



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Response to Call for Evidence by the
European Scrutiny Committee on the
institutional framework of the UK-EU Trade
and Co-operation Agreement**

1 October 2021

1.0 Introduction

- 1.1. The Northern Ireland Human Rights Commission (NIHRC) and the Equality Commission for Northern Ireland (ECNI) welcome the Committee's call for evidence on the institutional framework of the UK-EU Trade and Co-operation Agreement (TCA).
- 1.2. Established in 1999, the NIHRC reviews the adequacy and effectiveness of law and practice relating to the protection of human rights, pursuant to Section 69(1) the Northern Ireland Act 1998. The NIHRC's mandate extends to all matters relating to the protection and promotion of human rights in Northern Ireland (NI), within the competence of the NI Assembly and the Westminster Parliament.
- 1.3. 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 to monitor, advise on, promote, enforce and report on the implementation of Article 2(1) of the Ireland/Northern Ireland Protocol ('the Protocol') to the UK-EU Withdrawal Agreement. The Commissions exercise these functions independently or jointly and Protocol Article 2(2) provides for joint working of NIHRC, ECNI and the Irish Human Rights and Equality Commission in relation to rights on the island of Ireland.
- 1.5. The Committee's inquiry extends to matters outside the remit of the Commissions therefore the following brief submission focuses on two of the questions under consideration, in relation to the interaction of the TCA with the Protocol and representation from Northern Ireland on bodies established under the TCA.

2.0 How could the implementation of the TCA and the

actions of the UK/EU joint bodies impact the operation of the Northern Ireland Protocol to the UK/EU Withdrawal Agreement?

- 2.1. The TCA and the Protocol on Ireland/Northern Ireland ('the Protocol') include long-term commitments across a range of inter-connected areas. The commitments to human rights in the TCA, for example, are relevant to Article 2 of the Protocol (individual rights) and to Article 11 (other areas of North-South cooperation).
- 2.2. UK-EU co-operation agreed on justice matters under the TCA, is made contingent on democracy, the rule of law and the protection of fundamental rights; and the text makes reference to the importance of giving domestic effect to the ECHR.¹ Such co-operation is also dependent on maintaining high standards in data protection, including respect for human rights in the collection of data.² Cooperation in these areas could be terminated almost immediately if either party renounces the ECHR.³
- 2.3. Article 2(1) of the Protocol states that:
'The UK shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 [Belfast (Good Friday)] Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, including in the area of protection against discrimination, as enshrined in the provisions of Union law listed in Annex 1 to this Protocol, and shall implement this paragraph through dedicated mechanisms'.
- 2.4. This provision derived from recognition that many of the rights and safeguards set out in that chapter of the Belfast (Good Friday) Agreement 1998 have since been strengthened due to EU obligations and resulting domestic legislation.
- 2.5. The Commissions welcome the commitment in the TCA to the ECHR and to its enduring domestic effect, particularly given that a commitment to

¹ Article 524

² Article 525

³ Article 692

incorporation of the ECHR is also contained in the section of the Belfast (Good Friday) Agreement specified in Article 2. The extent to which Article 2 requires continued adherence to the ECHR is a complex question on which there has been no judicial decision to date. Its express inclusion in the TCA is therefore helpful.

- 2.6. The TCA non-regression provisions on the level playing field, including labour and social standards, are relevant to Article 2 of the Protocol. “Labour and social levels of protection” are defined in TCA Article 386 and include “fundamental rights at work”.
- 2.7. Protocol Article 2(1) provides, firstly, a non-regression commitment in respect of the range of rights set out in the relevant chapter of the Belfast (Good Friday) Agreement underpinned by EU obligations – EU treaties, Regulations, Directives etc. – in place at the end of the transition period, on 31 December 2020.
- 2.8. Annex 1 of the Protocol sets out six EU equality Directives. Under the Protocol, the UK Government has committed not only to ensure that there is no diminution of the rights contained in these Directives but also that Northern Ireland equality law will keep pace with any changes made by the EU to these rights to improve the minimum levels of protection available, from 1 January 2021.
- 2.9. The Directives are:
 - Gender Goods and Services Directive;⁴
 - Recast Equal Treatment Directive;⁵
 - Racial Equality Directive;⁶
 - Equality Framework Directive;⁷
 - Self-Employment Equal Treatment Directive;⁸ and

⁴ Directive 2004/113/EC, ‘EU Council Directive on Implementing the Principle of Equal Treatment between Men and Women in the access to and supply of goods and Services’, 13 December 2004.

⁵ Directive 2006/54/EC, ‘EU Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation’, 5 July 2006.

⁶ Directive 2000/43/EC, ‘EU Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin’, 29 June 2000.

⁷ Directive 2000/78/EC, ‘EU Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation’, 27 November 2000.

⁸ Directive 2010/41/EU, ‘EU Parliament and EU Council Directive on the Application of the Principle of Equal Treatment between Men and Women Engaged in an Activity in a Self-employed Capacity’, 7 July 2010.

- Equal Treatment in Social Security Directive.⁹
- 2.10. The Employment Framework Directive prohibits discrimination in the area of employment and vocational training on the grounds of age, disability, sexual orientation, and religion and belief; the Recast Equal Treatment Directive covers equal pay and the Race Directive covers discrimination on grounds of race, ethnic and national origin including in employment and vocational training
- 2.11. The UK Government has also acknowledged on a non-exhaustive basis, that the Parental Leave Directive and Pregnant Workers Directive are relevant to the wider non-regression commitment.
- 2.12. The level playing field commitment in relation to labour and social protection in the TCA is therefore welcome, however it is weakened by a caveat to the effect that the diminution must not impact upon trade or investment, which may be difficult to demonstrate:
- “A Party shall not weaken or reduce, in a manner affecting trade or investment between the Parties, its labour and social levels of protection below the levels in place at the end of the transition period, including by failing to effectively enforce its law and standards.”¹⁰
- 2.13. The development of domestic policy in this field must take account of Protocol Article 2, as well as the TCA.
- 2.14. Future arrangements on justice co-operation arising from or developing on the TCA, will have a particular significance on the island of Ireland given the land border and previous co-operation. Protocol Article 11 provides that the Protocol shall be implemented and applied so as to maintain the necessary conditions for continued North-South cooperation across a range of areas including justice and security.
- 2.15. The timeliness and quality of communication between the structures established under the TCA and those under the Withdrawal Agreement,

⁹ Directive 79/7/EEC, 'EU Council Directive on the Progressive Implementation of the Principle of Equal Treatment for Men and Women in Matters of Social Security', 19 December 1978.

¹⁰ Article 387

as well as with stakeholders, will impact upon the operation of the Protocol.

- 2.16. It will be critical to ensure that measures are taken, including information-sharing by the relevant joint bodies to avoid, for example, changes to employment law which are compatible with the TCA but could breach Article 2 of the Protocol. Such rights are central to the work of the TCA Trade Specialised Committee on Level Playing Field for Open and Fair Competition and Sustainable Development but are also relevant to the Specialised Committee on the Protocol. Importantly, policy and legislative developments in the UK or the EU, which engage human rights and equality commitments under either treaty, will need to be shared at an early stage with the Commissions and all relevant stakeholders and bodies. This is critical to enable Protocol Article 2 and the Dedicated Mechanism to function effectively.
- 2.17. Early and meaningful engagement will ensure that policy is informed by stakeholders and takes into account evidence of practical issues arising and their potential solutions, reducing the likelihood of dispute. Engagement and early information-sharing also enables those tasked with providing advice the time and space to provide advice that is reliable and comprehensive.
- 2.18. The Commissions believe that strong human rights and equality protections informed by practical experience are essential to building a strong, cohesive economy, mutual trust and effective co-operation.
- 2.19. **Recommendation: Given the interface between the TCA and the Protocol, we recommend that the Committee enquire about the development of the UK Government's and EU's processes to ensure effective and timely communication of proposed policy and legislative developments, between the bodies established under the TCA with those established under the Withdrawal Agreement and Protocol, as well as with relevant civil society stakeholders, including equality and human rights organisations and the Commissions.**

3.0 What should the Government's approach to

representing the UK in meetings of the TCA’s joint bodies be? Should the Devolved Administrations be involved in discussions that relate to devolved competences? How should the Government ensure cross-departmental and cross-sectoral coordination of its positions in the various bodies established by the TCA?

- 3.1. Given the particular arrangements in place in Northern Ireland under the Protocol and the interface on many issues from equality and human rights to economic matters, between the TCA and the Protocol, there is a strong case for representation from NI on bodies established under TCA. This should include, the Domestic Advisory Group(s) and the Civil Society Forum. Representation across these structures will ensure that direct evidence from Northern Ireland is available. That evidence will demonstrate more effectively the impact(s) on the community. A further benefit will be expertise from a range of relevant sectors, including the human rights and equality sector.
- 3.2. **Recommendation: Northern Ireland voices should be heard, including those of equality and human rights organisations, on relevant bodies established under the TCA including the Domestic Advisory Group(s) and Civil Society Forum.**

4.0 Conclusion

- 4.1. The Commissions are grateful for the opportunity to contribute to the Committee’s work and would welcome two-way information sharing and further engagement on our role and remit as the dedicated mechanism.

Contact Us

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