent 'disallowance' rate in Britain.

Compiled by Sinead Burns from various newspapers

Just News

Just News welcomes readers' news, views and comments.

Just News is published by the Committee on the Administration of Justice Ltd.

Correspondence should be addressed to the Editor, **Fionnuala Ní Aoláin**, CAJ Ltd.

1st Floor, Community House
Citylink Business Park
6A Albert Street
BT12 4HQ

Phone: (028) 9031 6000

Text Phone: 077 0348 6949

Email: info@caj.org.uk

The views expressed in Just News are not necessarily those of CAJ.