



Preliminary Findings Report – Brexit, Human Rights and Equality Issues

What is the theme?

The Belfast/Good Friday Agreement 1998 (GFA 1998) is a major peace agreement, intended to bring an end to the conflict in (and about) Northern Ireland. The Agreement recognises that human rights and equality are fundamental to the peace process. In this regard it includes much more elaborate provisions on human rights and equality than were provided for in previous efforts to end the conflict. The section of the Agreement on ‘Rights, Safeguards and Equality of Opportunity’ is especially significant, and some of the equality-related issues are addressed in our preliminary report on socio-economic rights and equality. Brexit is therefore advancing in a Northern Ireland context where human rights and equality are accorded a particular and special status (in principle if not always in practice).

What are the main issues?

The EU legal framework provides a set of rights including whenever the EU itself is acting or its members-states are implementing EU law. These embrace rights guaranteed in the EU treaties, EU secondary legislation (in the form of regulations and directives), and the EU Charter of Fundamental Rights. While limited to the scope of EU law, these rights frequently go beyond what would otherwise be protected in domestic UK law, including protections available through the Human Rights Act 1998. The doctrine of EU law supremacy means that these rights are binding on all UK authorities, including the Westminster Parliament and Northern Ireland Assembly.

This rights regime applies across the 28 member states and so also ensures a common floor of equivalent guarantees on the island of Ireland, north and south. As mentioned above, the EU has often provided rights protections beyond what would have otherwise appeared in UK law – one of the primary examples of this is in the area of LGBT rights. Moreover, the EU has things to say on matters that are of particular interest within the GFA 1998; these include on socio-economic rights, equality, victims’ rights and environmental rights. The EU has also played a substantial role in promoting the economic and social development of Northern Ireland and in particular cross-border cooperation in these areas.

Finally, it is also worth mentioning that exit from the EU will likely entail a shift of responsibilities to the Northern Ireland Executive and Assembly. Thus, the decisions made in Brussels regarding, for example, funding criteria for agricultural subsidies may eventually be moved to Stormont. This will open up complex and challenging questions for the power-sharing regime, including around the mainstreaming of equality and human rights considerations within the budget process.

What problems have been identified and what solutions have been proposed?

There is a real risk that the discussions on Brexit will circle only around a debate on the rights of *citizens* (British-Irish-EU). It is essential in this context to highlight the value and significance of a *human* rights framework, one that includes everyone. A number of the negotiating documents produced by the UK Government take a narrow or partial approach to the Agreement’s requirements in this respect. References in these negotiating documents to equality for instance tends to focus on the (vital) issue of equality between the two main communities in Northern Ireland.



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While the UK Government has indicated that the powers in the EU (Withdrawal) Bill will not be used to reduce protections in relation to equality and certain other rights, there is nothing formally that would necessarily preclude this. Brexit will mean that the supremacy of EU law was no longer guaranteed and the decision to exclude the Charter of Fundamental Rights is particularly unfortunate.

Ireland will continue to be bound by EU law and therefore there is a plain risk that rights will not receive equivalent protection on the island of Ireland after exit day. Brexit will mean that the EU funds previously directed to economic and social development and reconciliation in Northern Ireland will be endangered. The Human Rights Act 1998 and the UK's commitment to the European Convention on Human Rights 1950 are not formally implicated by the UK's exit from the EU. However, much of the political rhetoric which accompanies the pro-Brexit position includes scepticism of supranational and especially 'European' institutions and 'European' judges. In some media discourse, the coverage frequently conflates criticism of different European organisations and judges. It is worth recalling that the 1998 Agreement is unequivocal about the role of the European Convention in the Northern Ireland arrangements. With these points in mind we make the following preliminary suggestions:

- Proposed 'solutions' for Northern Ireland and the island of Ireland should be subject to rigorous human rights and equality impact assessments
- The position of the Charter of Fundamental Rights in the Withdrawal Bill should be the same as for other retained EU law
- The Bill should include specific protections for rights and equality so that secondary legislation cannot reduce EU protections in these areas
- Nothing taken forward in UK domestic law should rule out or take 'off the table' options that may emerge as 'solutions' to the unique position of Northern Ireland
- Given the altered position regarding the supremacy of EU law on rights and equality there is a risk that these will not be guaranteed in the Northern Irish legal system
- Furthermore, there is a risk that the equivalent protection of rights on the island of Ireland will be significantly undermined
- There is therefore an urgent need to consider the Bill of Rights as a mechanism to ensure Northern Ireland authorities respect the range of rights found in EU law
- The risk to equivalence also suggests that more attention should be given to the debate on an all island Charter of rights.
- There should be clarity on the support for funding of economic and social development and reconciliation initiatives in Northern Ireland
- The position of the European Convention on Human Rights and the Human Rights Act 1998 in relation to Northern Ireland should be affirmed
- There should be a Single Equality Act for Northern Ireland that ensures that gaps are addressed and that the jurisdiction is well placed to keep pace with international and European best practice in the future