



Preliminary Findings Report – Brexit, Human Rights and Equality Issues

What is the theme?

The Belfast/Good Friday Agreement 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 the 1998 Agreement 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 the Report on socioeconomic rights and equality. Brexit is therefore advancing in a 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 provides a set of rights including whenever the EU itself is acting or its members-states are implementing EU law. These include 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 going beyond what would otherwise be protected by 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.

The EU rights are binding across the 28 member states and so also ensure a level of equivalent protection of human rights on the island of Ireland, north and south. The EU has provided protections in some areas of particular interest in the Agreement; these include the socioeconomic and equality areas. This also includes matters such as 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.

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

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

While the UK Government has indicated that the powers in the 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 would entail 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



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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:

- The position of the Charter of Fundamental Rights (and general principles of law) 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.
- 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.
- These suggest that there is a more 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