

European Affairs Committee

Protocol on Ireland/Northern Ireland Sub-Committee

Corrected oral evidence: Article 2 of the protocol (rights of individuals)

Wednesday 15 September 2021

4 pm

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Members present: Lord Jay of Ewelme (The Chair); Lord Caine; Lord Dodds of Duncairn; Lord Empey; Baroness Goudie; Lord Hain; Lord Hannan of Kingsclere; Baroness O’Loan; Baroness Ritchie of Downpatrick; Lord Thomas of Gresford.

Evidence Session No. 1

Virtual Proceeding

Questions 1 - 11

Witnesses

I: Alyson Kilpatrick, Chief Commissioner, Northern Ireland Human Rights Commission; Éilis Haughey, Head of Service (Dedicated Mechanism—EU Withdrawal), Northern Ireland Human Rights Commission; Roisín Mallon, Director, Dedicated Mechanism Unit, Equality Commission for Northern Ireland; Geraldine McGahey, Chief Commissioner, Equality Commission for Northern Ireland.

Examination of Witnesses

Alyson Kilpatrick, Éilis Haughey, Roisín Mallon and Geraldine McGahey.

The Chair: Good afternoon and welcome to this public meeting of the European Affairs Committee on the protocol on Ireland/Northern Ireland. We are today holding an evidence session exploring Article 2 of the protocol on Ireland/Northern Ireland on rights of individuals, with representatives of the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland, who have a key role to play in oversight of Article 2. You are all very welcome and we much look forward to hearing your evidence. I would be grateful if you could introduce yourselves briefly the first time you speak.

Today's meeting is being broadcast and a verbatim transcript will be taken for subsequent publication, which will be sent to witnesses to check for accuracy. I should refer to the list of Members' interests as published on the committee's website and say that we may have to pause for a couple of minutes every now and then when votes are held. That having been said, welcome again.

Q1 **Lord Caine:** To all our witnesses, you are most welcome. I will open the batting, as it were, with a fairly general question to each of you. I had dealings with both organisations over many years when I was in the Northern Ireland Office. I think it would be helpful more generally to the committee if you could give an overview of what each of your organisations does, whom you report to and are accountable to, and how you interact with each other.

Alyson Kilpatrick: Good afternoon, everyone. I am a lawyer with a specialism in public law and human rights. I have just been appointed as chief commissioner to the Northern Ireland Human Rights Commission. I started last week in fact. I say that in a slightly cowardly attempt to manage your expectations. Luckily, with me is Éilis Haughey. She heads the commission's team working on the protection of rights following withdrawal from the EU, as part of the commission's new role in the dedicated mechanism.

Having prefaced with that, I can tell you I am very delighted to be here to see you all and offer whatever assistance I can. I can promise that, if I cannot answer any questions today and Éilis cannot, we will certainly get back to you very quickly in writing.

To begin with a brief overview of what the Human Rights Commission does, we were established under the Belfast/Good Friday agreement 1998. We are a national human rights institution with 'A' status accreditation at the Global Alliance of National Human Rights Institutions. Our core function is to review the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland under powers set out in the Northern Ireland Act 1998.

We do this in a number of ways. We advise the Secretary of State for Northern Ireland and the Executive Committee of the NI Assembly of legislative and other measures that ought to be taken to protect human rights. We advise the NI Assembly whether proposed legislation is compatible with human rights standards. We promote understanding and awareness of the importance of human rights. We bring, support or intervene in legal cases concerning the protection of human rights. We conduct investigations. That is our core business.

We have acquired a new statutory responsibility, with the Equality Commission, to ensure there is no diminution of the rights, safeguards and equality of opportunity provided by the Belfast/Good Friday agreement, importantly, as a result of withdrawal from the EU. To fulfil that obligation, we work very closely with our partners across the sectors but especially closely with the Equality Commission for Northern Ireland.

We are partners in the dedicated mechanism set up pursuant to the withdrawal agreement. At that stage, I will perhaps let my colleague, Chief Commissioner Geraldine McGahey, tell you a little more about her organisation and deal with the point about joint working under the dedicated mechanism.

Lord Caine: Before you hand over, could you say who you are actually accountable to in Northern Ireland. Is it the Secretary of State? Is it the Executive?

Alyson Kilpatrick: It is the Secretary of State. We give advice to all public authorities, but I am accountable to the Secretary of State, as is the commission.

Geraldine McGahey: Good afternoon, everyone, and thank you for the opportunity to be here before you today. As Alyson has said, I am the chief commissioner of the Equality Commission for Northern Ireland. I have been in post now since March 2020, just at the beginning of lockdown, so I feel like I am starting my role as we are now starting to get out and to meet everyone. I hope we will soon be able to meet person to person. In the meantime, we will have to make do with Zoom.

The Equality Commission is an independent public body that was established under the Northern Ireland Act in 1998. Our powers and duties derive from a number of equality statutes providing protection against discrimination on the grounds of age, disability, race, religion, political opinion, sex and sexual orientation. Our remit also includes overseeing the statutory duties on public authorities to enable them to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998.

We promote equality and combat discrimination through a range of mechanisms. For example, we provide legal advice and support to individuals who have complaints of discrimination. We provide assistance to organisations to enable them to meet the requirements of equality law. We undertake research and education activities and aim to influence policymakers through our advocacy work. We consider complaints against organisations and public bodies, where they have been alleged to fail to comply with their equality schemes. On foot of that, we conduct investigations.

I should say that, while I am appointed by the Secretary of State, we report to and are accountable to the Executive Office and the Assembly.

Since 2010, the two commissions have worked very closely in partnership as part of the Northern Ireland independent mechanism for monitoring the UK Government's implementation of their international obligations under the Convention on the Rights of Persons with Disabilities. We have a long history of working together.

The European Union (Withdrawal Agreement) Act in 2020 empowered the commissions with new duties and functions to monitor, advise, report on

and promote and enforce the implementation of Article 2. The commissions can exercise their powers jointly or separately. I should say that the commissions are required, as you can understand, to work very closely in partnership across a whole wide range of areas, not least to ensure there is no duplication of effort and the most economical use of our resources.

We have been jointly engaging with Governments and departments, advice-giving organisations, equality and human rights stakeholders, as well as parliamentary and Assembly committees as part of our overall work to ensure that equality and human rights continue to be protected after Brexit. We have also produced joint communications, including publications, which have been aimed at raising awareness of the Article 2 commitment and actual dedicated mechanism framework, and sharing information on key issues.

With regard to the island of Ireland dimension within the commitment, we have also been working in partnership with the Irish Human Rights and Equality Commission, including on joint engagement events with cross-border stakeholders. We have undertaken a number of those. That probably covers what our remit is and how we are performing to date, if that is acceptable.

Lord Caine: That was all very comprehensive and, to me, very clear.

Q2 **Baroness O'Loan:** I am moving on, as you have already moved on, into Article 2. Could you explain to us your new responsibilities under Article 2? There is an obligation under Article 2(2) that you should be resourced to do the work. Are you resourced properly to do this? I know that is always a problem. How do you engage with your Irish counterpart organisations, in particular in relation to your Article 2 responsibilities?

Geraldine McGahey: I will start, if I may, and then Alyson will come in on certain aspects of the question; we will share the answering of this question. As I stated earlier, the withdrawal agreement Act empowers both commissions with new duties and functions. They are to monitor and advise, as well as reporting on, promoting and enforcing the implementation of Article 2. We exercise these functions as part of what is known as the dedicated mechanism framework, which was established under Article 2. They have been in effect since 1 January of this year.

Our new powers and duties are quite comprehensive. They can be exercised either jointly or separately. That includes monitoring how the commitment itself is implemented, reporting on its implementation to the Secretary of State for Northern Ireland as well as the Executive Office, advising the Secretary of State and the Northern Ireland Assembly Executive Committee of legislative and other measures that must be taken to ensure that the commitment is actually implemented, and advising the Northern Ireland Assembly, or indeed any of its committees, whether a Bill that is being considered is compatible with the commitment.

We are required to promote understanding and awareness of how important the commitment actually is, something that I think has been lost over the past while. We are also charged with bringing or intervening in legal proceedings in respect of an alleged breach or a potential future breach of the commitment and assisting persons in relevant legal proceedings.

The commissions and the joint committee of the Northern Ireland Human Rights Commission and the Irish Human Rights and Equality Commission can directly raise matters with the specialised committee on the protocol. The commissions have undertaken a wide range of work to date. We believe that civil society engagement has been a key priority. We have had a number of joint meetings with equality and human rights organisations. They have been held with representatives from the women's sector, for example, in Northern Ireland. We have also had a cross-border event with civil society representatives across the whole of the island. These events also provide an opportunity for civil society to raise concerns directly with us. We think that two-way engagement is very important.

In addition, we have had a number of engagements with other stakeholders, including the Labour Relations Agency, trade unions, employment lawyers, the Law Society and the Independent Monitoring Authority. We have participated in meetings of the Ad-Hoc Group for North-South and East-West Cooperation.

I would also stress that we have had engagement with the Northern Ireland Assembly, the UK Government and the Irish Government, as well as their officials, in addition to the EU delegation to the UK in relation to Article 2 commitments. All three commissions have jointly briefed the Northern Ireland Assembly Executive Committee. The Equality Commission and the Northern Ireland Human Rights Commission have jointly engaged with the Northern Ireland Assembly Ad Hoc Committee on a Bill of Rights for Northern Ireland.

You are probably well aware that we have provided written and oral evidence, as well as policy briefings and recommendations. These have been provided to the Northern Ireland Affairs Committee inquiry on Brexit, the Secretary of State for Northern Ireland, various Ministers and Assembly committees, as well as the public, in relation to the internal market Bill. We have also provided papers to the Irish Seanad Special Select Committee on the Withdrawal of the UK from the EU and, indeed, this sub-committee's own inquiry into the operations of the protocol.

We have jointly expressed concerns and raised issues regarding the UK Government's commitment under Article 2, for example through letters that we have written to the Secretary of State on voting rights. We have commissioned and carried out research on Article 2. Particularly the Equality Commission is involved in undertaking research in respect of Assembly and parliamentary scrutiny mechanisms. We are expecting this work to be completed as we move further into the autumn.

Some of the other areas of research being undertaken this year include an examination of the potential impacts of the loss of EU funding post-Brexit on certain equality groups in Northern Ireland. We have been hearing that this is quite a concern for many of the groups.

The committee suspended for a Division in the House.

Geraldine McGahey: I had been talking about the research work by the Equality Commission that is currently under way, and I had moved on to talk about the work we are doing in partnership with the Northern Ireland Human Rights Commission, as well as the Irish Human Rights and Equality Commission. That joint partnership work is currently looking at the divergence of rights on the island of Ireland. That work will be ongoing for the next while.

In terms of our legal work, we are currently considering in detail the scope of the Article 2 commitment and providing advice in relation to any legal inquiries that we receive. As well as that, we are doing quite a bit of awareness-raising work. You will appreciate the importance of this. To date, we have produced some short, animated videos, as well as a number of accessible, user-friendly publications to explain the Article 2 commitment and the role of the dedicated mechanism as we move forward. Those documents have been produced in partnership with the Northern Ireland Human Rights Commission. Further campaigns are planned for later this autumn. They will include social media and radio campaigns.

Tracking and monitoring of legislative developments is a very vital area of our remit. We are working to ensure that effective mechanisms are put in place to keep the dedicated mechanism informed of actual as well as planned domestic and EU legislative developments that are relevant to the Article 2 commitment. From this point, Alyson will talk to you about the research work and other work that the Human Rights Commission is currently undertaking.

Alyson Kilpatrick: I will start by restating something that the commission and the Irish Human Rights and Equality Commission take very seriously in this work. That is the Belfast/Good Friday agreement recognition of the importance of equivalence of rights on the island of Ireland. For that purpose, they established the joint committee between the Northern Ireland commission and its counterpart, the Irish Human Rights and Equality Commission. Throughout, we bear that very closely in mind.

Prior to withdrawal, we worked as a joint committee to produce a policy statement on protecting rights in the context of Brexit. We commissioned and published related research looking at the potential impact at that stage on human rights and justice co-operation. Our work now, as part of the dedicated mechanism, builds very much on that relationship and that work. Geraldine has covered fairly extensively the work that we are doing. We have an Article 2 working group of the three commissioners and a memorandum of understanding. We have a programme of work,

which Geraldine outlined the important bits of. I will let Éilis Haughey come in in a minute if there is anything she wants to add to that.

To the question on resources, obviously the amount of resource we have will determine how much work we can do, either separately or together. We acknowledge that we were given significant additional resources for the purposes of the dedicated mechanism, and we were grateful for it. We are satisfied that that will cover our work for the time being. The budget is allocated for three years, which is better than it could have been, but the long-term position needs to be clarified.

Article 2 of the protocol is a novel and—I do not think I am overstating this—complicated provision. We are still assessing the scale of the task and what is needed to discharge our obligations properly. A lot of this will transpire over the next three years. We are only beginning to see what will be required. We are only beginning to get submissions from members of the public, NGOs and other organisations. We know from our experience in our core business that the monitoring aspect alone is quite a significant challenge. We very much welcome the UK commitment to facilitating the continuation of our work, and we take them seriously in that respect. That is in relation to the Human Rights Commission's and the Equality Commission's work and with the Irish Human Rights and Equality Commission.

The short answer is: so far, yes. We are grateful and we can work with it, but we may not be able to give that guarantee further down the line.

Q3 **Baroness Ritchie of Downpatrick:** I would like to declare my interest as recorded in the register of Members' interests as a member of the boards of Co-operation Ireland and of the Centre for Democracy and Peace Building, both of which impact on Ireland and Northern Ireland. I would like to welcome the representatives of the Human Rights Commission and the Equality Commission. I have worked with you in the past.

As a follow-on to Baroness O'Loan's question, I think Alyson has already referred to how you are only starting the work at this particular stage. How do you see Article 2 of the protocol interacting with the relevant provisions of the Belfast/Good Friday agreement? I am very conscious that central to the agreement are the principles of human rights and equality.

Alyson Kilpatrick: There were clearly negotiations leading to withdrawal. During those negotiations, the UK and the EU recognised the centrality of the Belfast/Good Friday agreement of 1998 and that it required special consideration and protection. Human rights and equality protections are at the heart of that agreement. I am sure everyone would agree that they are central to the peace process in Northern Ireland.

The UK recognised that EU law had underpinned and contributed to many of the protections, equalities and safeguards in the Act. Article 2 was meant to protect particular rights, safeguards and equalities of opportunity set out in the Belfast agreement, only to the extent,

however, that they are underpinned by EU obligations, such as relevant directives. It is rather tortuous to explain how exactly it interacts. In some ways, we are still working out the extent of interaction. Perhaps this will help.

A breach of Article 2, if I put it that way, arises if a right, safeguard or equality of opportunity that falls within that part of the Belfast/Good Friday agreement, which was also underpinned by an EU law obligation, suffered diminution on or after 1 January 2021 and that diminution would have been inconsistent with the UK's legal obligations as an EU member state. In other words, but for leaving the EU, the right, safeguard or opportunity would have continued to be protected.

We are exploring all aspects of that. What exactly is a right, safeguard or equality of opportunity? They are not further defined. What does "underpinned by an EU law obligation" really mean—which EU laws? Has there been a diminution on or after 1 January 2021? You will be conscious of the duty to keep pace in relation to some of the directives et cetera. Is the diminution a result of withdrawal from the European Union? That is also quite a difficult, complex issue.

We have been carrying out research. Éilis Haughey, who is here, has been working tirelessly with her team, trying to work through all the various aspects and has commissioned legal advice on some very specific points. I think we will know as we go along and test it. Much of this will have to be tested in courts, through the committees maybe or through the arbitrations. Perhaps Éilis can say an additional word, if she wishes to, on the interaction between the two agreements.

Baroness Ritchie of Downpatrick: That would be very helpful indeed.

Éilis Haughey: As Alyson said, it really will take some time to work out the ramifications. There are areas that are more obvious. When you look at the relevant chapter of the Good Friday agreement, you can see that a number of rights are listed, but they are listed in a non-exhaustive manner. As members will be aware, the agreement was not designed to be used for this purpose precisely. Therefore, there are a number of grey areas around the edges.

As Alyson mentioned, we are conducting research into, for example, potential interaction between Article 2 protections and immigration policy and legislation. We know, for example, that immigration policy was one of the driving forces behind the rationale for many people for exiting the EU. Nevertheless, there are questions to be asked about future cohorts of people arriving and living legally in Northern Ireland and to what extent they might be afforded any protections, in terms of the basic rule of law and everyone being equal before the law. Against that, there is a potential interaction with immigration status and the UK Government being entitled to decide its own immigration policy. We are researching that.

For example, we are looking to see how health policy might interact. This is very important for our border communities, where we have cross-border health services and cross-border out-of-hours GP services. We have all-island cardiac services for children. Many of those things are governed by service-level agreements. On the other hand, if you have things formally governed by EU policy, such as mutual recognition of professional qualifications, there might be challenges and questions about, for example, family members of frontier workers and those not covered by the common travel area. In and around the edges of this is where Baroness Ritchie's question comes into play, as we seek to scope that out. That is a matter of ongoing work.

Baroness Ritchie of Downpatrick: It might be useful if the Human Rights Commission could provide us at various intervals an assessment of its ongoing work, to help inform our deliberations.

The Chair: Yes, indeed, that would be helpful.

Alyson Kilpatrick: I can certainly make that commitment. It is something we will be doing in any event. We want to map this ourselves and we are very happy to share that with you. If you can think of a better way to assist, please come back to me.

The Chair: Thank you very much for that. That is a very kind offer and we are grateful for it.

Baroness Ritchie of Downpatrick: Geraldine might have something to add on behalf of the Equality Commission.

Geraldine McGahey: Alyson and Éilis have given you a very comprehensive overview of the scope of Article 2. It is very complex. It is a matrix of tentacles stretching to local legislation as well as EU law. It is really important that it is unpicked and everyone has a full understanding, not just us, as the dedicated mechanism, but various government departments, Ministers and the public.

As Alyson said at the very beginning, ultimately it will be up to the courts to decide what is contained within the scope of Article 2 and what is not. The amount of work required to get a proper handle on this should not be underestimated. I have nothing further to add to it.

Q4 **Lord Dodds of Duncairn:** Thank you so far for the evidence that you have provided. It has been very helpful. You have already touched on the question I was going to ask, which was about issues that will arise, in your opinion, in the future in relation to implementation of Article 2. Would you perhaps like to add to that? What issues have arisen already and how are they being progressed? If you could say something on that, I would be grateful.

Geraldine McGahey: I will lead on this and then Alyson can come in and add to it if I have missed something. The number of inquiries received by both commissions so far has been relatively low. That is partly because this is a new area of law and because, until 1 January, UK and EU law

have been aligned. It is only as we move forward that we might see UK law and EU law starting to diverge and therefore issues that might well start to emerge.

It is also important to recognise that, as we recognise awareness of the scope of Article 2, there is the potential for more inquiries to come from the wider public. It is important to stress that not all the issues and concerns that have been raised with us to date about the impact of Brexit on equality and human rights issues amount to a breach of Article 2 as yet. However, these issues are still very relevant to us. We will use them as part of our evidence building in respect of how we monitor and assess the impact of Brexit on equality groups. I would not underestimate the fact that they may not be relevant as yet.

As part of our awareness-raising role, we will be taking further steps to clarify and provide clarification regarding the parameters of the Article 2 commitment. The fact that a number of inquiries do not fall within it reinforces the need for that clarification to be given and to be given as quickly as we can.

Some of the issues that have arisen to date have included the voting rights of EU citizens, new requirements for pet passports for assistance dog owners—I am sure you are well aware of the media coverage that latter point has been getting—and the pay transparency directive and difficulties in accessing kosher and halal food by the Jewish and Muslim communities respectively.

It is important to say that we have raised these issues with the relevant parties. In relation to the voting rights of EU citizens, both commissions raised the issue with the Secretary of State for Northern Ireland back in June. We highlighted the concerns over the rights of EU citizens resident in Northern Ireland, including those who have EU citizenship by virtue of being Irish citizens, in relation to local district council elections both in voting ability and in candidacy rights.

The Government have since clarified their position and have published proposed changes, meaning that EU citizens living in the UK before 31 December 2020 will retain their rights provided that they retain lawful immigration status. The voting and candidacy rights of EU citizens arriving in the UK after this date are dependent on the principle of a mutual grant of rights through agreements with individual EU member states. We are looking forward to having some further discussions on this and examining this matter further.

The issue of pet passports and the potential discrimination against people with the need for assistance dogs has received a fair amount of media coverage. The commission raised this with the Executive Committee way back in September last year. Following on from that, the matter has been discussed with various MLAs, with DAERA and with the Northern Ireland Affairs Committee. These additional checks on pet passports for assistance dog owners are not yet being enforced, and it will be

interesting to see how this pans out on a permanent basis. It is something that we are both continuing to watch with great interest.

In terms of the pay transparency directive, the commission is considering the applicability of the proposed pay transparency directive to Northern Ireland within the scope of Article 2 specifically regarding the extent to which the UK Government will be required to keep pace with the proposed pay transparency directive, if it becomes EU law. We will raise any concerns with the UK Government and with the Executive Committee as we move forward. However, we are not yet sure whether that will become law, and it is subject to change. We are not yet convinced of the implications that it has in relation to the directives in annex 1.

The concerns that have been raised in relation to accessing kosher and halal food are still ongoing. We have been having some meetings and correspondence with the Jewish and Muslim communities in Northern Ireland in relation to the consequences, because it is not just about food; it is about some of their rituals too. This is something that we are continuing to monitor. There are issues perhaps with some of these products coming up from Dublin, but we will wait and see. We do not have the full details yet on the ramifications of it.

That covers most of issues. If there is something else in particular, I am happy to address it.

Lord Dodds of Duncairn: No, that is very helpful, comprehensive and very clear. Thank you very much.

Alyson Kilpatrick: I wonder whether I might simply add a couple of issues that are raised with the Human Rights Commission. You may be aware that the Committee on the Administration of Justice, a long-standing non-governmental organisation in Northern Ireland, has published a paper. It focuses on questions of equality between British and Irish citizens in Northern Ireland and the rights of EU settled status citizens and frontier workers. We do not yet know the answer to the issues they have raised, but we are working on it and are seeking a legal opinion before we can form any reliable view or assist you as to whether that will come within our remit.

A number of issues have been raised with us relating to the operation of the EU settlement scheme, most notably in relation to delays and the impact of delays. The delays could be impacting on issues such as housing and housing applications that are outstanding and being put into abeyance. We are looking at all of these. We have raised some of them with the Independent Monitoring Authority, which was established to oversee the citizens' rights chapter of the withdrawal agreement. We are working closely with them.

I would just signal a note of caution in relation to our role in some of these issues. We are confined to looking at rights that fall within the scope of Article 2, which is much more limited than the other work of the commission. Many of the issues that are raised by the public may not

actually fall within Article 2, but they may well fall within the core business of the commission. We will certainly look at addressing all those other issues as part of our core business.

Lord Dodds of Duncairn: There is one thing that is sure: between Article 2 and all the other core responsibilities, you are not going to be short of work.

Alyson Kilpatrick: Not yet, no.

Lord Dodds of Duncairn: Those resources will become ever more important.

Alyson Kilpatrick: I am strengthening my glasses already.

Q5 **Lord Empey:** Good afternoon. It is good to see Éilis again wearing a different hat this time. I was going to ask a question with regard to responsibilities. What do you see as the effective responsibilities of the UK Government and the Executive in relation to Article 2? How do you seek to engage with them both? I would just be interested to get your response to that. We could maybe start with Geraldine this time.

Geraldine McGahey: Lord Empey, if you do not mind, Alyson will take this issue forward for the Human Rights Commission.

Lord Empey: That is fine.

Alyson Kilpatrick: Geraldine will have much more interesting things to say as soon as I am finished. I will be brief.

Article 2 is an international treaty commitment falling to the UK Government, and is incorporated into domestic law, for completeness, under the European Union (Withdrawal) Act Section 7(a). That requires consideration of Article 2 to be built into all policy-making and legislative development both in Westminster and within the devolved institutions. We are very conscious of where the obligations lie but also that we have to engage with both.

We intend to engage, and in some respects have already engaged, formally by regular meetings with officials and periodic meetings with Ministers. We have produced responses to Bills and policy consultations, which in itself will involve a degree of engagement. We will be making submissions in evidence to committee inquiries and we will be giving advice to government. All those formal channels of engagement will be used.

We are exploring more direct engagement with local communities and people perhaps directly affected on the ground who do not have an opportunity to engage through those more formal channels. We will communicate those views throughout our other engagement processes.

We would also look to facilitate direct engagement between government and communities. Certainly, at an event we had recently, some members of the community who had not engaged previously drew to my attention

the fact that a lot of this does not reach them. They have fears and concerns that are not being explained or assuaged, and they would like more information. They are very keen to get involved. We need to try to reach them as well as working through the formal channels.

Lord Empey: I was just going to say that there is a complicated interface between the responsibilities of the Executive and the UK Government, and transferred, reserved and excepted powers.

Alyson Kilpatrick: There is, and I am delighted to tell you that Geraldine will answer that point.

Geraldine McGahey: This is one of the joys of being a commissioner who has been slightly longer in post. I take your point about reserved and excepted responsibilities under the devolution settlement.

In relation to transferred responsibilities, in the Northern Ireland Assembly, Ministers cannot pass legislation that contravenes Article 2. To ensure that the no-diminution commitment is maintained, the UK Government have amended the Northern Ireland Act so that the Northern Ireland Assembly and the Northern Ireland Executive will be acting outside their powers if they breach Article 2(1).

With regard to the keeping pace duty, it is ultimately the responsibility of the UK Government, but we envisage that the Northern Ireland Assembly and their Ministers will be introducing legislation to keep pace via their devolved powers if it lies within their devolved remit. For example, equality legislation and equality matters are a devolved remit. On that basis, the Executive Office and the Department for Communities can introduce equality legislation to enable Northern Ireland to keep pace, where it is within their devolved powers.

If Article 2 non-diminution falls within a reserved matter, it falls to the UK Government to ensure that that matter is addressed. If the UK Minister, for example, was to pass legislation and act in breach of the commitment under Article 2, it can be subject to legal challenge. That is really where the dedicated mechanism comes in.

We are taking forward work to monitor Westminster legislation in terms of its compliance with Article 2, and we will use our enforcement powers as we are required to do, should we consider that the UK Government have breached their commitment through the introduction of Westminster legislation that impacts on Northern Ireland. We used our powers and spoke up in relation to United Kingdom Internal Market Bill, for example, and its implications for the Article 2 commitment.

I hope that addresses your query about how the legislation will fall within the devolved and reserved matters. If there is anything else, I am certainly happy to take it up.

Lord Empey: Thank you. No, it is clearly complicated, and it will be a moveable feast over time. As you say, there are a number of cases that are likely to be taken. The implications and outcomes of those are as yet

unclear, and there may be legislative downstream consequence from them. We can only deal with when it happens, I guess. I am content with those responses.

Q6 **Baroness Goudie:** Good afternoon. I have really enjoyed listening to all your replies so far. I am sure you have worked out who will go first on my question. Who are your key human rights and civil society stakeholders in Northern Ireland and beyond? How much engagement have you had with them? What opportunities can be seized to gain their input, especially in light of the perceived democratic deficit under the protocol? Further, to what extent is there public awareness of individuals' ability to bring legal challenges in cases of breaches of the Article 2 commitment?

I would like to add a further sentence to that. I know that legal aid is probably not available for these cases, but, when it is possible to do them, there must be a way of funding them. That is fundamental to human rights.

Alyson Kilpatrick: To start with your last point perhaps, a human right is of no benefit whatever if you cannot actually enforce it. We are very conscious of that. We have some power to assist individuals in relation to litigation and we can bring litigation ourselves. We certainly will be looking to do that.

In relation to key stakeholders, the commission has always been keen to engage with as wide a range of stakeholders as possible. However, it is even more so now. Northern Ireland is very well served by a very experienced, active civil society, and they are very quick to come to us with issues. We are very grateful to them for that, and we can work with them and explore those issues. We can access some of the people they work with and are closer to.

We make joint representations to groups such as the Human Rights Consortium - which represents 160 community groups - trade unions, NGOs, charities, legal professionals and academics. We reach a wide range of people through that forum. We hosted a cross-border community event with the Centre for Cross Border Studies. That was attended by over 30 organisations and academics.

We also recently hosted a small group of stakeholders who met and discussed with EU Vice-President Šefčovič issues arising from the protocol. They were very blunt with him. I think he got a lot from the engagement. We raised at that meeting the importance of regular, structured, transparent engagement with a broad range of stakeholders, but not so broad that we are losing sight of what we are supposed to be focused on. Getting that balance right is very important. We need to get the right people, but we also need to encourage people who would never consider attending a round-table discussion or coming to us of their own volition.

I said earlier that we have forged many good relationships, but we are looking to expand and build new relationships, particularly with smaller

representative groups, community groups and people who are working directly on the ground. I spoke with one very impressive woman in relation to the work she was doing within her local community. She said that she was not aware of any of this stuff and that it means nothing to her, but that her community were frightened by the notion of the protocol and do not know what will happen if their rights are diminished. We have to reach those people. We clearly have not yet.

That probably answers your question about the awareness of the ability to bring a challenge. Sadly, the answer is probably that not very many people are aware yet. We have a job of work to do to make that known to the people who are most likely to be directly affected by it, so that they can come to us and we can assist in whatever way we can. At the minute, there is more concern and confusion than there are answers. We have a role to play in that.

Geraldine McGahey: Given the remit and the role of the Equality Commission, specifically in relation to Section 75 of the Northern Ireland Act, and the equality requirements and obligations that are placed on foot of that, the Equality Commission has engagement with a wide range of stakeholders right across Northern Ireland. That will form the basis on which we move forward. It will cover many of the various stakeholders.

In answer to the second part of your question about public awareness, we also have to bear in mind that it has been only nine months since the introduction of the new rights, so awareness is only beginning to percolate down through communities and stakeholders, particularly the right to bring legal challenges. It is at a very low level at the minute. As we roll out our awareness-raising programme, that will change. In all probability, we will see an increase in inquiries and potential complaints of breaches. I am sure that many of them will not be breaches for quite a while yet.

We recognise the importance of raising awareness and the role of the dedicated mechanism in addition to the Article 2 commitments, including with the general public. These are new powers that we need to make everyone aware of, not just officials, parliamentarians, politicians and civic leaders but right down to the grass-roots level. We have taken steps to raise public awareness through the publication of guides, as I mentioned to you earlier, which have been jointly produced between Alyson's team and our teams. We also have a programme of activities that is rolling out over the next number of months, and I made reference to those as well.

Meetings and information sessions have been held with a wide range of civil society organisations. Again, I have touched on those in relation to the trade unions, the members of the legal profession, et cetera, but we recognise that the scope of Article 2 is still very unclear. It represents a real challenge in making clear to all stakeholders what individual rights they actually have and how they are protected.

The commission is proactively undertaking a whole range of activities, and will continue to do so, but it is events like this, talking to you, and perhaps some joint working that we might do as we move forward, that will help in that activity.

The Chair: Thank you very much for that. There was a very interesting set of answers.

Q7 **Lord Hain:** Thank you all for the evidence, time and effort that you have put into the session. Can I ask Roisín and Éilis about the question of EU-UK governance mechanisms within the Withdrawal Agreement Joint Committee, the Specialised Committee on Ireland/Northern Ireland and the Joint Consultative Working Group on matters relating to Article 2 of the protocol? I am interested in whether you have been able to engage, because it does not seem to be functioning properly from the outside. It does not seem to be resolving the issues that are besetting Northern Ireland at the moment. What has the nature of your engagement been? Are you going to make any progress through it?

Roisín Mallon: Good afternoon, everyone. I am the director of the dedicated mechanism unit within the Equality Commission.

On the question, we would of course welcome more regular engagement with the Joint Consultative Working Group. We have not met with the group as yet. We have made clear to the group that we would welcome an invitation, and we understand that it will facilitate that request in due course. We have also stressed the need for the Joint Consultative Working Group not only to engage with the dedicated mechanism in relation to the Article 2 commitment, but to engage more widely with equality and human rights stakeholders in Northern Ireland, because it is important that their voices are heard directly by the Joint Consultative Working Group.

We have also stressed the need for timely and regular information exchange. As you will be well aware, under Article 15 of the protocol the EU has to provide information to the UK on planned future EU law that amends any of the annex 1 directives. In our contact with government officials, we have made clear the need for the dedicated mechanism to have good communications and good sharing of timely and relevant information, so that we are aware of EU legislation, given our monitoring role and the keeping-pace requirement.

On the other mechanisms you mentioned, we have not as yet raised any matters with the Specialised Committee. We of course have that power. The joint committee of the Human Rights Commission and the Irish Human Rights and Equality Commission have not yet raised a matter, but we have made clear that there is a need for clarity on the processes that the Specialised Committee will adopt and transparency in relation to decision-making and procedures. We have raised that as something that we would welcome clarity on.

In general, we have also stressed the need for these EU-UK oversight mechanisms to form structured engagement with civil society so that it is not simply the Joint Consultative Working Group. We have encouraged it to engage with civil society, as we have with the other oversight mechanisms. As I say, we would welcome the opportunity to brief the Joint Consultative Working Group directly on the work, not just through a one-off meeting but through regular engagement to advise it of our work and the concerns being raised by stakeholders in Northern Ireland on the Article 2 commitment. We would welcome good sharing of information to facilitate our work in monitoring the Government's compliance with Article 2.

Lord Hain: Given that you have said very diplomatically, if I am not putting words in your mouth, that you welcome engagement and all that, do you get the impression that this thing is functioning at all from your point of view? Are these joint committees working? Are they functioning? Is there any kind of real sense you get of a live process that you can engage with?

Roisín Mallon: We understand that the Specialised Committee has engaged with equality and human rights stakeholders in Northern Ireland. Meetings have taken place already to date. Joint Consultative Working Group meetings have started. The working group is at a very early stage of the process, we understand.

Lord Hain: It is nine months in, though, since Brexit was "done".

Roisín Mallon: Yes, it is nine months in. That is something we continue to raise in our regular meetings with the Northern Ireland Office on updates in relation to the establishment of the Joint Consultative Working Group and when we might get the opportunity to meet. As I say, we understand that the Joint Consultative Working Group is keen to meet us, so we welcome that engagement.

Lord Hain: That sounds good at any rate.

Éilis Haughey: I suppose the question takes us back, to some degree, to why we are so glad to be with you today. Keeping human rights and equality to the fore in a debate sometimes seemingly dominated entirely by trade questions is probably at the heart of your question, Lord Hain, and why we have not yet been before the Joint Consultative Working Group.

Roisín covered the issues amply there, but I would add that, in addition to the formal channels, we are acutely aware of the need to develop, and the benefit of developing, informal relationships. We meet periodically on an informal basis at official level with the EU delegation to the UK, and we have discussed the need for and the benefits of good channels of communication there. We would like to have those informal relationships to ensure that we are aware of what is coming down track before it is formally notified to us by the Specialised Committee and the Joint Committee structures, and so on.

We have powers, and we will use them to the full as required, in terms of raising issues with the Specialised Committee. But the first step in any process is to seek to resolve the matter diplomatically and through advice to government and to try to prevent issues coming to a head before we need to go down those formal channels. To date, we have been focused on doing that: on giving advice and, as I say, on seeking to ensure that we stay compliant with the Article 2 obligation.

Q8 Lord Hain: I am not asking you to pass judgment on the politics of this, but if the UK were to withdraw from the protocol, as has been suggested might be the case, what implications might that have, Éilis and Roisín, for your statutory responsibilities?

Éilis Haughey: At the moment, clearly the protocol is a matter of international law. It is an international commitment, and it has been incorporated, as Alyson said, into domestic law. Unless and until anything happens at an international level, or indeed at a domestic level, to change that, we will continue to have these powers, and Northern Ireland citizens and others will continue to have the protection that Article 2 offers.

Beyond that, I suppose the risks of failure to comply with or adhere to Article 2 are to do with those centrally important human rights and equality protections, and the risk of Northern Ireland potentially falling behind. That is not to say that we are world leaders on human rights in the first place. Perhaps I will stop there.

Roisín Mallon: Éilis has covered the key points there. Geraldine mentioned the importance of Article 2. What would happen if the protocol was to go and Article 2 was not to be replicated in a different form? I should say that one of the strengths of the protocol is, as Éilis has mentioned, that it is an international agreement, so it has the oversight mechanisms. Therefore, if it were to take a different form, potentially it would not have those oversight mechanisms in place. That would be one disadvantage.

Equally, the loss of Article 2 cannot be overestimated, because, unlike other parts of the UK where that commitment is not there, there is a potential risk of a diminution of equality and human rights that would affect the people in Northern Ireland but also—

Lord Hain: Why? Perhaps you could just elaborate on that.

Roisín Mallon: You will be aware that EU law has underpinned many of the equality laws in Northern Ireland. It has strengthened protection for a wide range of equality groups, including women, disabled people, older people and different communities.

If there was a roll-back on those equality rights that emanated from EU law, those groups would lose key rights that they have gained. Equally, if Article 2 was not there, there would be no commitment from the UK to keep pace with changes that the EU might make on those annex 1 directives. Lord Hain, you will be well aware that equality law in Northern

Ireland is well behind equality law in Great Britain in many key aspects, particularly in relation to single equality legislation.

If there were a roll-back on rights in Northern Ireland, we could end up with Ireland, which would be required to keep pace with EU law, having stronger equality rights, whereas citizens in Northern Ireland, on the other side of the border, could have potentially progressively fewer rights.

Lord Hain: Thanks. That has been very helpful.

Geraldine McGahey: Can I give my apologies for not introducing Roisín? It was very remiss of me and extremely bad manners, so my apologies to all of you and to Roisín. That is out of the way and I can breathe more easily in relation to that point.

Roisín has made the point about how citizens in Northern Ireland might be disadvantaged further. Equality legislation in Northern Ireland was once to the fore compared with neighbouring jurisdictions, whether across the rest of the United Kingdom or, indeed, in Ireland. We have fallen way behind from being the leader. We have not progressed to the same extent as other jurisdictions have. For example, in Northern Ireland we do not have a single equality Act. Certain parts of our legislation fall way behind. Examples are age GFS—age goods, facilities and services—and race relations.

That aside, I just want to reinforce that, to us, Article 2 is one of the really important positive aspects of the withdrawal agreement and the protocol. We would be very, very disappointed to see it diminished or weakened in any way. We argued long and hard for its inclusion and its retention, and we will continue to do so.

I have to say that the UK Government have, at various stages, stated and reaffirmed their commitment to Article 2 continuing. In their explainer document, for example, the UK Government stated, "The UK is committed to ensuring that rights and equality protections continue to be upheld in Northern Ireland". Indeed, they also reiterated that commitment in the recent command paper on the protocol, where they referred to Article 2 as being non-controversial.

On top of that, in a recent letter from the Minister of State for Northern Ireland on pay transparency to the European Scrutiny Committee, it was stated, "The UK Government is committed to ensuring that all the rights scoped out in the Belfast/Good Friday agreement are protected and we have taken steps to ensure that both the dedicated mechanism and changes to the Northern Ireland Act will ensure that the Assembly and the Executive are subject to the requirement to protect those rights in the way that they develop policy and pass legislation".

In that regard, we have to be optimistic and confident that Article 2 will remain, regardless of what the negotiations bring forward in terms of the

protocol in its wider context. I hope that gives you an insight into my positive thinking.

The committee suspended for a Division in the House.

Alyson Kilpatrick: I just have a couple of words to add to what Geraldine said and to come back to Lord Hain's question. Article 2 of the protocol is both a symbolic statement of commitment and the very mechanism by which to ensure that rights, equality of opportunity and safeguards are protected. It is fundamental to the Belfast agreement, to the peace process itself and, we would say, to Northern Ireland's ability to flourish and to be positive following withdrawal from the EU.

The way that I look at it—and I remain optimistic—is, as my father used to advise me, to take it at face value and not to assume anything. At the minute, Article 2 is the means of protecting those very valuable fundamental rights, but we need to make sure that that mechanism remains and is working properly.

The Chair: Thank you very much. Those were some very interesting answers indeed.

Q9 **Lord Thomas of Gresford:** From what I understand from all contributors, the terms of Article 2(1)—that the United Kingdom shall ensure that there is no diminution of rights, safeguards or equality of opportunity et cetera—are interpreted as keeping pace with the European Union's rights. Do I understand that, in the event of divergence, Northern Ireland would feel that, under Article 2(1), it should have such new rights accruing to it as the EU may adopt?

In that regard, are you seeking to monitor relevant developments in EU law as set out in annex 1 of the protocol? Have there been any relevant developments in EU law since the protocol came into effect requiring relevant domestic law in Northern Ireland to be amended, if necessary? Has there been any litigation as yet on the effect of Article 2? Are there any challenges that are known about which may come to fruition in litigation at a later stage?

Alyson Kilpatrick: I will begin, because I have the easy bit. I can answer the easy questions. There has been no litigation yet. In relation to the Article 2 provisions, there are essentially two parts. There is no diminution of rights, but then there is also the particular keeping pace with the directives, and those are the ones at annex 1 that you talked about.

I could probably talk about it for the rest of the evening, but I am not going to. Éilis has a very beautiful and neat way of describing the difference between keeping pace and the general clauses, as we have been calling it. I might ask her to deal with that.

Éilis Haughey: Article 2 is layered and complex, and it will take us some time to work through, as colleagues have said. It can be broken down into two tiers of protection, which might be why the phrase "no

diminution" is used. More generally, there is a no-regression commitment. In other words, Northern Ireland must not fall behind the standards that were in place on 31 December 2020 in relation to any rights that are set out or relevant to the relevant chapter of the Good Friday agreement and underpinned by a relevant EU obligation. That is a no-regression standard and does not entail, in the broader sense, a keeping pace obligation.

Six particular equality and non-discrimination directives were given enhanced protection, enhanced status, because they were listed in annex 1. Article 13 of the protocol states that, where EU law is set out or referenced specifically in the protocol, that reference is to that legislation as amended or replaced, and that is what gives us the keeping pace obligation.

Those six directives are the four gender directives, the employment framework directive and the race directive. So, yes, in relation to those particular directives, should the EU legislate to advance protections in those fields, Northern Ireland would be required to keep pace.

Examples of the wider range of directives that are relevant on a no-regression basis include the victims directive and the parental leave directive. We would be looking and monitoring the standards that are in place and the relevant jurisprudence that was applicable up to and including 31 December. This is partly why the monitoring task is quite significant: because in relation to the jurisprudence attaching to the annex 1 directives, for example, we will need to be across the way in which those directives are being interpreted.

For example, the texts of some of the relevant directives in relation to equal treatment do not specify transgender rights, but they have been read in through the jurisprudence. The monitoring task is significant, and perhaps I will pause there to let other colleagues take other aspects of the question.

Lord Thomas of Gresford: Before I move on from that, do I take it that, if there were developments in European law in relation to the main directives, there would be an obligation on either the Northern Ireland Assembly or the UK Parliament to pass relevant legislation? Is that what you are saying? Do I understand that correctly?

Éilis Haughey: Yes. In respect of developments of case law in connection with the annex 1 directives, I would expect Northern Ireland to follow suit in its interpretation and, if necessary, legislative developments. We should not legislate in such a way that would be contrary, for example, to case-law developments in relation to the annex 1 directives.

Lord Thomas of Gresford: Would you be in a position to take the Assembly to court to enforce that?

Éilis Haughey: The Assembly is subject, as Roisín was saying, to restrictions on its legislative competence. In other words, it is acting outside its powers if it passes primary legislation that is not compliant with Article 2. If it breaches its legislative competence, there is a whole process in the Northern Ireland Act whereby legislation can be referred to the Supreme Court and overturned. Court action could, of course, be taken in respect of Westminster legislation separately.

Geraldine McGahey: I referred earlier to the pay transparency directive that is currently being discussed and is out for consultation. If I may, I might invite Roisín to talk a little more about that. She has been dealing with it and will be able to explain the implications in much clearer language than I would. Roisín, could you take his Lordship through it?

Roisín Mallon: You had asked whether there were any examples to date of any EU developments which the UK might be required to keep pace with. I just wanted to highlight the issue of a proposal for a pay transparency directive that has been issued by the EU.

Éilis has already mentioned the UK Government commitment to keep pace with any changes that the EU might make to the annex 1 directives that improve minimum levels of protection so that Northern Ireland does not fall behind the minimum levels of protection under anti-discrimination law.

The commissions are currently looking at the implications of the proposal for a pay transparency directive—we would be happy to get back to the committee to share our views on this—particularly whether it amends or updates the recast directive, which, as you know, is one of the annex 1 directives, dealing with equal treatment between men and women in employment. The proposal for a pay transparency directive, if it is introduced and becomes EU law, would, for example, increase pay transparency standards; it would improve enforcement mechanisms to empower women so that they can claim for equal pay; it contains a requirement on large employers to report on gender pay. There are extensive changes proposed in that draft directive.

I would highlight that the European Scrutiny Committee asked the Government in July for their views on whether the proposed pay transparency directive amended the annex 1 directives, particularly the recast directive, and the Government have published their response. In it, they confirmed their commitment to pay transparency but did not believe that there was any requirement to go further than the requirements to assess that are set out in the protocol. There was no clear indication in their response that they considered that there was a need to replicate in Northern Ireland law the proposed provisions in the pay transparency directive, should it become EU law.

As I said, the commissions are looking at this closely, and we will confirm our views to government on the pay transparency directive. As I mentioned, we would be happy to relay our views back to the committee.

Lord Thomas of Gresford: Is it your position that if Europe legislates for equal pay, for example, there is an obligation on either the UK Government or the Northern Ireland Assembly to legislate to bring Northern Ireland up to that standard?

Roisín Mallon: If the proposed EU law on equal pay should amend or update one of the annex 1 directives—the recast directive is the most relevant directive to equal pay—and if it can be agreed with the UK Government that it does that, yes. If the UK Government agree to that, yes, we would expect them to introduce the changes set out in the pay transparency directive or any other EU law directive that amends or updates the annex 1 directives. We would expect those provisions to be introduced into Northern Ireland law.

Lord Thomas of Gresford: Does your organisation have the standing to take the Government to court to force them to bring in legislation up to the European standard?

Roisín Mallon: Should the UK Government breach their commitment in the protocol, if there were any concerns about that, there are, as you know, mechanisms in the protocol for us to raise issues with the Specialised Committee. They would be breaching their obligations under the protocol, and we would be availing ourselves of the mechanisms within the protocol to deal with that situation.

Lord Thomas of Gresford: Therefore, if it goes to the Specialised Committee and cannot be agreed, it would go to the European Court of Justice, would it not?

Roisín Mallon: Yes, the European Court of Justice has the final role in relation to those sorts of matters, but our first port of call would be to the Specialised Committee. As you know, we have the power to raise concerns with the Specialised Committee. We would hope that we would be able to convince the UK Government, should it be our view that there was a need to introduce relevant legislation.

Lord Thomas of Gresford: But if they refuse to do so, the European Court of Justice would be the final arbiter.

Roisín Mallon: The European Court of Justice would be the final arbiter as per its powers under the protocol. I hope that answers your question, Lord Thomas.

Lord Thomas of Gresford: That would be very interesting, I must say. I would like to be there.

Alyson Kilpatrick: Could I clarify something, in case I was misleading? You asked about litigation. There is no litigation concluded, but there is one case going through the domestic courts at the moment that will touch on Article 2. We will get some indication quite quickly through the courts here on some of these issues. Éilis was going to speak to you about the power to litigate in relation to a failure to keep pace with the directives.

Éilis Haughey: Perhaps it might be helpful to add to what Roisín was saying in respect of the dispute resolution mechanisms. If an issue should go to the Specialised Committee, it is my understanding that it can then be elevated to the Joint Committee and could then go to arbitration under the arbitration mechanisms in Article 168 and subsequent in the withdrawal agreement. The arbitration panel, as Roisín says, could refer a question of interpretation of EU law to the European Court of Justice.

Lord Thomas of Gresford: That is very interesting.

Éilis Haughey: Secondly, we have own-motion powers to take cases. In that respect, that gives us a domestic route as well as an international route, potentially.

Geraldine McGahey: You can see from what has been said so far that it really is a very significant area, with some serious ramifications if it is not done right, which is why we are putting so much effort into trying to make sure that our monitoring processes are effective and, most importantly, timely, so that issues such as this can be flagged at the earliest opportunity and we do not get to that legislative position, and that the process is done right and the right considerations are taken at the right time.

Anything that you can do to support us in advance warning of discussions and anything that might come up in your own scrutiny work would be really very valuable to us in ensuring that the right discussions with the right people take place in a timely manner.

Lord Thomas of Gresford: I understand that caution. My application to the Northern Ireland Bar is going in next week.

Q10 **Lord Hannan of Kingsclere:** You have answered most of my questions, ladies, and you have been very thorough, so thank you for taking the time. I wonder whether I could just ask a very basic and specific question. If there is this divergence that the UK Government say there will not be under Article 2, what is your worst-case scenario? What negative outcome specifically would you be most alarmed about? Roisín mentioned the transparency in pay. Can you see anything else on the horizon that would be a tangible and deleterious impact of divergence? I will put that to whoever is interested.

Alyson Kilpatrick: Éilis is looking at precisely that question. As yet we cannot point to a breach of Article 2. In relation to forthcoming measures, there may well be. I am not sure I want to go very much further than that. I do not know whether Éilis wants to add anything more specific. It is something her team is looking very closely at.

Éilis Haughey: I am sorry, Chair. I was getting a message about an unstable connection, so I have had to turn off my video and I am afraid I missed the last question.

Lord Hannan of Kingsclere: What are you most worried about, Éilis, when it comes to a very hard specific outcome? If there is the

divergence, which the UK Government say there will not be, how in their practical daily life will somebody be negatively impacted by a divergence under Article 2?

Éilis Haughey: I am so sorry, Chair. I do not know whether you can hear me, but I am afraid I missed that repeated question. I heard the bit about what we are most worried about in terms of divergence. I could go from there.

The Chair: Yes, go from there, if you can. No.

Geraldine McGahey: Chair, we might have lost Éilis. If she comes back online, I will certainly hand over to her. In the meantime, I would just say that a failure to keep pace with EU law would have a number of equality and human rights implications for residents in Northern Ireland. For example, equality rights would fall further behind the equality rights in the rest of Ireland. That point has already been made by me and by Roisín.

It is important to recognise that EU law has significantly strengthened the rights of people in Northern Ireland, including disabled people; the young and the old; people of different religions and beliefs, including rights in employment; and in the case of gender and race in employment, in goods, facilities and services and in social security. More importantly, EU law has underpinned the Belfast/Good Friday agreement. Northern Ireland is already behind Great Britain. We have no single equality Act and we have no Bill of Rights that could help strengthen the rights that we do have.

Further, a failure to abide by the non-diminution commitment could result in the potential weakening of equality and human rights, including those that have been derived presently from the EU. That is why Article 2 is an important commitment and why it is important that the dedicated mechanism uses whatever powers it has to hold government to account to ensure that that commitment is upheld. We welcome the commitment to keep pace with any EU changes to annex 1 equality directives, but the equality directives do not cover all aspects of equality rights and safeguards.

Lord Hannan of Kingsclere: Forgive me, Geraldine. Maybe I expressed my question badly. You have listed those things in terms of generalities, and we heard that already. What I am trying to drive at—again, maybe I am just missing something—is this. For an ordinary citizen in Northern Ireland, what would be the concrete negative impact on daily life that might be justiciable, or would otherwise just be a deleterious harmful impact that they would suffer as a direct consequence? Rather than just saying, “There will be a potential falling-behind in equalities legislation”, what specifically are we worried about?

Geraldine McGahey: Éilis, if she was online, or Roisín might be best placed to take this forward. In the past, there have been issues in relation to schooling and social security where kids are moving across the

border. That really falls within the human rights aspect, and Éilis' and Alyson's remit. I am not sure whether Éilis is back online.

Alyson Kilpatrick: Perhaps I will have to take the bullet after all. The commission has recognised a number of potential and fundamental issues from divergence. So far, they focus in and around free movement: frontier workers crossing the border, as Geraldine has anticipated, and the difference between Irish citizens in Northern Ireland being treated as EU citizens and able to move freely in other parts, and having to rely on the common travel area once the free movement provision fell away.

The common travel area is often given as the answer to some of these free movement issues, but certainly we know, and we have been advised by counsel recently, that it is not sufficient to guarantee similar rights as were provided before. Citizenship issues fall strictly outside Article 2, so they are strictly outside our remit. A lot of the issues about identity that come up in a lot of these conversations are not within our remit.

You are asking, "What will be different for you tomorrow compared to today if there is divergence?" The short answer is that I cannot reliably point you to something that will be different tomorrow, but we know there will be differences, because the rights that I had today will not carry on tomorrow. The best I can do is to say that we will have to look at all of them. We will look at all the practical impacts and in what way it diverges. It may be replaced by something as good if not better.

There are some very practical consequences, but I do not want to overstate this and suggest to you that we can point to something that will be different tomorrow from how it is today, if there is divergence. We are simply unable to do that as yet.

Geraldine McGahey: There is a research project about to commence, commissioned by the Northern Ireland Human Rights Commission as well as the Irish Human Rights and Equality Commission, specifically looking at the divergence of equality and human rights protections and EU best practice right across island of Ireland. If anything will point us in the direction of very specific hard examples that people will face on the ground, it is that piece of work. We hope that we will have interim reports coming towards the end of this year or early next year in relation to that piece of work. We are more than happy to share that with you as and when it becomes available to inform your thinking and knowledge on the subject, as well as ours.

The Chair: It would be very helpful to have that information when it becomes available. Meanwhile, because Éilis has alas left us, it might be very helpful if one of you were able to write to us with the state of knowledge now in answer to Lord Hannan's question. That would be a helpful first stage in the absence of Éilis, if that is okay. Is that all right with you, Lord Hannan?

Lord Hannan of Kingsclere: Yes, very much so. Thank you for taking the trouble, ladies. It helps. In my plodding literal-minded way, I would

much rather be able to identify what the tangible, hard issues are.

Geraldine McGahey: I would be happy to do so.

Alyson Kilpatrick: Lord Hannan, you have put your finger on the issue, really. We are grasping at smoke a little bit at the minute. We know there will be effects, but we cannot point you to very specific hard-edged impacts on the ground. We want to be able to do that. If there are none, we would be delighted to say so. If you want something tangible but also reliable that you can stand over, we would be very happy to do that in writing.

The Chair: Thank you very much.

Lord Hain: I wondered whether you could give us detailed written examples of all the ways in which a number of you said that Northern Ireland had fallen behind on human rights. It would be really useful for us to have that.

Geraldine McGahey: I am happy to do so. Alyson and I can work on that together in relation to the human rights aspects, but certainly we have quite a lengthy policy paper on where we have fallen behind in terms of equality legislation in Northern Ireland, and we are more than happy to supply both.

Q11 **The Chair:** Thank you very much. That would be extremely helpful. I am afraid we have asked you for one or two pieces of extra information, but that is really because what you have been saying to us has been extremely interesting and has led us to ask other questions.

I ought now, as I should have said at the beginning, to thank both organisations for the submissions that you made earlier to our earlier inquiry. We are sorry that we were not able to take those fully into account, but we are extremely grateful that it has led us to have this exchange this afternoon, which has been extremely helpful to us.

There are a number of points that we shall want to reflect on from what you have said. One that strikes me is the need for contact—you have some contact with the Specialised Committees—with the JCWG. That is clearly a very important thing. I was struck by Alyson's evidence, and at some point I wrote down, "There is more concern and confusion than answers at the moment". That may be true of your work, but it is perhaps true of Northern Ireland as a whole, as a wider application.

Both of you have stressed at times that contact with the committee is important to you; it is certainly important to us. I wondered whether there were other ways in which we could in some way help you or maintain contact with you. Perhaps just very briefly, as we end, if there is anything you want to say on that, it would be very helpful.

Geraldine McGahey: We have identified some of the issues in the written evidence that we have provided as a response to your inquiry on the protocol. I can just give you the high-level indication of what they might be.

There is an important role that Explanatory Memoranda can provide or play in the scrutiny work and the considerations. We believe this is key to ensuring that the commitments made under Article 2 of the protocol are adequately addressed and will ensure that the commissions and any relevant parliamentary committees responsible for legislative scrutiny are provided with sufficient information at an early stage. That goes back to what I was saying earlier about getting the information at the right time to the right people.

Other really important aspects are the engagement and information flow between us, our dedicated mechanism unit, and your own committee. In the scrutiny that you will be undertaking of EU legislation applying to Northern Ireland under the protocol, it would be really helpful if you were able to alert us to any of the issues that come before you.

We would very much welcome greater two-way communication and information sharing between the committee and the dedicated mechanism. It would be helpful for the committee to draw matters to the dedicated mechanism's attention. As I have said, greater information sharing will ensure that issues raised by us are taken into account by parliamentarians and that they are alerted to any significant issues well in advance.

In terms of your inquiries and reviews, we would very much welcome a periodic consideration by this committee in due course of how effectively the Article 2 commitment is operating in practice.

In terms of engagement, we would encourage the committee to engage with human rights and civil society organisations to establish the impact that the protocol is having at grass-roots level. That two-way communication is very effective and really does provide a degree of reassurance. It allows accurate information to be supplied, too.

As set out in our response to your inquiry, we consider that the commitment by the UK Government is a positive development, as it recognises the centrality of equality and human rights in the Belfast/Good Friday agreement and the durability of the peace process. In addition, the establishment, the resourcing and the new powers and duties of the commissions to oversee the implementation of this commitment are indeed another positive development. If you can encourage the sustainability of resources, we would very much welcome that. Some long-term planning would be very, very helpful.

There is not much more that I can say, except to refer you back to the written information that we have provided to your inquiry. We will supplement that with a written version of this part of the evidence. I am very conscious of the time and the length of time that the committee has given to us. It would do it justice if I were to put that in writing along with the written examples of the legislation and where we are potentially falling behind, if that would be agreeable to you.

The Chair: It would be agreeable and extremely welcome. We are very grateful to you indeed for suggesting that. Thank you very much for that. Alyson, are there any final words from you?

Alyson Kilpatrick: I have very little left to add. I would encourage the committee to continue to focus on the issue of rights and equality, and to help us do our job better in that respect. It is often overlooked in the midst of these tense trade negotiations and constitutional issues, but rights and equality are central to all those other things as well.

Simply because we have lost Éilis, I would just say that Éilis has worked so hard over the last number of months on pulling all of this together. I just want to recognise how informed, dedicated and insightful she really is. With her and Roisín behind this, we will be able to have some very positive engagement and make some real progress with the committee's help. Thank you very much for hearing from us. I know you found Éilis very helpful. I shall tell her that.

The Chair: Thank you very much. We found all four of you extremely helpful. We are very grateful indeed for your sparing so much time for us this afternoon. On behalf of the committee as a whole, thank you all very much indeed.