



Preliminary Findings Report – Brexit and Socio-economic Rights

What is the theme?

Socio-economic issues, and more specifically rights, have been central to understanding the Northern Ireland conflict. The conflict emerged against the backdrop of discrimination in housing and employment in particular. It was also most intense in areas of socio-economic deprivation and it exacerbated economic and health problems creating a long-lasting social impact in this jurisdiction.

There have been numerous efforts to introduce reforms addressing these concerns. The Housing Executive was created and adopted an allocation process based on objective need. Fair employment legislation was enacted to address discrimination in employment on grounds of religion or political opinion. The Fair Employment laws were gradually strengthened resulting in the Fair Employment and Treatment Order (FETO) 1998. The Fair Employment legislation provides for robust legal intervention in the workplace through monitoring, and recent reviews of the labour market show that inequalities in this area have reduced. The 1998 Belfast/Good Friday Agreement 1998 (GFA 1998) introduced some important provisions in relation to socio-economic rights, and more particularly equality.

The Agreement provides for a (then ground-breaking) equality mainstreaming obligation. This was legislated for in section 75 of the Northern Ireland Act, requiring designated public authorities to have due regard to the need to promote equality of opportunity across nine grounds. The Agreement also provided for a single equality commission to monitor and enforce equality and anti-discrimination law, including disability law. The equality legislation does not protect socio-economic rights or prohibit discrimination based on socio-economic status, but the protection of equality and socio-economic rights are in practice intertwined. The Agreement also includes commitments on economic, social and cultural ‘issues’, including regional and economic development and social cohesion, protecting the environment, employment equality reform, linguistic diversity (especially on promotion of the Irish language), and on the use of symbols and emblems.

While the 1998 Agreement and subsequent agreements have provided some support for socio-economic rights and equality rights, the local political context of power-sharing government has to be considered. In numerous respects there has either been inaction or actual slippage in the protection of socio-economic rights and equality.

The EU is directly relevant to the protection of socio-economic rights and equality. There is especial significance in relation to equality law. EU support for economic and social development in Northern Ireland, and for cross-border programmes, has also been important for maintaining socio-economic standards.

What are the main issues?

The UK Government position paper on Northern Ireland and Ireland refers to the need to uphold the GFA 1998 ‘in all its parts’; to maintain the Common Travel Area (CTA) and associated rights; to avoid a hard border for the movement of goods and to preserve North-South and East-West cooperation, including on energy. The paper refers to the need be ‘mindful of the full breadth of commitments’ in the 1998 Agreement. The position paper gives considerable and understandable attention to a host of issues. However, its limited focus on socio-economic rights and equality is skewed. There is mention of matters such as ‘equality’ and ‘party of esteem’ but these seem intended to refer to the ethno-national divide rather than to a more inclusive understanding of equality and anti-discrimination rights. There is a



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recognition that deprivation in Northern Ireland was both a consequence of and a factor in sustaining the conflict, but this does not translate into a clear endorsement of socio-economic rights and equality.

The UK position paper supports the CTA, which allows for no border control within the CTA arrangements and usually no requirements regarding leave to enter. In principle the system provides that any journey in the CTA is not to be subject to (passport) control. However, the CTA does not specify the levels at which these rights are protected and it remains significantly under-developed as a legal concept.

Further, reciprocal rights have evolved bilaterally between the two countries. These permit UK and Irish nationals reciprocal access to a range of rights in each other's country. These include socio-economic rights such as the right to work, to study, to access social welfare and health services.

On social and economic issues, the UK position paper envisages working with the EU in relation to the Peace IV programme and the role of the SEUPB. Much of the UK approach focuses on cross-border trade and energy cooperation. It discusses agriculture in the context of trade but not the role of EU subsidies to the Northern Irish agricultural sector.

The European Commission has set out guiding principles for dialogue on Ireland and Northern Ireland. As part of this it states there can be no retrogression in the enjoyment of anti-discrimination rights in particular.

There is of course much uncertainty about the impact of Brexit on these rights. At certain points in recent history the Northern Irish legislation has been ahead of EU developments (the prohibition of religious discrimination, the adoption of equality mainstreaming). At least theoretically a Northern Irish legislature could maintain or enhance these rights in the exercise of its own legislative powers. They have legislative competence in many of these areas, more so than their counterparts in Scotland for instance.

The EU has provided a convenient 'neutral' backdrop for upholding equality laws in particular. Discussions on equality rights (and sometimes socio-economic rights) sometimes get mired in zero-sum local politics. Rights based on EU law (arguably) need not necessarily attract the same political tensions. The EU has also acted as a driver for equality law during periods when it has been difficult to envisage much legislative activity in Northern Ireland. The EU has functioned as a 'leader' specifically on sexual orientation equality, where some local politicians have been inclined not to be proactive. EU legislation therefore provides an irreducible minimum level of protection for equality and certain socio-economic rights.

The EU (Withdrawal) Bill does not include any explicit saver for equality rights or socio-economic rights. It is the subject of considerable criticism including that it is deeply ambiguous and confers excessive powers to make secondary legislation. There will be possibilities for UK ministers or Stormont ministers to make changes in these areas without adequate democratic oversight, and this could have a concerning impact on, for example, socio-economic rights. Exit will likely also mean that there will be no access to the Court of Justice. Taken together this has led to considerable anxiety about the prospects for socio-economic rights in particular.



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What problems have been identified and what solutions have been proposed?

The EU (Withdrawal) Bill should provide explicit protections for EU standards in the fields of equality and discrimination law, workers' rights, environmental rights (both in relation to devolved and UK authorities). Brexit will mean that the supremacy of these rights vis-à-vis the devolved authorities and UK authorities is eroded. Providing for supremacy at least as regards devolved authorities requires either further amendment to the Northern Ireland Act or more sensibly an enforceable Bill of Rights (that includes protections for socio-economic rights). In addition to this, consideration should be given to what role the Charter of Fundamental Rights can play in the future, and the provisions of the Withdrawal Bill are particularly unwelcome in this respect.

The equality law framework in Northern Ireland needs to be strengthened, to address gaps that have emerged and to consolidate and 'level-up' established guarantees. A Single Equality Act for Northern Ireland remains a sensible way forward. Section 75 of the Northern Ireland Act provides a framework for considering the equality implications of policies adopted by designated public authorities. Particular attention should be given to supporting section 75 processes and thought given to whether it adequately covers possible action by UK ministers affecting the law in Northern Ireland. More attention should be paid to whether the envisaged 'enforcement' tools around section 75 in the Northern Ireland Act remain adequate and whether the grounds under section 75 should now be extended to cover socio-economic status. Provisions under section 75 such as data collection, the ongoing monitoring of impacts of any policies and positive action to address inequalities should be used to inform any public authority decisions through the transition period.