

## **Written Evidence to the introductory inquiry of the House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland**

**June 2021**

1. 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 seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its obligations in international human rights law.
2. CAJ was the NGO partner in the BrexitLawNI<sup>1</sup> project with the law schools of Queen's and Ulster Universities considering the constitutional, legal, human rights and equality aspects of Brexit and has continued with a range of interventions since, including an immigration impacts specific project. We welcome the opportunity to provide written evidence to the Sub-Committee on its introductory inquiry.
3. The focus of this submission is specifically on the current situation regarding the UK commitment under Article 2 ("Rights of individuals") of the Protocol. This provides that there will be 'no diminution' in certain rights under the Belfast/Good Friday Agreement ('the 1998 Agreement') as a consequence of the Brexit. The origins of provision can be found in a broader commitment in the 2017 UK-EU Joint Report.<sup>2</sup>
4. Article 2(1) of the NI Protocol to the UK-EU Withdrawal Agreement states:

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.
5. The UK committed, under Article 2(2) to implement this provision through the 'dedicated mechanisms' in reference to the Human Rights and Equality Commissions established further to the 1998 Agreement. Article 14 of the Protocol also sets out that the Specialised Committee (on the Protocol) is mandated to "consider any matter of relevance to" the non-diminution commitment brought to its attention by the Commissions. The commitment was given effect in domestic law, including new enforcement and oversight powers for the Northern Ireland Human Rights and Equality Commissions, under the EU (Withdrawal Agreement) Act 2020, by way of

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<sup>1</sup> <https://brexitlawni.org/>

<sup>2</sup> <https://www.gov.uk/government/publications/joint-report-on-progress-during-phase-1-of-negotiations-under-article-50-teu-on-the-uks-orderly-withdrawal-from-the-eu> paragraph 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."

amendments to the Northern Ireland Act 1998.<sup>3</sup> The UK has produced an ‘Explainer’ document in relation to the commitment.<sup>4</sup> The Commissions have entered into a Memorandum of Understanding regarding the operation of their new functions.<sup>5</sup>

6. At the beginning of January 2021, when the commitment and powers commenced, we identified six existing and forthcoming breaches to the ‘non diminution’ commitment. We submitted complaints on each issue to the Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission in January 2021. The following is summary information on two of the complaints:

- *Civil Service Nationality Rules*: Civil Service Nationality Rules restrict access to civil service jobs in NI based on nationality (this is entirely separate to permission to work based on immigration status). Until the end of 2021 EU citizens had a legal right under EU law to work in ‘non public service’ posts in the Civil Service in NI. This right is retained for EU citizens with retained EU rights under Part II of the Withdrawal Agreement (settled status). In relation to most EU26 citizens, Regulations have been passed as a direct consequence of Brexit that have introduced a nationality bar on working in NI civil service posts.<sup>6</sup> This has the effect on EU26 citizens who come to NI in future, who have residence and full immigration permission to work, of now being debarred from civil service posts. Whilst *in practice* this barrier has not been applied to Irish (EU) citizens, such persons have lost a *legally binding right* to work in such posts.<sup>7</sup> The relevant section of the 1998 Agreement includes: “the right to *equal opportunity* in all social and *economic activity*, regardless of class, creed, disability, gender or *ethnicity*” (emphasis added). It is this right that has been diminished as a consequence of these Brexit regulations extending civil service nationality rules.
- *Democratic Rights*: The relevant section of the 1998 Agreement provides for political rights (“the right to pursue democratically national and political aspirations”) one of the most fundamental of which is the right to vote. The right of women to full and equal political participation is also provided for under the Agreement. Unlike Scotland and Wales, the electoral franchise is not devolved for local elections in Northern Ireland (i.e., Council and NI Assembly elections). Should the UK Government now proceed to strip EU26 citizens of the vote in local elections in NI, this will constitute a diminution in democratic rights in breach of the Article 2 commitment. Whilst Irish citizens remain EU citizens, democratic rights have been already diminished by Brexit by the removal of representation by MEPs and hence participation in the democratic life of the EU

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<sup>3</sup> EU (Withdrawal Agreement) Act 2020, section 23 and schedule 3.

<sup>4</sup> <https://www.gov.uk/government/publications/protocol-on-irelandnorthern-ireland-article-2>

<sup>5</sup> Memorandum of Understanding: Ireland/Northern Ireland Protocol of the European Union (EU) Withdrawal Agreement, Article 2: island of Ireland dimension Equality Commission for Northern Ireland (ECNI) Irish Human Rights and Equality Commission (IHREC) Northern Ireland Human Rights Commission (NIHRC) March 2021 (<https://nihrc.org/publication/detail/memorandum-of-understanding-ireland-northern-ireland-protocol>)

<sup>6</sup> <https://www.legislation.gov.uk/uksi/2020/1309/regulation/4/made> The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020.

<sup>7</sup> Irish citizens who have settled status will retain the EU right, however the Home Office discouraged applications to the EU settlement scheme from Irish citizens and legislated to prevent most NI-born Irish citizens from applying to the scheme (by virtue of the conferral of British citizenship).

(largely retained by other EU citizens in NI by virtue of extraterritorial voting). The continued franchise for Irish citizens in Westminster and local elections is provided for in the bilateral Common Travel Area (CTA) Memorandum of Understanding, covering what are referred to as 'reciprocal rights' of the CTA.<sup>8</sup> Whilst Irish citizens have previously been able to vote in UK Referendums, continuation of this right is not provided for in this MoU, on grounds there is no reciprocal right for British citizens in Ireland to vote in referendums. The advent of the concept of CTA reciprocal rights is a direct product of seeking to replace provisions providing for equality of treatment for Irish citizens in the UK (in NI a requirement of the 1998 Agreement) that had hitherto been provided for by EU free movement law.

7. In summary the four other areas where breaches have already been identified are:
  - The cut off dates for '*Relevant Persons of Northern Ireland*' to obtain rights to family reunification, the provision for which will be diminished once this specific scheme, tied to the Brexit EU Settlement Scheme, ends.
  - Loss of EU rights and benefits for *Irish citizens in NI*: with Irish citizens in NI left to rely on non-binding commitments of CTA rights, which remain limited and on an insecure footing.
  - Diminution in protections and rights for *frontier workers*, specifically provisions for the family members of EU frontier workers, the exclusion of British citizen frontier workers from protections, and increased grounds for refusal and removal of frontier worker permits.
  - Diminution in protections against *deportation of Irish citizens from NI*.
8. We note the HC European Scrutiny Committee has also corresponded with the Northern Ireland Minister of State regarding the application of the Article 2 'non diminution' commitment to the new EU proposal to strengthen the application of the principle of equal pay.<sup>9</sup>
9. Since the submission of the above complaints, we have continued to proactively engage with the Commissions who at the time of writing we understand are still working through the issues raised.
10. To date we are not aware if issues regarding compliance with the Article 2(1) 'non diminution' commitment have been discussed at the Specialised Committee on the Protocol.

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<sup>8</sup> Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland concerning the Common Travel Area and associated reciprocal rights and privileges, 8 May 2019. Paragraph 13.

<https://www.gov.uk/government/publications/memorandum-of-understanding-between-the-uk-and-ireland-on-the-cta>

<sup>9</sup> HC European Scrutiny Committee [Correspondence from Sir William Cash MP to Robin Walker MP Minister of State for Northern Ireland 26 May 2021](#)

**CAJ, June 2021**

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