

## **5 Tests for the Ireland/Northern Ireland Protocol Deal Brexit & Human Rights Working Group**

The Brexit and Human Rights Working Group is a group of organisations including community groups, human rights organisations, trade unions, and others organisations working in Northern Ireland who are focussed on Brexit and its impact on human rights.

The Protocol on Ireland and Northern Ireland (herein, 'the Protocol') contains several key commitments on rights and equality protections which could be under threat from any changes to its interpretation or implementation.

For that reason, and in the interests of promoting the vital protections within the Protocol, we are setting out the 5 Tests we believe must be met in order to secure full human rights compliance of any proposed deal.

A fair Protocol deal to protect human rights must:

- 1. Make no changes to Article 2 of the Protocol, including to the Directives listed under Annex 1, unless these changes strengthen or expand the protections contained therein.**

Article 2 contains a vital commitment by the UK Government to ensure “no diminution of rights in Northern Ireland as a result of Brexit,” accompanied by a number of key EU Directives focused on equality and non-discrimination with which Northern Ireland must ‘keep pace’.

These EU Directives address issues such as equal pay, maternity cover, disability discrimination, and various other workplace equality issues, and are essential to maintain and improve our legislative framework for equality and non-discrimination.

- 2. Develop common regulatory frameworks between the EU & NI, particularly in areas of equality and human rights and in policy areas enabling North-South Cooperation.**

Regulatory alignment between the EU & NI in equality and human rights is necessary to uphold the Belfast/Good Friday Agreement commitment to no divergence of rights on the island of Ireland. It is also vital for the maintenance of North-South cooperation, which relies on common regulatory frameworks in areas such as healthcare, policing, transport, and education.

Any changes to the implementation of the Protocol must ensure an equivalence of rights and equality protections on a North-South basis and maintain the environment for North-South cooperation.

- 3. Ensure that Northern Ireland, and UK-wide, courts have full access to case law of the Court of Justice of the EU, particularly regarding EU equality and non-discrimination law such as those within Annex 1.**

A key component of the commitment to ‘keep pace’ with the various Directives contained in Annex 1 is the assurance that any changes or developments in how

these Directives are interpreted by the CJEU will be adhered to in Northern Ireland. Thus, keeping pace requires consistent interpretation of these Directives between the EU and NI.

The UK Government has made clear that they intend to further diverge from the CJEU through their NI Protocol Bill and Retained EU Law (Revocation and Reform) Bill, both of which contain clauses undermining the ability of UK Courts to rely on CJEU case law. This case law is essential to maintain the commitment made by the UK Government in Article 2 of the Protocol.

#### **4. Maintain protections for the Common Travel Area and North-South cooperation.**

The operation of the Common Travel Area is vital to protect the free movement of people both on a North-South and East-West basis. There are several imminent and existing threats to the CTA, including the Government's planned introduction of Electronic Travel Authorisation (ETA) on the land border through the Nationality and Borders Act 2022.

The introduction of ETA would require non-British or non-Irish citizens, including those resident on the island of Ireland, to obtain authorisation to cross the border into Northern Ireland, a clear signal that the UK Government views the CTA as only applying to British and Irish citizens.

Any revisions of the operation of the Protocol should recommit to the maintenance of the necessary conditions for North-South cooperation (Article 11), and in doing so recognise that many barriers to cooperation are not experienced at the border, but rather as a result of regulatory divergence.

#### **5. Confirm that future legislative undertakings by the UK Government will not diminish or undermine their ability to uphold commitments made in Article 2 of the Protocol.**

The Government has implemented various pieces of legislation which have been identified by the Dedicated Mechanisms (the Northern Ireland Human Rights Commission and Equality Commission for Northern Ireland) as contravening the Article 2 'non-diminution' commitment. These include the Nationality and Borders Act and Elections Act, both of which have received royal assent.

The Government is currently progressing the Retained EU Law (Revocation and Reform) Bill, which has been identified by the Dedicated Mechanisms as containing a wide range of 'as applied' breaches of the Article 2 commitments, including potentially removing access to case law of the CJEU. The wide-ranging powers contained within the Bill would enable UK Ministers to remove swathes of EU law vital to the maintenance of the Article 2 commitments.

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