



Northern Ireland
Assembly

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Tim Moore

PROTOCOL ON IRELAND/NORTHERN IRELAND

Article 2

Article 2

Rights of individuals

1. The United Kingdom shall ensure that no diminution of rights, safeguards or 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.
2. The United Kingdom shall continue to facilitate the related work of the institutions and bodies set up 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, in upholding human rights and equality standards.

1 Rights of individuals (Article 2)

In its recently published report on The Protocol on Ireland/Northern Ireland,¹ the House of Lords European Union Committee provided the a useful outline of Article 2 of the Protocol.

Article 2 of the Protocol, headed “Rights of individuals”, deals with the UK’s undertakings to ensure “no diminution of rights, safeguards and equality of opportunity”, as set out in Part 6 of the 1998 Belfast/Good Friday Agreement, including with respect to six EU Directives listed in Annex 1 to the Protocol that implement the principles of equal treatment.

The UK undertakes to “continue to facilitate” the work of the bodies created by the 1998 Agreement “in upholding human rights and equality standards”. These include 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.

These commitments are legislated for in section 23 and Schedule 3 of the European Union (Withdrawal Agreement) Act 2020. Schedule 3 states that any legislation applying to Northern Ireland brought forward either at Westminster or in the Northern Ireland Assembly must be compatible with Article 2(1) of the Protocol. The Northern Ireland Human Rights Commission (NIHRC) and the Equality Commission for Northern Ireland (ECNI) must monitor the implementation of Article 2(1), reporting to the Secretary of State for Northern Ireland and the Northern Ireland Executive upon request and as they deem necessary. They may also bring any appropriate matters to the attention of the Ireland/Northern Ireland Specialised Committee (see Chapter 12), bring judicial review proceedings, intervene in legal proceedings, and provide assistance to persons in legal proceedings on an alleged breach or potential future breach of Article 2. The Government has committed to ensuring that the NIHRC and ECNI have sufficient resources to undertake these new functions.

By virtue of Article 13(3) of the Protocol, the obligation to adhere to the six EU Directives implementing principles of equal treatment extends to any new EU laws amending or replacing those Directives. The effect of this is that domestic

¹ The Protocol on Ireland/Northern Ireland Ninth Report of Session 2019-21 - published 1 June 2020 - HL Paper 66 Chapter 3: Rights of individuals (Article 2) paras 26-30 [references omitted]
https://publications.parliament.uk/pa/ld5801/ldselect/ldeucom/66/6606.htm#_idTextAnchor015

legislation will need to be amended as the directives listed in Annex 1 develop. We set out the process for amendment to domestic legislation in Chapter 11.

The Commission's April 2020 technical note on the implementation of the Protocol called on the UK to clarify the "dedicated mechanisms" it intends to create to implement Article 2, and its timetable for doing so. The Government subsequently reiterated its commitments in its Command Paper.

Commenting on the Article 2 the House of Lords European Union Committee stated:

We welcome Article 2 of the Protocol, and the provisions set out in section 23 and schedule 3 of the European Union (Withdrawal Agreement) Act 2020, on safeguarding the rights of individuals, as set out in the Belfast/Good Friday Agreement. We welcome in particular the specific role set out under the Protocol for 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, and the Government's commitment to ensure they are adequately resourced to undertake their new statutory tasks as set out in the 2020 Act.

We note that the obligation to ensure no diminution of rights extends to those protections against discrimination enshrined in the EU Directives listed in Annex 1 to the Protocol, as amended or replaced. The effect of this is that domestic legislation implementing these responsibilities will need to be amended as the Directives evolve.²

In its Adjusted Commission Work Programme 2020, the European Commission indicated that it intended to put forward a legislative proposal setting out binding pay transparency measures. The Work Programme also indicates that this proposal is to be adopted in the fourth quarter of 2020. As it relates to one of the six EU Directives listed in Annex 1, it may provide an early example of the process by which domestic legislation will be implemented to meet the requirements of Article 2.1.³

² The Protocol on Ireland/Northern Ireland Ninth Report of Session 2019-21 - published 1 June 2020 - HL Paper 66 Chapter 3: Rights of individuals (Article 2) paras 31-32 [references omitted]

https://publications.parliament.uk/pa/ld5801/ldselect/lddeucom/66/6606.htm#_idTextAnchor015

³ European Commission (May 2020) Adjusted Commission Work Programme 2020 - Annex 1 New Initiatives - 37. Equality and non-discrimination initiatives European Gender Equality Strategy (non-legislative, Q1 2020), followed by binding pay transparency measures (legislative, incl. impact assessment, Article 157 TFEU, Q4 2020)

https://ec.europa.eu/info/publications/2020-commission-work-programme-key-documents_en

ANNEX 1⁴

PROVISIONS OF UNION LAW REFERRED TO IN ARTICLE 2(1)

Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services

Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing

Council Directive 86/613/EEC–Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security

⁴ UK Government New Protocol on Ireland/Northern Ireland and Political Declaration

<https://www.gov.uk/government/publications/new-protocol-on-irelandnorthern-ireland-and-political-declaration>