

Northern Ireland Human Rights Commission (NIHRC) and Equality Commission for Northern Ireland (ECNI) - Joint written evidence (FUI0023)

Submission of the NIHRC and ECNI to the House of Lords Sub-Committee on the Protocol's follow up Inquiry on the impact of the Protocol

8 June 2022

Executive Summary

In summary, the Commissions recommend that:

- the UK Government and EU urgently reach agreement on long-term, sustainable solutions relating to the supply from Great Britain to Northern Ireland of foods affecting faith communities in Northern Ireland, and on requirements for assistance dogs travelling from Great Britain to Northern Ireland.
- the UK Government, working with the EU, continues to monitor and address any outstanding issues relating to the supply of medicines from Great Britain to Northern Ireland in order to allay fears relating to future availability, including for disabled people.
- there are no changes to the Protocol that would result in a weakening of either the Article 2(1) commitment or the Protocol's rights, safeguards and oversight mechanisms relating to this commitment.
- the Sub-Committee urge the UK Government to engage in a public awareness raising exercise outlining the roles and remit of the various UK-EU oversight bodies of the UK-EU Withdrawal Agreement and the UK-EU Trade and Cooperation Agreement and which clarifies the role of the Northern Ireland Executive input in relation to each of these bodies.
- the Commissions are not only kept informed of any future EU equality law developments relevant to the Annex 1 equality Directives in the Protocol, but also have the opportunity to highlight in advance any implications of those changes for equality law in Northern Ireland.
- clarity is provided on future proposals to be taken forward by the EU/UK in the areas previously highlighted by the Commissions.

1.0 Introduction

- 1.1 The Northern Ireland Human Rights Commission (the NIHRC), pursuant to section 69(1) the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland.
- 1.2 The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe (CoE) and United Nations (UN) systems. In addition to these treaty standards, there exists a body of 'soft law' developed by the human rights bodies of the CoE and UN. These declarations and principles are non-binding but provide further guidance in respect of specific areas.
- 1.3 The Equality Commission for Northern Ireland (ECNI) is an independent public body established under the Northern Ireland Act 1998. Its powers and duties derive from a number of equality statutes providing protection against discrimination on the grounds of age, disability, race, religion and political opinion, sex and sexual orientation. Its remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998.
- 1.4 The EU (Withdrawal Agreement) Act 2020 empowers the Commissions with new functions to monitor, advise, report on, promote, and enforce the implementation of Article 2(1) of the Ireland/Northern Ireland Protocol ('the Protocol') to the UK-EU Withdrawal Agreement.
- 1.5 The Commissions welcome this opportunity to respond to the call for evidence, on the follow up inquiry on the impact of the Protocol by the House of Lords Sub-Committee on the Protocol ('the Sub-Committee') and are available to provide an oral briefing if this could provide further assistance to the Committee.
- 1.6 This submission follows our June 2021 submission of the Commissions to the Sub-Committee's introductory inquiry into the operation of the Protocol¹ and more recently our November 2021 submission to the Sub-Committee on the UK and EU proposals and the prospects for Agreement².
- 1.7 In this briefing, the Commissions have focused on addressing only those questions in the Sub-Committee's call for evidence which fall within the scope of our respective roles and remit.

2.0 Impact of the Protocol

The practical impact of the Protocol

¹ Northern Ireland Human Rights Commission and Equality Commission for Northern Ireland, [Joint written evidence to the House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland's Introductory Inquiry into the operation of the Protocol on Ireland/Northern Ireland](#), June 2021

² Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland, [Submission on the UK and EU proposals and the prospects for Agreement to the House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland](#), 12 November 2021

- 2.1 Question 4 of the call for evidence asks about which aspects of the operation of the Protocol are creating most difficulties and which practical modifications to its operation would make it operate more effectively.
- 2.2 The Commissions have previously highlighted to the Sub-Committee our concerns about the impact of Brexit on marginalised and minority groups in Northern Ireland.

Minority ethnic groups/faith communities

- 2.3 The Commissions have raised concerns over the potential impact of Brexit on the sourcing of halal and kosher meat products and ritual items on Muslim and Jewish communities in Northern Ireland. The Commissions have raised concerns on access to, cost, and the availability of, halal and kosher food and ritual items and the potential impact on lower income groups, such as students and refugees and asylum seekers³.
- 2.4 The Commissions note that the UK Government took the unilateral decision to indefinitely extend grace periods related to the import of chilled meats from Great Britain to Northern Ireland, while negotiations between the UK and EU on the issue are ongoing⁴.
- 2.5 The Commissions have also raised the issue of additional requirements and checks for those travelling with assistance dogs. This has highlighted that the issue of travel arrangements for assistance dogs may have potential equality and human rights implications for disabled people both domestically and internationally, including in relation to Protocol Article 2 commitments in the Protocol, Article 8 of the ECHR and the United Nations Convention on the Rights of Persons with Disabilities.
- 2.6 There is a clear need for the UK and the EU to find a long-term, sustainable solution to pet travel arrangements. This should help allay any concerns relating to future travel, especially for disabled people who are reliant on assistance dogs to improve or maintain their health and independence.
- 2.7 We ask the Committee to note that in December 2021, following concerns raised with us by representatives of the Jewish community in Northern Ireland, the Commissions jointly issued a press release highlighting their concerns and called for an urgent solution to alleviate the ongoing shortages of kosher food in Northern Ireland following Brexit⁵. In February 2022, following concerns raised with it by representatives from some disability organisations in Northern Ireland, the Equality Commission issued a press release calling for a long-term, sustainable solution is needed for disabled people travelling between Great Britain and Northern Ireland with their assistance dogs⁶. In January 2022 the

³ Ibid.

⁴ The Commissions are also aware of UK Government plans to unilaterally change the Protocol, including removing checks and paperwork on so called "green lane" goods relating to both customs and SPS controls. See John Curtis (2022) [Northern Ireland Protocol: Implementation, grace periods and EU-UK discussions \(2021- 22\)](#), 1 June 2022, p 49

⁵ Equality Commission and Northern Ireland Human Rights Commission press release, [Call to alleviate food shortages for Jewish community](#), 15 December 2022

⁶ Equality Commission for Northern Ireland press release, [Break down barriers, do not build new ones after](#)

Equality Commission also wrote to the Minister of State for Northern Ireland in response to a request for further information on these issues.

Medicines

- 2.8 Under the Protocol Northern Ireland remains aligned to EU regulations and legislation on medicines and their supply. Following the end of the 'grace period', which had been due to end on 31 December 2021, it would have been required that all medicines imported to Northern Ireland from Great Britain follow EU rules and regulations. As a result suppliers raised concerns about the viability of supplying items to Northern Ireland in the longer term. The Commissions raised concerns that this could result in Northern Ireland facing continued and intensified disruption in relation to medicines supply.
- 2.9 The Commissions have raised these concerns in evidence to the Sub-Committee, highlighting potential equality and human rights implications and negative impacts on the day to day lives of disabled people in Northern Ireland, emphasising that there should be no-diminution of rights for disabled people in relation to their access to health and treatment, and that the UK and EU undertake urgent constructive engagement to reach agreement on a long-term, sustainable solution⁷.
- 2.10 In December 2021, the EU announced that it would act unilaterally to ensure the continued long-term supply of medicines from Great Britain into Northern Ireland with the grace period extended until the end of 2022 or the finalisation of the legislative procedure⁸. While the EU legislation does address some immediate and urgent supply issues the UK Government has described the EU's package as "not comprehensive" with some issues still to be addressed⁹. The UK Government said that they are "closely monitoring supply and gathering evidence on the risks not dealt with in the EU proposals"¹⁰.
- 2.11 Whilst we recognise that UK/EU negotiations remain ongoing, we are concerned that, to date, long-term sustainable solutions that address the issues we have raised, are still outstanding.
- 2.12 **The Commissions reiterate their recommendations that the UK Government and EU urgently reach agreement on long-term, sustainable solutions relating to the supply from Great Britain to Northern Ireland of foods affecting faith communities in Northern Ireland, and on requirements for assistance dogs travelling from Great Britain to Northern Ireland.**

[Brexit](#), 08 February 2022

⁷ NI Human Rights Commission and Equality Commission for NI, '[Submission of the NIHRC and ECNI on the UK and EU proposals and the prospects for Agreement to the House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland](#)' (NIHRC and ECNI, 2021), at paras 3.1 – 3.8

⁸ [EU-UK relations: Commission proposes solution \(europa.eu\)](#)

⁹ [Letter](#) from James Cleverly MP, Minister of State for Europe and North America to Lord Jay of Ewelme, Chair of House of Lords Sub-Committee on the Ireland/Northern Ireland Protocol on Medicines, 28 March 2022

¹⁰ Ibid.

- 2.13 **The Commissions recommend that the UK Government, working with the EU, continues to monitor and address any outstanding issues relating to the supply of medicines from Great Britain to Northern Ireland in order to allay fears relating to future availability, including for disabled people.**

Positive impact of the Protocol

- 2.14 Question 7 of the call for evidence requests evidence on whether the Protocol has had any positive impact for Northern Ireland.
- 2.15 Human rights and equality protections are at the heart of the Belfast (Good Friday) Agreement 1998 and are central to the peace process in Northern Ireland. The importance of protecting the 1998 Agreement and its human rights and equality commitments was accepted in negotiations leading to the UK's withdrawal from the EU.¹¹ This is reflected in the Protocol to the UK-EU Withdrawal Agreement 2020.¹²
- 2.16 As previously highlighted to the Sub-Committee, the Commissions consider that the commitment by the UK Government in Article 2 of the Protocol 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 process¹³. In addition, the establishment, resourcing, and new powers and duties of the Commissions as the dedicated mechanism to oversee the implementation of this commitment is another positive development (see Appendix 1 hereto).¹⁴
- 2.17 This enables the Commissions to hold the UK Government to account in terms of the implementation of the Article 2 commitment. It also provides individuals with rights to challenge the actions of the Northern Ireland Executive, Northern Ireland Ministers, and the Northern Ireland Assembly should they breach this commitment. A further positive aspect of the role of the dedicated mechanism is its close working with the Irish Human Rights and Equality Commission on matters relevant to Article 2 that have an island of Ireland dimension. The Commissions' also have the power to directly raise matters of concern with the Specialised Committee on the implementation of the Protocol.
- 2.18 As a result of being granted these new functions, the Commissions continue to undertake engagement with a range of stakeholders, including equality and human stakeholders, to raise awareness of the rights of individuals in respect of Article 2 and the role and remit of the dedicated mechanism, and to highlight issues of concern in relation to draft legislation progressing through Parliament.

¹¹ Joint report from the Negotiators of the EU and UK Government progress during Phase 1 of Negotiations under Article 50 TEU on the UK's Orderly Withdrawal from the EU, 8 December 2017, para 42 and 53.

¹² Preamble to the Protocol on Ireland/Northern Ireland to the UK-EU Withdrawal Agreement 2020.

¹³ Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland, [Submission on the UK and EU proposals and the prospects for Agreement to the House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland](#), 12 November 2021

¹⁴ Sections 78A-78E, Northern Ireland Act 1998.

3.0 Alternatives to the Protocol

- 3.1 Question 8 requests views on if there is a viable alternative to the Protocol, and to what extent would such alternatives address the priorities and concerns of each side.
- 3.2 In considering whether or not there are any viable alternatives to the Protocol, we would ask the Committee to note the positive aspects and benefits of Article 2 and the associated rights and remedies for individuals, outlined above.
- 3.3 We also ask the Sub-Committee to note the value of the Article 2(1) commitment being contained within the framework of the Protocol, with its associated oversight mechanisms, and the value of the dedicated mechanism framework provided for in the Protocol. Section 7A of the EU (Withdrawal) Act 2018 is particularly important for the enforceability of Protocol Article 2.
- 3.4 **The Commissions recommend that there are no changes to the Protocol that would result in a weakening of either the Article 2(1) commitment or the Protocol's rights, safeguards and oversight mechanisms relating to this commitment.**

4.0 Addressing the democratic deficit

- 4.1 Question 11 requests views on how to address concerns about the perceived democratic deficit at the heart of the Protocol, in view of the continued dynamic application of significant areas of EU law to Northern Ireland in the absence of UK participation in the EU institutions.
- 4.2 As highlighted previously to the Sub-Committee¹⁵, there is no express right to a particular form of democratic representation contained in the human rights treaties to which the UK is a signatory. Article 3 of Protocol 1 of the ECHR protects the right to free elections, which also encompasses the right to vote. The protection afforded by this right is only related to the domestic legislature.
- 4.3 Following the decision of UK in 2016 to withdraw from the EU, there has been a loss of representation in the EU institutions as the UK is no longer an EU Member State. However, the UK-EU Withdrawal Agreement makes provision for a series of new mechanisms for ongoing engagement between the UK and the EU and ongoing oversight of the UK-EU Withdrawal Agreement. These new institutions include establishing a Specialised Committee on the implementation of the Protocol¹⁶ and a Joint Consultative Working Group to facilitate the exchange of information and mutual consultation.¹⁷
- 4.4 In addition, the Protocol also provides for the Northern Ireland Assembly to give consent periodically as regards the continuing operation of its single market and customs provisions.¹⁸

¹⁵ Northern Ireland Human Rights Commission and Equality Commission for Northern Ireland, [Joint written evidence to the House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland's Introductory Inquiry into the operation of the Protocol on Ireland/Northern Ireland](#), June 2021

¹⁶ Article 14, Ireland/Northern Ireland Protocol to the UK-EU Withdrawal Agreement 2020.

¹⁷ Article 15, Ireland/Northern Ireland Protocol to the UK-EU Withdrawal Agreement 2020.

- 4.5 Under the UK-EU Trade and Cooperation Agreement 2020, the UK Government will establish domestic advisory groups in different configurations to discuss the implementation of the Agreement.¹⁹ The parties will also establish a Civil Society Forum which will meet a minimum of once per year and will focus on Part 2 of the Agreement.²⁰ These groups will include representation of independent civil society organisations including in the area of human rights. We are aware that the Partnership Council has adopted operational guidelines for the UK-EU Civil Society Forum and that its first meeting is expected to take place in June or early July, bringing together different civil society actors from across the EU and UK²¹. We also note that both the UK²² and EU²³ have established Domestic Advisory Groups.
- 4.6 As set out above, since 1 January 2021, the Commissions have new duties and powers as the 'dedicated mechanism' to monitor, supervise, advise, enforce, and report on this commitment. In this role, we can raise issues directly with the Specialised Committee.²⁴
- 4.7 The Belfast (Good Friday) Agreement has been exposed to risks pursuant to the withdrawal of the UK from the EU. The UK Government has recognised that human rights and equality protections are essential to the continued peace and stability in Northern Ireland. To that end, there should be a renewed focus on the full implementation of the Belfast (Good Friday) Agreement, including in relation to social inclusion and community development.
- 4.8 In the context of any future changes to EU equality law that the UK Government must keep pace with in Northern Ireland, under the terms of the Protocol, it is important for both the Commissions and equality and human rights stakeholders in Northern Ireland, that the implications for Northern Ireland are considered. To achieve this there is a requirement for sustained and regular engagement by the UK Government with the Commissions and equality and human rights stakeholders to ensure a full understanding of the implications of any EU law that is relevant to Northern Ireland.
- 4.9 It is also essential that the Commissions have the opportunity, not only to be kept informed of any future EU equality law developments relevant to the Annex 1 equality Directives in the Protocol, including through the Joint Consultative Working Group, but also to highlight in advance, any implications of those changes for equality law in Northern Ireland.
- 4.10 **The Commissions recommend that the Sub-Committee urge the UK Government to engage in a public awareness raising exercise outlining the roles and remit of the various UK-EU oversight bodies of the UK-EU Withdrawal Agreement and the UK-EU Trade and Cooperation**

¹⁸ Article 18, Ireland/Northern Ireland Protocol to the UK-EU Withdrawal Agreement 2020.

¹⁹ Article 13, UK-EU Trade and Cooperation Agreement 2020.

²⁰ Article 14, UK-EU Trade and Cooperation Agreement 2020.

²¹ [Remarks by Vice President Šefčovič](#) at the first meeting of the EU-UK Parliamentary Partnership Assembly, 12 May 2022

²² UK Government [webpage on the UK-EU Trade and Cooperation Agreement Domestic Advisory Group](#)

²³ European Economic and Social Committee [webpage on the EU Domestic Advisory Group under the EU-UK TCA](#)

²⁴ Sections 78A-78E, Northern Ireland Act 1998.

Agreement and which clarifies the role of the Northern Ireland Executive input in relation to each of these bodies²⁵.

- 4.11 **The Commissions recommend that the Commissions are not only kept informed of any future EU equality law developments relevant to the Annex 1 equality Directives in the Protocol, but also have the opportunity to highlight in advance any implications of those changes for equality law in Northern Ireland.**

5.0 The UK and EU approach

UK and EU proposals

- 5.1 Question 12 requests assessments of the UK Government's approach to, and management of, the impact of the Protocol since the publication of its Command Paper in July 2021, and question 14 requests assessments of the EU's approach to and management of the impact of the Protocol over the past year, including the publication of its four 'non-papers' in October 2021.
- 5.2 In our joint submission to the Sub-Committee on the UK and EU proposals and the prospects for Agreement in November 2021, the Commissions outlined our views on the UK Government's proposals in its Command Paper, and also the EU's 'non-papers'²⁶.
- 5.3 In this submission the Commissions welcomed a number of the proposals of the UK Government in its Command Paper and made a number of subsequent recommendations, including in relation to the importance of the Article 2(1) commitment and the importance of engagement by the UK Government with Northern Ireland stakeholders, including civil society.
- 5.4 Further, the Commissions welcomed a number of the EU's proposals set out in its non-paper on Engagement with Northern Ireland Stakeholders and Authorities and recommended further actions that the EU can take based on their proposals, including in relation to increased transparency, the Joint Consultative Working Group, structured dialogue with Northern Ireland stakeholders and the Specialised/Joint Committee.
- 5.5 The Commissions are awaiting the outcome in relation to a number of these matters that we have raised as regards the EU proposals and UK Government's Command Paper.
- 5.6 **The Commissions seek clarity on future proposals to be taken forward by the EU/UK in the areas previously highlighted by the Commissions.**

UK Government actions

²⁵ As recommended in: Northern Ireland Human Rights Commission and Equality Commission for Northern Ireland, [Joint written evidence to the House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland's Introductory Inquiry into the operation of the Protocol on Ireland/Northern Ireland](#), June 2021, pages 6-7

²⁶ Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland, [Submission on the UK and EU proposals and the prospects for Agreement to the House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland](#), 12 November 2021

- 5.7 Question 13 asks what the political, legal and socio-economic impact would be if the UK Government a) brings forward domestic legislation in relation to the Protocol, and/or b) uses the safeguarding mechanism contained in Article 16 of the Protocol.
- 5.8 It is essential that any future/new legislation brought forward by the UK Government in relation to the Protocol and/or the use of the safeguarding mechanism in Article 16 does not weaken Protocol Article 2 or the Article 2 oversight mechanisms.
- 5.9 If action was taken by the UK Government to weaken Article 2 and/or the Article 2 oversight mechanisms, that could result in a loss of individual rights for those living in Northern Ireland under Article 2, and could have potential implications for the work, role and remit of the two Commissions and our functions as the Dedicated Mechanism. Section 7A of the EU (Withdrawal) Act 2018 is particularly important for the enforceability of Protocol Article 2.
- 5.10 **The Commissions reiterate our recommendation that there are no changes to the Protocol that would result in a weakening of either the Article 2(1) commitment or the Protocol's rights, safeguards and oversight mechanisms relating to this commitment.**

8 June 2022