

## **Written Evidence to the House of Lords EU Justice Sub-Committee Inquiry into Rights after Brexit from the Committee on the Administration of Justice (CAJ)**

### **The ‘dedicated mechanisms’ to ensure the non-diminution of rights under the 1998 Belfast Agreement in the Ireland/Ni Protocol**

**March 2019**

#### **About CAJ**

The [Committee on the Administration of Justice \(CAJ\)](#) is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ has been the NGO partner in the [BrexitLawNI.org](#) project with the law schools of the Queen’s University Belfast and Ulster University, and co-convenes the NI Equality Coalition with UNISON in Northern Ireland (NI).

#### **Executive Summary**

- Article 4 of the Ireland / NI Protocol in the draft Withdrawal Agreement contains a commitment by the UK that there will be ‘no diminution’ of the rights set out in a named part of the Belfast /Good Friday Agreement as a result of Brexit. This maps back to an original broader commitment in Paragraph 53 of the 2017 EU-UK Joint Report
- The rights in question in the 1998 Agreement have largely not otherwise been incorporated into domestic law, in particular in the absence of implementation of the GFA-mandated Bill of Rights for Northern Ireland. Rather EU law has provided a supporting framework for their realisation;
- The ‘no diminution’ commitment is to be implemented through ‘dedicated mechanisms’, set out in the UK Explainer to the draft Withdrawal Agreement, to include the existing NI Equality and Human Rights Commissions;
- The Explainer provides that the UK will confer “new powers” on the two Commissions to “monitor, supervise, advise, report on” and “enforce” the “no diminution” commitment. A policy document setting out proposed powers has been issued to both Commissions;
- Even at this late stage there has been no further clarification from Government as to the nature of such powers, and no Parliamentary or public scrutiny;

#### **The Committee may wish therefore to seek clarification from Ministers as to:**

- **The nature of the proposed ‘new powers’ intended to be vested in the two Commissions, and when there will be public consultation on same;**
- **Whether the commitment to ensure ‘non-diminution’ of rights under the Belfast Agreement will still be honoured in a ‘no deal’ scenario;**

## The “no diminution” commitment

1. The UK and EU on 8 December 2017 published the ‘Joint Report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the UK’s orderly withdrawal from the European Union’ (TF50 (2017) 19). The paragraph 53 in reference to the Belfast/Good Friday Agreement (1998 Agreement) provided:

53. The 1998 Agreement also includes important provisions on Rights, Safeguards and Equality of Opportunity for which EU law and practice has provided a supporting framework in Northern Ireland and across the island of Ireland. The United Kingdom commits 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. The United Kingdom commits to facilitating the related work of the institutions and bodies, established by the 1998 Agreement, in upholding human rights and equality standards.
2. The February 2018 draft UK-EU Withdrawal Agreement subsequently contained the following provision in Article 1 of the Protocol on Ireland/NI:
  - (1) The United Kingdom shall ensure that no diminution of rights, safeguards and 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.
  - (2) The United Kingdom shall continue to facilitate the related work of the institutions and bodies pursuant to the 1998 Agreement, including 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.
3. The same wording is then contained in the Protocol in the November 2018 draft Withdrawal Agreement, although it is moved to Article 4. The above provision appears to limit the explicit commitment to non-diminution of rights in the named “Rights, Safeguards and Equality of Opportunity” section of the 1998 Agreement.

## Relevant provisions in the Belfast/Good Friday Agreement

4. In reality there are two consecutive sections of the 1998 Agreement entitled “Rights, Safeguards and Equality of Opportunity”. Among the provisions in these sections are:
  - Listed rights including rights of women to full and equal political participation; rights to equality of opportunity in all social and economic activity; the right to choose one’s place of residence; freedom from sectarian harassment [paragraph 1, Section 1];
  - Incorporation of the ECHR into NI Law; statutory equality duty; NI Human Rights Commission, NI Bill of Rights, comparable steps by Ireland [2-10, S1];
  - Provisions on reconciliation and victims of violence [11-13, S1]

- Economic and social provisions [1-2, Section 2]
  - Linguistic diversity, including specific commitments to the Irish language [3-4, S2]
5. Other sections of the 1998 Agreement, outside of the two parts with the above title include the provisions in the initial sections to the Agreement on ‘rigorous impartiality’, ‘parity of esteem’ and citizenship rights. Such commitments remain treaty based obligations and relevant to the interpretation of other provisions in the 1998 Agreement.
6. It is unclear if Governments’ intention has been in the translation of Paragraph 53 into the text of the Article to deliberately place such matters outside the scope of the ‘non-diminution’ commitment, or as to whether the provision has been mistranslated and Government will commit to non-diminution of rights throughout the 1998 Agreement. *The Committee may wish to seek clarification on this.*

### **The proposed powers of the ‘dedicated mechanisms’**

7. In relation to the commitment Paragraph 176 of the HM Government [‘explainer’ to the draft Withdrawal Agreement](#) states:
176. We have agreed to implement the no diminution commitment through a ‘dedicated mechanism’. It is intended that this mechanism will draw on the existing human rights and equality bodies established under the Belfast (Good Friday) Agreement - namely the Northern Ireland Human Rights Commission (NIHRC), the Equality Commission for Northern Ireland (ECNI) and, on issues with an island of Ireland dimension, the Joint Committee - to provide independent oversight of the ‘no diminution’ commitment. The UK will confer upon NIHRC and ECNI new powers to monitor, supervise, advise and report on and enforce the commitment, as well as provide adequate resources to ensure that they are able to perform their enhanced roles effectively. The UK Government will continue to engage with both Commissions on issues relating to the dedicated mechanism.
8. To date the underpinning EU law of rights which provided a supporting framework for rights under the GFA has already been diminished, not least through the removal of the EU Charter of Fundamental Rights. However, to date the proposed powers of dedicated mechanisms not only have not been legislated for but have remained confidential, and are yet to be subject to Parliamentary or public scrutiny.
9. Whilst freedom of information requests from CAJ have confirmed the existence of a draft policy document setting out proposed powers, at this late stage there has still been no further elaboration beyond the paragraph as to what is actually proposed.

### **The Committee may wish therefore to seek clarification from Ministers as to:**

- **The nature of the proposed ‘new powers’ intended to be vested in the two Commissions, and when there will be public consultation on same;**
- **Whether the commitment to ensure ‘non-diminution’ of rights under the Belfast Agreement will still be honoured in a ‘no deal’ scenario;**