

COMMENT

Uncertainty over Brexit vote



Professor Dagmar Schiek from the School of Law at Queen's University examines the possible implications for anti-discrimination law in Northern Ireland following the vote to leave the EU

What does the UK's withdrawal from the EU mean for anti-discrimination law in Northern Ireland?

The short answer to the question is: "All that is certain is uncertainty, but there is a risk that efficiency and traction of anti-discrimination law, and possibly also some substance, will be lost."

Anti-discrimination law in Northern Ireland has different sources, and EU law is only one of them.

For Northern Ireland specifically, the 1998 Belfast Agreement and its successors aim to erase factual inequalities between the "two main communities" in Northern Ireland. Equality legislation for Northern Ireland goes further: under section 75 of the Northern Ireland Act 1998, public authorities are to have due regard to promote equality of opportunity between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation, between men and women, persons with disability and without and persons with dependants and without.

Combating discrimination and ensuring equality in politics and society has been an important element of the European Union's law and politics.

The EU has banned discrimination on grounds of nationality as well as pay discrimination on grounds of sex from 1957, has legislated to ensure that these aims are achieved in the employment field from 1968 for nationality and from 1974 for sex discrimination in the employment field, expanding the legislation to combating discrimination on grounds of racial and ethnic origin, religion and belief, sexual orientation, age and disability, as well as sex beyond the employment field from 1999.

The result is a complex web of EU regulations and directives, banning discrimination on all the aforementioned grounds in employment, on grounds of sex and ethnic and racial origin, also in social security and access to goods and services, and only on grounds of racial and ethnic origin also in health care and education.

This legislation has been implemented



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in Northern Ireland by legislative orders issued by the UK government – UK equality law mainly does not apply in Northern Ireland, with the exception of the Disability Act 1995.

All this results in a high degree of complexity of equality law in Northern Ireland, which may be enhanced by the UK exiting the EU. According to the UK government's White Paper of 2 February, a Great Repeal Bill will, while repealing the European Communities Act 1972, will "convert the (...) body of existing EU law (...) into domestic law". The White Paper also promises that "Parliament (and, where appropriate, the devolved legislatures) will then be able to decide which elements of that law to keep, amend or repeal", with some more specifications to be made in a future White Paper on the Great Repeal Bill.

In Northern Ireland, matters of combating discrimination and equality are in principle transferred matter (subject to change), while legislative orders implementing EU directives were based on the Westminster competence in international relations.

For the future, the NI legislative Assembly may attain a holistic competence to legislate for equality in Northern Ireland (again, subject to change, and notwithstanding the fact that implementing any UN conventions on discrimination law remains a reserved matter). This might present an opportunity to create more comprehensive equality legislation for Northern Ireland.

However, that legislation will have lost its basis in EU law with the UK's withdrawal from the union. In the past, the Equality Commission for Northern Ireland has proactively used the option to bring cases before the European Court of Justice to further equality law in Northern Ireland, and by implication in the whole of the European Union.

Examples comprise matters of maternity law or the notorious question of whether women can be refused posts in the police force of Northern Ireland because weapons on a woman might be looked upon unfavourably (this has been resolved in favour of gender equality as can be observed by everyone). Leaving the EU, these opportunities are lost.

Further, standards of protection will diverge between the UK (and Northern Ireland) and other EU Member States (such as Ireland). For example, while equal treatment of EU citizens in employment matters must presently adhere to the same EU legislative standards, it is not certain whether the relevant prohibitions will remain in force unaltered after the parliaments in Westminster and Stormont have spoken. Thus, Irish citizens working in Northern Ireland might lose their protection by this specific equality clause, as will UK citizens working in Ireland.

Alternatively, there is still the option that specific solutions are achieved for the island of Ireland. Given the specific relevance of equality issues for Northern Ireland, and the proximity to Ireland, maintaining the validity of EU equality law might be an element of these.

In any case, this is the time to consider in more detail what future legislation in the field is adequate for and needed in Northern Ireland.