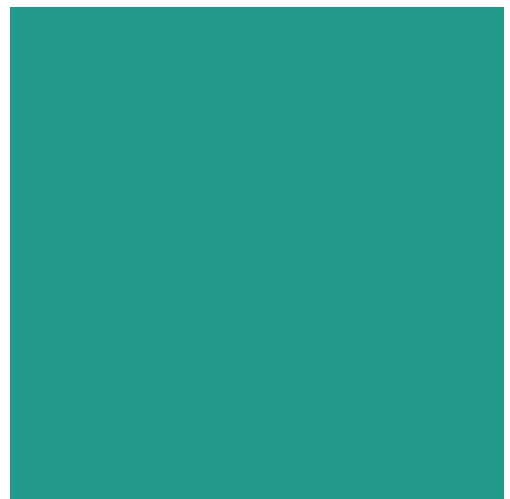


Joint Committee of the Irish Human Rights and Equality Commission and the Northern Ireland Human Rights Commission

Policy statement on the United Kingdom withdrawal from the European Union

March 2018



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INTRODUCTION

The Belfast / Good Friday Agreement 1998 ("the 1998 Agreement") laid down not only a mandate for national human rights institutions in NI and Ireland, but also the mechanism to ensure strong cooperation between them.¹ The 1998 Agreement specifically envisaged the establishment of a Joint Committee with representatives of the two bodies, in NI and Ireland, as a forum for considering human rights issues on the island of Ireland.² The first official meeting of the Joint Committee took place in November 2001 and, since then, members have engaged on several key issues and collaborated on all-island events.

The Joint Committee welcomes the proposed commitment contained in the February draft Withdrawal Agreement that the United Kingdom 'shall continue to facilitate the related work of the institutions and bodies pursuant to the 1998 Agreement, including the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland and the Joint Committee of representatives of the Human Rights Commissions of Northern Ireland and Ireland'.³

Under the 1998 Agreement, the Joint Committee was invited to consider the possibility of creating a Charter of Rights for everyone living on the island of Ireland.⁴ The former Irish Human Rights Commission and the Northern Ireland Human Rights Commission together published their *Advice on a Charter of Rights for the Island of Ireland* in June 2011 and this was presented to the Irish and UK governments and the Northern Ireland Assembly.⁵ The Joint Committee recommended that, as a minimum, a Charter of Rights for the Island of Ireland should reaffirm the political parties' commitment to the rights in the European Convention on Human Rights.

The Joint Committee was pleased to see the commitment by the UK to no diminution of rights as well as recognition that the Belfast / Good Friday Agreement 1998 must be protected in all its parts, in the Joint Report of December 2017.⁶ Seeing these matters as mutually dependent, the Joint Committee welcomes the reflection of these commitments in the February

1 Belfast / Good Friday Agreement 1998, 10 April 1998.

2 Belfast / Good Friday Agreement 1998, 10 April 1998, Strand Three, para 10.

3 European Commission Draft Withdrawal Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, TF50 (2018) 33 – Commission to EU 27, 28 February 2018, at p.99.

4 Belfast / Good Friday Agreement 1998, 10 April 1998, Strand Three, para 10.

5 Available at https://www.ihrec.ie/download/pdf/charter_of_rights_advice__june_2011__final.pdf. Both Commissions together presented advice to the Governments of the UK and Ireland, the Speaker of the NI Assembly and the Ceann Comhairle of Dáil Éireann. The Speaker and Ceann Comhairle both agreed to forward the advice to political parties in their respective legislative bodies for further consideration. Since then no further communication has been received on this matter.

6 Joint Report, December 2017, para 53.

2018 draft Withdrawal Agreement,⁷ and is of the view that the final Withdrawal Agreement must also ensure these commitments are enforceable and provide for the protection of rights on an ongoing basis.

Progress towards a lasting resolution of the conflict in Northern Ireland and Ireland has been grounded in the human rights and equality provisions of the 1998 Agreement. The equality and human rights framework which underpinned the 1998 Agreement assumed the UK's and Ireland's continuing common membership of the European Union. The significance of that common membership is seen in explicit acknowledgement of their relationship 'as partners in the European Union'⁸ and frequent reference to the EU throughout the document.⁹ The UK's withdrawal from the EU therefore creates significant risks for rights protection and the effective functioning of the 1998 Agreement.

The Joint Committee makes the following recommendations in order to honour the ongoing protection of rights on the island of Ireland:

1. Ensure commitment to 'no diminution of rights' is evident and enforceable in final Withdrawal Agreement
2. Safeguard North-South equivalence of rights on an ongoing basis
3. Guarantee equality of citizenship within Northern Ireland
4. Protect border communities and migrant workers
5. Ensure evolving justice arrangements comply with commitment to non-diminution of rights
6. Ensure continued right to participation in public life for EU citizens in Northern Ireland

⁷ European Commission Draft Withdrawal Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, TF50 (2018) 33 – Commission to EU 27, 28 February 2018, at p.99.

⁸ Belfast / Good Friday Agreement 1998, 10 April 1998, Agreement preamble.

⁹ For example, in relation to the relations between the Northern Ireland Assembly and other institutions; as well as to the work programme of the North/South Ministerial Council.

1. ENSURE COMMITMENT TO 'NO DIMINUTION OF RIGHTS' IS EVIDENT AND ENFORCEABLE IN FINAL WITHDRAWAL AGREEMENT

The transposition of EU provisions to UK law has strengthened protections for human rights and equality in a range of areas including employment and criminal justice. These protections have been further strengthened by the EU Charter of Fundamental Rights, which itself draws together the foundational rights and principles that have been recognised by the EU and its member states. The Joint Committee is concerned that failure to retain the EU Charter of Fundamental Rights and EU equality legislation within UK law will result in a diminution of rights within Northern Ireland and potentially cause divergence in rights protections on a North-South basis, contrary to the Belfast /Good Friday Agreement 1998 (as detailed further in section 2).

UK citizens would lose protection in terms of substantive rights, direct enforceability and remedies, albeit that rights only apply in areas of EU competence. Some provisions of the Charter are more extensive than the European Convention on Human Rights (ECHR) or domestic legislation e.g. Charter Article 24 on the rights of the child. Additional protections have developed under the Charter, as seen in the recent recognition

by the CJEU¹⁰ of "the right to be forgotten" arising from Articles 7 & 8. Moreover, unlike UK law, Charter rights are fundamental in that they cannot be repealed and incompatible domestic legislation can be struck down. Another loss relates to standing, since rules under the Charter facilitate action being taken by a wider group of applicants than under the 'victim' test under the ECHR.

"53...The United Kingdom commits to ensuring that no diminution of rights is caused by its departure from the European Union, including in the area of protection against forms of discrimination enshrined in EU law."

EU-UK Joint Report on Phase 1 of Negotiations

¹⁰ C-131/12 Google Spain SL v Agencia Espanola de Proteccion de Datos [2014] QB 1022

The UK government's current approach means that the EU rights and protections 'retained' in UK law further to the EU (Withdrawal) Bill may subsequently be repealed or amended and will have reduced status. The UK Supreme Court will be able to depart from CJEU case law and interpretation may therefore diverge over time, opening a gap between Northern Ireland and Ireland in terms of rights protection. As retained EU law is modified over time, it will not necessarily have overriding force in UK law, no longer being subject to the possibility of dis-application, amounting to a loss of rights protection. It is our view, therefore, that the loss of the Charter will breach the government's commitment to no diminution of rights.

Retention of the Charter, alongside a commitment to provide for accruing rights, keeping pace with its development, will help prevent a diminution of rights and address a number of related issues. It would mitigate the risk of undermining the Belfast Good Friday Agreement 1998 due to a lack of equality between Northern Ireland citizens (see section 3) and equivalence of rights on a North-South basis, as detailed in section 2. It would further facilitate co-operation on criminal justice as reference in section 5.

Making retention of the Charter a requirement in the Withdrawal Agreement would be consistent with the EU's move towards including human rights and equality commitments in trade agreements.

The Joint Committee acknowledges, however, that the retention of the Charter will not, of itself, fully address concerns about the potential diminution of rights after withdrawal. Neither will retention of the Charter obviate the need for a Bill of Rights in Northern Ireland, as identified in the 1998 Agreement, though this may assume greater significance in the absence of the EU Charter.

The Joint Committee calls for the text of the Withdrawal Agreement to commit the UK to retaining in UK law the Charter of Fundamental Rights of the EU and to enable the UK to keep pace with its evolving protections over time.

The Joint Committee recommends that the Withdrawal Agreement include a clear and enforceable commitment to no diminution of human rights and equality standards following withdrawal (rather than simply as a result of withdrawal)

In order to protect further the 1998 Agreement and its institutions, the Joint Committee calls on the EU to seek a commitment that the UK will ensure that all forthcoming Brexit-related legislation affecting Northern Ireland will be fully consistent with the 1998 Agreement

The Joint Committee considers that the commitment to no diminution of rights requires concomitant measures to ensure no diminution of remedies. Loss of access to the remedies, protection and monitoring of rights available via EU institutions will amount to a loss of rights unless equivalent domestic protections are made available. These must include comparable protections to those afforded by the European Parliament petition procedure, the European Ombudsman the European Data Protection Supervisor as well as the European Commission and CJEU. Potential loss of the assistance and expertise afforded by the Fundamental Rights Agency is also a concern.¹¹ These matters have particular significance in the context of the retention of EU citizenship rights in Northern Ireland.

The Joint Committee recommends that at least Northern Ireland remains within the jurisdiction of the CJEU as regards enforcement of rights under the EU Charter.

¹¹ Such as the collecting, recording, analysis and dissemination of information and data resulting from research and monitoring of fundamental rights in the European Union. See <http://fra.europa.eu/en/about-fra/what-we-do/areas-of-work>.

Any body established to review implementation of the Withdrawal Agreement, such as the Joint Committee on Implementation proposed in the Draft Withdrawal Agreement¹², should include within its terms of reference that it consider the human rights and equality implications of withdrawal and effectively engages with the Joint Committee, UK National Human Rights Institutions, the Fundamental Rights Agency, and statutory equality bodies.

Should the UK move outside the EU human rights and equality framework, the Joint Committee calls for the Withdrawal Agreement to include clear commitments by the UK government to establish, and maintain on an ongoing basis, equivalent remedies, protection and monitoring to ensure that rights in Northern Ireland are not undermined by a loss of remedies

All scenarios envisaged above will create an increasingly challenging environment for bodies tasked with monitoring, enforcing and advising on human rights and equality. Their work will be critical in monitoring adherence to the non-diminution guarantee and equivalence obligations.

The Joint Committee therefore calls for significantly increased and sufficient support for statutory human rights and equality bodies and civil society across the island of Ireland. It would consider further cuts to the funding of relevant statutory bodies difficult to reconcile with stated undertakings to protect the institutions established under the 1998 Agreement and to ensure “no diminution of rights”.

“53... The United Kingdom commits to facilitating the related work of the institutions and bodies, established by the 1998 Agreement, in upholding human rights and equality standards.”

EU-UK Joint Report on Phase 1 of Negotiations

¹² Articles 157-158, European Commission Draft Withdrawal Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and European Atomic Energy Community, TF50 (2018) 33 Commission to EU 27, 28 February 2018

2. SAFEGUARD NORTH-SOUTH EQUIVALENCE OF RIGHTS ON AN ONGOING BASIS

The equivalence of rights, on a North-South basis, is a defining feature of the Belfast/ Good Friday Agreement 1998. While the 1998 Agreement provides for the Irish government to initiate measures which 'would ensure at least an equivalent level of protection of human rights as will pertain in Northern Ireland'¹³, an ongoing North-South equivalence of rights is clearly envisaged. As well as referring to the UK's commitment to incorporate the European Convention on Human Rights and to the UK giving active consideration to signing the European Charter for Regional or Minority Languages¹⁴, the 1998 Agreement committed the Irish Government to establishing a human rights commission, to incorporating the Council of Europe Framework Convention on National Minorities (already ratified by the UK); to implementing enhanced employment equality legislation; and to introducing equal status legislation.¹⁵

13 Belfast / Good Friday Agreement 1998, 10 April 1998, Rights, Safeguards and Equality of Opportunity: Comparable Steps by the Irish Government, para 9.

14 Belfast / Good Friday Agreement 1998, 10 April 1998, Rights, Safeguards and Equality of Opportunity: Economic, Social & Cultural Issues, para 4.

15 Belfast / Good Friday Agreement 1998, 10 April 1998, Rights, Safeguards and Equality of Opportunity, Comparable Steps by the Irish Government, para 9.

A further signal of the expectation of long-term North-South equivalence is seen in the duty of the Joint Committee to consider 'human rights issues in the island of Ireland' as well as 'the possibility of establishing a charter, open to signature by all democratic political parties, reflecting and endorsing agreed measures for the protection of the fundamental rights of everyone living in the island of Ireland.'¹⁶

The Joint Committee welcomes the commitment in the Draft Withdrawal Agreement that 'the United Kingdom shall ensure that no diminution of rights, safeguards and equality of opportunity as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union'.¹⁷ However, the UK Government's proposals to incorporate /retain in UK law, the body of EU law in force on exit day,¹⁸ will solely ensure an equivalence of rights on exit

16 Belfast / Good Friday Agreement 1998, 10 April 1998, Strand Three, para 10.

17 European Commission Draft Withdrawal Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, TF50 (2018) 33 – Commission to EU 27, 28 February 2018, at p.99.

18 European Union (Withdrawal) Bill, clauses 2(1) and 3(1) – the Bill is at Committee Stage in the House of Lords at time of writing

day in March 2019. Currently, there is a risk that after that date a growing discrepancy between UK and EU law will emerge, thus eroding the North-South equivalence of rights in Ireland, whether as a consequence of the UK or the EU adopting higher standards. The Joint Committee believes that this discrepancy would undermine the 1998 Belfast/Good Friday Agreement.

The Joint Committee calls for the Withdrawal Agreement to provide for the continuing North-South equivalence of rights, post-Brexit, as established under the 1998 Agreement.

The Joint Committee recommends that at least Northern Ireland remains within the EU human rights and equality legislative framework, continues to incorporate key EU instruments, and remains within the jurisdiction of EU institutions or maintains an equivalence, at least, with EU human rights and equality instruments and jurisprudence on an evolving basis.

3. GUARANTEE EQUALITY OF CITIZENSHIP WITHIN NORTHERN IRELAND

The Belfast/Good Friday Agreement 1998 is founded on a binding commitment to equal rights and 'parity of esteem between the two main communities' of Northern Ireland. Indeed, Article 1(v) of the Agreement states that the power of the Northern Ireland government 'shall be founded on the principles of full respect for, and equality of, civil, political, social and cultural rights, of freedom from discrimination for all citizens, and of parity of esteem and of just and equal treatment for the identity, ethos and aspirations of both communities'.¹⁹ The EU rightly acknowledges its influence in this regard, not least in terms of its own fundamental principles as set out in Articles 2 and 6 of the Treaty on the European Union.²⁰

Twenty years after the 1998 Agreement, political stability is far from assured and the debate around withdrawal from the EU has already provoked a response reflecting

and entrenching community divisions. The Joint Committee notes the financial and political commitment which the European Union and the UK Government have made to addressing community divisions throughout the EU. While the Joint Committee welcomes the extension of continued EU citizenship rights to the people of Northern Ireland who are Irish citizens, as set out in the draft Withdrawal Agreement, we are concerned that any move towards unequal citizenship status has the potential to undermine the principles of equality and parity of esteem underpinning the 1998 Agreement. The Joint Committee believes that the right to live, work or travel in the European Union should be extended to all people of Northern Ireland irrespective of which passport they hold.

The 1998 Agreement recognises 'the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose'.²¹ Despite the commitment made by the British and Irish Governments in the 1998 Agreement that a person's identity will 'not be affected by any future change in the status of

19 Belfast / Good Friday Agreement 1998, 10 April 1998, Agreement Article 1(v).

20 Consolidated Version of the Treaty on the European Union, 2012, C326/13. Available <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012M/TXT&from=EN> Article 2 of the 2012 Consolidated version states 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.'

21 Belfast / Good Friday Agreement 1998, 10 April 1998, Agreement Article 1(vi).

Northern Ireland',²² the Joint Committee has concerns that a person's choices between the citizenship options available to them post-Brexit have potential to move beyond self-understanding towards choices that are based on potential practical consequences

Academic research commissioned by the Joint Committee identifies a potential nine different categories of citizenship arising from the December Joint Report, resulting in unwelcome bureaucratic challenges, potentially inhibiting free movement across the border and impinging on the exercise of socio-economic rights.²³ The differential treatment of Irish and non-Irish EU citizens in Northern Ireland is also called into question²⁴

The Joint Committee believes that the offer of continued EU citizenship – or equivalent rights – should be extended to at least all the 'people of Northern Ireland' as defined by the Belfast/Good Friday Agreement 1998.²⁵

The Joint Committee seeks an explicit guarantee that people in Northern Ireland may continue to identify themselves as they choose, without any diminution of rights, so that any choice of identity is not based on fear of practical consequences, post-Brexit.

Parties to the negotiations should reflect on the risk of creating different categories of residents and rights holders in Northern Ireland, in order to avoid divisiveness or unfair distinctions.

22 Belfast / Good Friday Agreement 1998, 10 April 1998, Agreement Article 1(vi).

23 Colin Murray, Aoife O'Donoghue and Ben Warwick, Discussion Paper on Brexit, January 2017, pp.28-29. This research, commissioned by the Joint Committee of IHREC and NIHRC, claims that 'there are multiple combinations of residency and citizenship entitlements in NI and Ireland that arise from the conclusions of the Phase 1 Report. Depending on which nationalities an individual has and where they are resident both before and after Brexit, there will be entitlements to different packages of rights', such as: (1) Irish citizen (no UK citizenship); (2) UK citizen (no Irish citizenship); (3) Dual Irish-UK citizen (no NI connection); (4) Dual Irish-UK citizen (part of the 'people of NI'); (5) Non-UK citizen who is entitled to Irish citizenship (e.g. USA); (6) Non-Irish EU; (7) Non-EU, Non-UK; (8) 'Worker' in Ireland with EU/UK citizenship; and (9) 'Worker' in UK with EU/UK citizenship.

24 Ibid.

25 Defined in Annex 2 of the 1998 Agreement as 'all persons born in Northern Ireland and having, at the time of their birth, at least one parent who is a British citizen, an Irish citizen or is otherwise entitled to reside in Northern Ireland without any restriction on their period of residence'.

4. PROTECT BORDER COMMUNITIES AND MIGRANT WORKERS

The Joint Committee welcomes the UK commitments in the Phase 1 report on negotiations "to the avoidance of a hard border, including any physical infrastructure or related checks and controls" and elsewhere in the text to "to protecting North-South cooperation and to its guarantee of avoiding a hard border". We believe, however, that increased border controls would impact negatively on the exercise of rights. People on both sides of the border between Ireland and Northern Ireland regularly cross the border to exercise their right to work, to access public services including health and education and to visit family, for example.

We also acknowledge the agreement to maintain the rights of frontier workers, though issues remain in particular for workers without entitlement to EU citizenship. An example is seen in the six-month limit on breaks in employment after which a frontier worker may lose that status in certain circumstances.

The Common Travel Area (CTA) has been referred to as a mechanism for facilitating cross-border working after withdrawal. Research commissioned by the Joint Committee suggests, however, that in terms

of service provision, this could infringe 'Most Favoured Nation' rules under the World Trade Organisation 'General Agreement on Trade in Services' since the CTA is not recognised by the WTO as a Preferential Trade Agreement whereas an EU-UK comprehensive trade deal would be.

Even in advance of the UK's withdrawal, the border can present challenges. A recent legal action under EU law, was taken by a lone parent on low pay living in Northern Ireland, to clarify that the applicant could use childcare services in the Republic of Ireland and access her entitlement to social security support to cover the cost. This issue was one covered by the EU Services Directive and not the Common Travel Area Arrangements.

The EU's work and investment over several decades to address disadvantage and community division in Northern Ireland, particularly in border areas, stands to be undermined by any renewed impact of the border in terms of freedom to move, work or access services. Continued PEACE and INTERREG funding will be needed to avoid a further drop in living standards during this time of transition. Issues raised on North-South equivalency of rights, are also relevant.

The Joint Committee wishes to highlight the importance of resolving border issues that go beyond the Common Travel Area arrangements, in terms of protecting rights.

The Joint Committee calls for the inclusion of measures within the Withdrawal Agreement to ensure no loss of rights due to changing border controls.

The Joint Committee has concerns that increased immigration checks resulting from the UK's withdrawal could lead to racial profiling and increase the impact of immigration status checks at public service access points including health, housing and education – potentially deterring migrants from accessing services to which they are entitled and also from reporting crime against them. The Joint Committee recalls obligations in the Victims' Directive that victims' rights "are not made conditional on the victim's residence status in their territory or on the victim's citizenship or nationality."

The Joint Committee seeks assurances that the UK and EU will work together to ensure immigration controls introduced once the UK leaves the EU are fully in compliance with international human rights standards, with progressive measures to obviate any risk of racial profiling emerging.

5. ENSURE EVOLVING JUSTICE ARRANGEMENTS COMPLY WITH COMMITMENT TO NON-DIMINUTION OF RIGHTS

The EU's cooperative justice arrangements significantly strengthen the capacity of both the UK and the other EU members to address those who abuse the human rights of others through transnational crimes.

The European Arrest Warrant is the most valuable tool within the arrangements. Between 2007 and 2017 the PSNI sought 154 EAWs, 113 involved a request to the Republic of Ireland. The acceptance of EAW requests from other member states is dependent on domestic courts being satisfied that the fundamental rights of the individual subject to the arrest warrant will be respected in the requesting country. In February 2018 the Irish Supreme Court forwarded a number of questions to the Court of Justice of the EU including whether the extradition of the suspect to the UK should be refused as a result of Brexit and the 'consequential uncertainty as to the extent to which [the applicant] would, in practice, be able to enjoy rights under the Treaties, the Charter or relevant legislation, should he be surrendered to the United Kingdom and remain incarcerated after the departure of the United Kingdom'²⁶.

The extradition of the individual has been delayed as a result.

In light of the potential to evade prosecution by crossing borders, the Joint Committee considers it a priority that the UK and EU government agree a robust legal mechanism to ensure effective extradition of persons accused of human rights abuses on the island of Ireland.

In addition to the European Arrest Warrant, the law enforcement authorities of EU member states are able to draw directly on a range of systems to access information of relevance to cross-border investigations. For instance, the European Criminal Records Information System provides access to accurate records of EU citizens' offending histories.

Whilst the EU has established bespoke arrangements to allow third states to contribute to established systems, as acknowledged by the UK Prime Minister, 'there is no existing security agreement between the EU and a third country that captures the full depth and breadth of our

26 Minister for Justice -v- O'Connor [2018] IESC 3

existing relationship'²⁷.

As part of the Brexit negotiations, new arrangements must be developed to ensure authorities across the island of Ireland are well placed to address transnational crimes, including human trafficking and sexual exploitation, which present significant obstacles to the enjoyment of human rights

The Joint Committee acknowledges the central oversight role of the Court of Justice of the European Union in the process of granting a European Arrest Warrant and in providing safeguards for citizens when using and sharing data. As the development of bespoke criminal justice co-operation measures is considered, it is vital that such measures fully integrate relevant human rights instruments and provide robust accountability and redress mechanisms

The UK Government and EU must ensure that any bespoke co-operation measures on justice matters are subject to robust oversight and redress mechanisms which conform to relevant human rights instruments and ensure continuance of existing rights protections.

A number of cross-border family laws are regulated by EU Regulation 2201/2003²⁸, commonly known as 'Brussels IIa'. A number of issues within the scope of the Regulations are of vital importance to ensuring respect for the rights of children, including arrangements for children's residence and contact with others and a system for the return of abducted children, enhancing the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

The Joint Committee highlights that the EU and UK must ensure continuous enforcement of relevant judgments in family cases, to resolve cross-border instances of child abduction and non-payment of maintenance and ensure practical solutions consistent with the rights of the child. They must also ensure the maintenance of current protections and that future enhancements are adhered to by the UK government.

²⁷ Prime Minister Theresa May's speech at the 2018 Munich Security Conference. 17 February 2018

²⁸ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000

6. ENSURE CONTINUED RIGHT TO PARTICIPATION IN PUBLIC LIFE FOR EU CITIZENS IN NORTHERN IRELAND

The right to participation in public life is another aspect of the North-South equivalence of rights under the 1998 Agreement.²⁹ It is important to consider how those in Northern Ireland to whom EU citizenship is to be offered exceptionally after Brexit will continue to be represented in EU democratic institutions.

The key rights of EU citizens are set out in Articles 20-24 of the Consolidated Version of the Treaty on the Functioning of the European Union.³⁰ These rights include 'the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State';³¹ as well as the right to apply to the European Ombudsman.³²

Given that the United Kingdom has committed to maintaining EU citizenship for 'the people of Northern Ireland who are Irish citizens – or who hold both British and Irish

citizenship',³³ any suggestion that Northern Irish citizens should be entitled to a lesser form of EU citizenship without the right to fully participate in the democratic institutions of the EU would appear to conflict with the principle of equivalence.

At present Ireland does not enable non-residents to vote in elections, although there is no legal obstacle to extending votes to emigrants.

The Joint Committee recommends that all the people of Northern Ireland retain the right to stand and vote in European Parliament elections.

The Joint Committee calls for Ireland to extend the franchise for EU Parliamentary elections to all the people of Northern Ireland, post-Brexit.

²⁹ Belfast / Good Friday Agreement 1998, 10 April 1998, Rights, Safeguards and Equality of Opportunity, Human Rights, para 1.

³⁰ Consolidated Version of the Treaty on the Functioning of the European Union, Articles 20-24, C326/56-58.

³¹ Article 20.2(b).

³² Article 24.

³³ HM Government, Northern Ireland and Ireland Position Paper (2017), para 14. Available https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/638135/6.3703_DEXEU_Northern_Ireland_and_Ireland_INTERACTIVE.pdf



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