



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION



**Coimisiún na hÉireann um Chearta  
an Duine agus Comhionannas**  
Irish Human Rights and Equality Commission

## **Continuing EU Citizenship “Rights, Opportunities and Benefits” in Northern Ireland after Brexit**

**25 June 2019**

**The Joint Committee of the Northern Ireland Human Rights Commission and the Irish Human Rights and Equality Commission is seeking to contract research on continuing EU citizenship rights, opportunities and benefits, in Northern Ireland, after Brexit.**

**The deadline for submitting a quotation is:  
5pm on Monday 5 August 2019**

## **Introduction**

The Northern Ireland Human Rights Commission (NIHRC) and the Irish Human Rights and Equality Commission (IHREC) have been working together as the Joint Committee established under the Belfast (Good Friday) Agreement 1998, to protect and promote human rights and equality in the context of the United Kingdom's withdrawal from the EU.

In March 2018, the Joint Committee produced a policy statement on the United Kingdom's withdrawal from the European Union<sup>1</sup>. Two of the recommendations were to:

- ensure a commitment to 'no diminution of rights' is evident and enforceable in the final Withdrawal Agreement; and
- guarantee equality of citizenship in Northern Ireland.

In this context, the Joint Committee wishes to research further the issues around the UK and EU commitment to facilitate continuing EU citizenship rights, opportunities and benefits in Northern Ireland after Brexit.

## **Defining EU rights, opportunities and benefits**

The Joint EU UK report on phase 1 of the Brexit negotiations ('the Joint Report'), published in December 2017, acknowledged that Northern Ireland born Irish citizens would remain EU citizens after withdrawal and would retain rights "including where they reside in Northern Ireland", giving a commitment that the next phase of negotiations would:

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<sup>1</sup> [https://www.ihrec.ie/app/uploads/2018/03/Joint-Committee-IHREC-NIHRC-Brexit-Policy-Statement\\_March-2018.pdf](https://www.ihrec.ie/app/uploads/2018/03/Joint-Committee-IHREC-NIHRC-Brexit-Policy-Statement_March-2018.pdf).

examine arrangements required to give effect to the ongoing exercise of, and access to, their EU rights, opportunities and benefits.<sup>2</sup>

This commitment implied that Northern Ireland citizens would not be treated simply as EU citizens living in any other third country: the commitment to 'examine arrangements required' would have been redundant otherwise since no 'arrangements' are necessary in respect of, for example, French citizens who move to the USA.

The Draft Withdrawal Agreement (DWA)<sup>3</sup>, published in November 2018, contained a Protocol on Ireland/Northern Ireland (the Protocol) which stated:

RECOGNISING that Irish citizens in Northern Ireland, by virtue of their Union citizenship, will continue to enjoy, exercise and have access to rights, opportunities and benefits, and that this Protocol should respect and be without prejudice to the rights, opportunities and identity that come with citizenship of the Union for the people of Northern Ireland who choose to assert their right to Irish citizenship.

An EU fact-sheet published alongside the DWA confirmed that Irish citizens in Northern Ireland would retain treaty rights including free movement, non-discrimination and access to institutions and consular support.<sup>4</sup>

The rights listed are drawn from Article 20 of the Treaty on the Functioning of the EU (TFEU) which grants EU citizenship to every person "holding the nationality of a member state" and enumerates rights including the right to free movement, administrative rights and consular protection. It also includes the right to stand and vote in European elections. Article 21 grants rights of residence to all EU citizens, which in turn has been interpreted as bringing into play the right to equal treatment under article 18, subject to limitations<sup>5</sup>.

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<sup>2</sup> Joint report from the negotiators of the EU and the UK Government on Phase 1 of negotiations under Article 50, December 2017, paragraph 52, accessible here: [https://ec.europa.eu/commission/publications/joint-report-negotiators-european-union-and-united-kingdom-government-progress-during-phase-1-negotiations-under-article-50-teu-united-kingdoms-orderly-withdrawal-european-union\\_en](https://ec.europa.eu/commission/publications/joint-report-negotiators-european-union-and-united-kingdom-government-progress-during-phase-1-negotiations-under-article-50-teu-united-kingdoms-orderly-withdrawal-european-union_en)

<sup>3</sup> Draft Withdrawal Agreement, November 2018, accessible here: <https://www.gov.uk/government/publications/withdrawal-agreement-and-political-declaration>

<sup>4</sup> Protocol on Ireland and Northern Ireland – Fact Sheet, 14 November 2018 accessible here: [http://europa.eu/rapid/press-release\\_MEMO-18-6423\\_en.htm](http://europa.eu/rapid/press-release_MEMO-18-6423_en.htm)

<sup>5</sup> 'EU social citizenship: between individual rights and national concerns', Catherine Jacqueson in *EU Citizenship and Social Rights*, Pennings and Seeleib-Kaiser Ed.s, Elgar Publishing, 2018

Questions answered by President Juncker in the European Parliament suggested a narrowing of the interpretation of rights, opportunities and benefits associated with citizenship, focusing on treaty rights which are contingent on nationality of a member state. He went on to say that EU citizenship hinges on nationality of a member state and that it is for the Irish government to determine acquisition of nationality (and the exercise of the franchise), subject to the 1998 Agreement.<sup>6</sup>

No further detail on the 'arrangements required' to ensure continued rights, opportunities and benefits, has yet been published but in a recent answer to a House of Commons parliamentary question, Immigration Minister Caroline Nokes stated:

Upholding the Belfast Agreement and its successors in all their parts, including the Agreement's citizenship and identity provisions, has been central to the Government's approach to the Exit negotiations. The Withdrawal Agreement with the EU recognises that the people of Northern Ireland who are Irish – and thus EU – citizens will continue to have access to rights, opportunities and benefits that come with EU citizenship. We are committed to working with our EU partners to put in place arrangements that will allow Irish citizens resident in Northern Ireland to enjoy the EU rights available to them.<sup>7</sup>

The question arises how this commitment to continuing rights, opportunities and benefits will be interpreted and applied in the Northern Ireland context. The paragraph 52 commitment raises issues in terms of the origin of rights, the usual requirement to reside in a member state in order to exercise certain rights and, for example, the mechanism by which continued enjoyment of certain rights might be funded in the fields of education, health and social security, for example, where rights are based on residence and/or reciprocity.

The UK Government has referred to the Future Relationship as the means by which some of the related issues may be addressed in so far as the UK hopes to secure ongoing access to EHIC and Erasmus<sup>8</sup>, however, the success of those negotiations is uncertain and may take some years. A 'no deal' Brexit would accentuate the difficulty.

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<sup>6</sup> [https://www.europarl.europa.eu/doceo/document/E-8-2018-002232-ASW\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-8-2018-002232-ASW_EN.html); and [http://www.europarl.europa.eu/doceo/document/E-8-2018-002636-ASW\\_EN.html](http://www.europarl.europa.eu/doceo/document/E-8-2018-002636-ASW_EN.html)

<sup>7</sup> Question 240974 asked by Lady Sylvia Hermon MP on 4 April.

<sup>8</sup> See, for example, the UK White Paper on UK-EU Future Relationship, 12 July 2018 accessible here: <https://www.gov.uk/government/publications/the-future-relationship-between-the-united-kingdom-and-the-european-union>

## Identity and birthright under the Belfast (Good Friday) Agreement 1998

The second aspect of the discussion on continuing EU citizenship rights, relates to equality. One of the founding principles of the Belfast (Good Friday) Agreement 1998 ('the 1998 Agreement') was the recognition by the two Governments and all participants, on a 'no detriment' basis, of:

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.<sup>9</sup>

Paragraph 52 of the Joint Report acknowledged this provision of the 1998 Agreement. It is difficult to reconcile the birthright commitment with a prospective disparity in rights between those who identify as Irish versus those who identify as British, potentially creating pressure to identify in a particular way, to avoid disadvantage as compared with neighbours. The inconsistency is underscored by the human rights and equality guarantees throughout the 1998 Agreement and reflected in the NIHRC's advice on a Bill of Rights, submitted to Government in December 2008, which concluded:

Provisions should be drafted to ensure that –

1. The right of the people of Northern Ireland to identify themselves and be accepted as Irish or British or both, as they may so choose, with no detriment or difference of treatment of any kind. This right would not be affected by any future change in the status of Northern Ireland.
2. The right of the people of Northern Ireland to hold British or Irish citizenship or both in accordance with the laws governing the exercise of this right, with no detriment or differential treatment of any kind. This right would not be affected by any future change in the status of Northern Ireland.
3. Public authorities must fully respect, on the basis of equality of treatment, the identity and ethos of both main communities in Northern Ireland. No one relying on this provision may do so in a manner inconsistent with the rights and freedoms of others.<sup>10</sup>

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<sup>9</sup> Agreement between the Government of the UK and the Government of Ireland, paragraph (vi), endorsed by all participants under Constitutional Issues section of Belfast Good Friday Agreement, paragraph 1(vi)

<sup>10</sup> A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland, NIHRC, 2008, p. 41 accessible here: <http://www.nihrc.org/publication/detail/advice-to-the-secretary-of-state-for-northern-ireland>

A consultation published by the Northern Ireland Office in 2009, in response to this advice stated:

The Government therefore believes that any Bill of Rights for Northern Ireland should enshrine in legislation the right of the people of Northern Ireland to identify themselves and be accepted as Irish or British or both.<sup>11</sup>

## The 'no diminution' commitment

A third consideration in exploring continuing EU rights after Brexit, is the degree of specific protection afforded by Article 4 of the Protocol:

1. 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, 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.<sup>12</sup>

Under Article 15 of the Protocol, minimum standards in Northern Ireland would be required to keep pace with the equality directives specified in Annex 1<sup>13</sup> as EU law evolves. The 1998 Agreement was not drafted with EU law in mind. It contains a number of specific commitments to rights, but also embraces broader aims, for example, social inclusion, the advancement of women in public life, respect, understanding and tolerance in relation to linguistic diversity and victims' rights to remember and contribute to a changed society. The interpretation of these concepts and the extent to which they will be protected by reference to EU law,

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<sup>11</sup> A Bill of Rights for Northern Ireland: Next Steps, NIO Consultation Paper, November 2009, Paragraph 6.6 accessible here: <https://cain.ulster.ac.uk/issues/law/bor/nio301109bor.pdf>

<sup>12</sup> Draft Withdrawal Agreement, November 2018, Protocol on Ireland/Northern Ireland, accessible here: <https://www.gov.uk/government/publications/withdrawal-agreement-and-political-declaration>

<sup>13</sup> Directive 2004/114/EC 2004 – the principle of equal treatment between men and women in access to and supply of goods and services.

Directive 2006/54/EC – the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

Directive 2000/43/EC – the principle of equal treatment between persons irrespective of racial and ethnic origin.

Directive 2000/78/EC – a general framework for equal treatment in employment and occupation.

Directive 2010/41/EU – the principle of equal treatment between men and women engaged in self-employment.

Directive 79/7/EEC – the principle of equal treatment for men and women in social security.

remains to be seen. The Commission and ECNI have argued strongly that in establishing the mechanism, explicit reference should be made, as a minimum, to EU directives on parental leave, pregnant workers and rights of victims being covered by the no diminution commitment.

## Research requirements

The Joint Committee wishes to contribute constructively to this debate and to continue its work to protect rights for all in Northern Ireland, in the context of the UK's withdrawal from the EU. The Joint Committee is therefore commissioning research to explore the nature and extent of the rights, opportunities and benefits in question and what legal and practical arrangements might be put in place to provide for their continued enjoyment in a manner consistent with the requirements of the Belfast (Good Friday) Agreement 1998. We would like to identify the possible individual or reciprocal obligations that such arrangements might entail for the UK, Ireland and the EU.

The fact of an Ireland/Northern Ireland protocol is acknowledgement in itself of the particular circumstances of, and potential to find solutions for, Northern Ireland. Article 4 would provide rights protections for all citizens in Northern Ireland and the Irish Government's recent commitment to continue providing EHIC cover to everyone in Northern Ireland provides a further example of an approach which would maintain rights irrespective of national identity.<sup>14</sup>

Research is required to:

- analyse in detail what may be encompassed in the commitment to ensure continued enjoyment of the rights, opportunities and benefits of EU citizenship once the UK leaves the EU, including, for example, what the enjoyment of freedom of movement might entail in practice, both where a Northern Ireland citizen exercises EU free movement rights to live and work in the EU26 or, indeed, returns to Northern Ireland having worked, say, in France for some years and wishes to bring a (non-EU) spouse home to Northern Ireland;
- set out the sources of rights, opportunities and benefits that are available to citizens of EU member states e.g. those based on treaty rights, nationality, residency or reciprocity;

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<sup>14</sup> <https://www.bbc.co.uk/news/uk-northern-ireland-47955980>

- detail the types and range of economic and social rights, opportunities and benefits currently enjoyed by EU citizens, including those relating to education, health, social security etc., making clear the distinction between those available to individuals who have exercised EU free movement rights and those who have not; between workers versus those not economically active; and distinguishing what is determined at EU level versus what is decided by member states (e.g. substantive social rights);
- explore the policy and other arguments for applying additional arrangements that could extend rights, opportunities and benefits (not covered by Article 4) to:
  - (a) EU citizens living in Northern Ireland and
  - (b) all the people of Northern Ireland,
 in a manner which augments the birth-right and equality commitments of the 1998 Agreement, e.g. waiving of residency requirement; and
- consider options for the mechanisms by which arrangements could work in practice, whether for those covered by the birthright provisions of the 1998 Agreement, or wider application as outlined above, including the advantages and disadvantages of a wider approach in practical terms. This should include:
  - o identifying those eligible (relying on birth certificate or proof of residency for example);
  - o options for liability and payment of the resulting costs; and
  - o the balance of responsibilities between the UK, Ireland and the EU required to make arrangements work.

The Joint Committee also intends to commission, in parallel with this research, a legal assessment of what is required in UK nationality and immigration law to meet the birthright commitment in the 1998 Agreement. A copy of this is attached by way of separate cover.

**Please note that the Commission would welcome informal engagement on the terms of the research proposal, in advance of a formal bid.**

## Specification

The successful contractor will be required:

- to engage with the Joint Committee to clarify the parameters of the project;
- to undertake desktop research and to engage with key stakeholders; and
- to submit an interim report by 1 October 2019 and, having taken account of Joint Committee comments, a final report by 31 October 2019. These timeframes are negotiable in consultation with the Commission.

The NI Human Rights Commission retains all rights to the intellectual property and will be responsible for future decisions regarding the publication of the report. In all publications, the role of the contractor will be duly acknowledged.

The Director (Legal, Research, Investigations and Advice to Government) will be available to liaise with the successful contractor for the duration of the project, to resolve any queries concerning the research or the Joint Committee's requirements in respect of the final draft.

## Application

Interested contractors are invited to:

1. Write a brief letter of motivation, alongside an annex of relevant experience and publications (no more than four pages in total), demonstrating:
  - experience of each member of the research team in undertaking research in the field of EU law, human rights or any other areas related to the work under this tender;
  - knowledge and understanding of the key issues relating to EU citizenship;
  - how they will conduct the research, including how the research team will ensure the research adds value to pre-existing research;
  - how they will ensure value for money; and
  - how quality assurance will be guaranteed.

It is expected that interested contractors will provide an outline of the proposed approach to the project, including the methods they will employ

for ascertaining and ensuring that the Joint Committee's requirements are met.

2. Quote a fixed price of no more than £15,000 /€16,700 (inclusive of VAT) for writing and presenting a final report detailing a breakdown of how many days will be allocated to specific tasks undertaken by research team members, alongside a daily financial rate for each researcher. The proposals will be assessed for value for money
3. Provide details of two referees who can comment on their ability to deliver the type of document described in the above specification.
4. The award of the contract will be based on; the applicant's competence to undertake the work, judged from the content of the letter of motivation and previous experience; how effectively the proposal will be delivered in practice; and value for money. The Joint Committee reserves the right not to accept the lowest quotation.

**Any questions about the project should be emailed to [Lorraine.hamill@nihrc.org](mailto:Lorraine.hamill@nihrc.org) who will arrange for a prompt response.**

**Please email your application to [Lorraine.Hamill@nihrc.org](mailto:Lorraine.Hamill@nihrc.org) by 5.00pm on Monday 5 August 2019.**