

**Mr Edward Argar MP, Parliamentary Under-Secretary of State for Justice —
Written evidence (RAB0011)**

Thank you for the opportunity to give evidence during the Lords EU Sub-Committee for Justice's inquiry into rights after Brexit. During the course of the session, I undertook to write to the Committee to provide additional information on several of the issues which were raised. Please find the details of my reply below.

1. Remedies including Francovich damages in the Implementation Period and in a no deal scenario

As I set out during my evidence, the Implementation Period is designed to ensure continuity and certainty for citizens and businesses. During that period, therefore, EU institutions, including the CJEU, will retain their current functions in respect of the UK.

The Withdrawal Agreement winds down the rights established during our membership, including the rights to certain remedies before the courts. To maintain and protect those, Article 4 to the Withdrawal Agreement ensures that both UK individuals and businesses who have rights under the Withdrawal Agreement in the EU, and EU individuals and business who have rights under the Withdrawal Agreement in the UK, are treated equally.

This is essential to ensure that citizens and businesses have consistency and certainty through a single set of changes.

Article 86 of the Withdrawal Agreement provides that where proceedings have been started in the CJEU before the end of the Implementation Period, they shall continue to have jurisdiction in any proceedings brought by or against the United Kingdom. It is right that these cases are wound down in an orderly manner and with minimal disruption. In many of these cases, considerable time and resources have been invested in legal proceedings in the legitimate expectation of the resolution of the case.

Articles 86-91 of the Withdrawal Agreement provide individuals and businesses with certainty that they will see their cases resolved - including through available remedies - supporting legitimate expectation and ensuring access to justice.

I have been clear that the UK's focus is on ensuring our smooth and orderly withdrawal from the EU with a deal as soon as possible.

The aim of the EU (Withdrawal) Act is to prepare the statute book for exit day, retaining EU law as it applied up to that day, and making corrections to ensure it is operable. Paragraph 4 of Schedule 1 to the Act provides that "*there is no right in domestic law on or after exit day to damages in accordance with the rule in Francovich*". However, paragraph 4 is subject to the transitional provisions set out under paragraph 39 of Schedule 8 to the Act. In particular, sub-paragraph (3) makes clear that the prohibition does not apply in relation to "*any proceedings begun, but not finally decided, before a court or tribunal in the United Kingdom before exit day.*" Further, sub-paragraph (7) delays the prohibition on seeking *Francovich* damages in domestic law **for two years after exit day**. This ensures that the Act will not prevent individuals from continuing to seek such damages in domestic law where a breach of EU law occurred before exit day.

2. Position of the UK Judiciary on the CJEU

The EU treaties set out the basis of membership of the CJEU and provide for judges from each Member State to participate in the Court.

Having left the EU and no longer being a Member State, the UK will no longer participate in the institutions of the EU as set out in Article 7 of the Withdrawal Agreement; in particular the nomination, appointment or election of members of the institutions shall no longer include the UK. Both judges and advocate generals are members of the Court and therefore the terms of the Withdrawal Agreement include the UK no longer having judges or an advocate general on the CJEU. Article 128 of the Withdrawal Agreement sets out that this position also applies during the Implementation Period.

We discussed your concerns around the uncertainty for UK judges and their staff on how long they will remain a part of the CJEU. Any uncertainty, however, derives from the extension of the Article 50 process and the UK's resultant ongoing membership of the EU. It is of course unfortunate for the judges and their staff that they should experience this period of uncertainty along with all citizens, businesses and public bodies of the UK and EU. The Government has worked hard to ensure that the UK can leave the EU in an orderly manner, with a deal, exactly in order to avoid such uncertainty and will continue to do so.

I mentioned during my evidence session my meeting with the President of the Court - I wanted to clarify that my own meeting was with the President of the European Court of Human Rights, rather than the President of the CJEU. However, the Secretary of State for Justice keeps in close contact with the UK's judges on the CJEU, most recently seeing them in Luxembourg in early June, where they discussed a range of issues of mutual interest.

3. Rights and protections in Northern Ireland

The recognition and protection of rights are fundamental principles of the UK. Our human rights framework offers comprehensive, well-established, and effective protections within a clear constitutional and legal system and the decision to leave the EU does not change this.

The Government is firmly committed to the Belfast Agreement, its successor agreements, the constitutional principles it upholds, the institutions established and the rights it protects. Leaving the EU, regardless of the terms of our departure, does not change this position.

The Government has committed to protect the rights of the three million EU citizens living in the UK in any exit scenario.

In addition, the longstanding Common Travel Area (CTA) arrangements provide important protections for the rights of British and Irish citizens in each other's state. On 8 May 2019, the Governments of the UK and Ireland signed a Memorandum of Understanding codifying the CTA and associated reciprocal rights. Whatever the terms of the UK's withdrawal from the EU, the MOU demonstrates our unshakeable commitment to the British-Irish relationship and to maintaining the CTA and preserving the rights enjoyed by British and Irish nationals when in each other's state.

For British and Irish citizens, in both a deal and a no deal situation, this means:

- Full protection and maintenance of the status quo for all journeys for individuals between the UK and Ireland, including the 110 million annual crossings of the border between Northern Ireland and Ireland;
- Protection of the right to work in each other's state without the need for any permissions or work permits;
- Full reciprocal access to education at all levels, including home fee status, tuition fee loans and maintenance support for students going to university in each other's state;
- Full reciprocal access to publicly funded healthcare for those living in or visiting each other's state;
- Maintenance of current social security arrangements, meaning that individuals pay into only one state's social security scheme at a time and can access social security benefits, such as pensions, in either state; and
- Protection of the right to vote in local and national parliamentary elections.

For the people of Northern Ireland, the preservation of reciprocal rights under the CTA facilitates the unique citizenship provisions in the Belfast (Good Friday) Agreement 1998, which give the people of Northern Ireland the right to hold both British and Irish citizenship, and to identify and be accepted as British or Irish or both as they may so choose. Maintaining these rights means that the people of Northern Ireland will not be required to assert and choose a specific identity in order to access public services and other entitlements.

Further to the above, Article 4(1) of the Protocol on Northern Ireland and Ireland to the Withdrawal Agreement confirms the UK's commitment to no diminution of rights in Northern Ireland. It contains a legally binding commitment on the UK Government to ensure that no diminution of rights is caused by its departure from the EU, including in the area of protection against forms of discrimination enshrined in EU law. This means that the rights, safeguards and equality provisions mentioned in the relevant chapter of the Belfast (Good Friday) Agreement, as set out in relevant domestic and retained EU law, are in scope of the commitment, provided that they are enforceable rights in Northern Ireland at the end of the Implementation Period and insofar as they may be affected by the UK's withdrawal from the EU. The existing institutions established under the Belfast Agreement, the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland, will take on a new role as a 'dedicated mechanism' to monitor, supervise, advise and report on, and enforce this commitment to ensure there is no diminution of these rights as a result of leaving the EU.

The EU (Withdrawal) Act 2018 sets out how EU law is converted into domestic law across the UK post-exit and this includes converting EU underlying rights and principles into domestic law. Section 5 makes clear that, whilst the Charter of Fundamental Rights will not form part of domestic law after exit, this does not remove any underlying fundamental rights or principles which exist, and EU law which is converted will continue to be interpreted in light of those underlying rights and principles.

Abortion law in Northern Ireland

The Government recognises the sensitivities of these issues and that there are strongly held views on all sides of the debate in Northern Ireland and across the rest of the UK. The Government welcomes the Women and Equalities Committee's recent work on this important issue, and is carefully considering the Committee's report and recommendations before responding in due course.

The Government remains fully committed to all of its obligations under international law, including the European Convention on Human Rights and the Convention on the Elimination of Discrimination Against Women. As abortion is a devolved matter, it is the Government's view that the best way forward is for locally accountable politicians in Northern Ireland to make decisions on these matters, and ensure their laws and policies are also compliant with international obligations.

The Government does not believe that the current situation in Northern Ireland should dislodge that principle, particularly in circumstances where the Government is working towards the restoration of devolved government in Northern Ireland through the current political talks process. The aim of the political talks, which commenced on 7 May 2019, is to quickly re-establish to full operation the democratic institutions of the Belfast Agreement so that they can effectively serve all of the people of Northern Ireland for the future. The Government will keep its position on this issue under review, as appropriate.

I hope this further information addresses your Committee's concerns.

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