

Northern Ireland Council for Racial Equality

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“Ensuring strong equalities legislation after EU Exit – a case for UK and Northern Ireland”

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Thank you for the invitation to contribute to this important event. The Equality Commission is committed to seeking to protect and advance equality and good relations as the UK exits from the European Union and we have made a number of recommendations to government in relation to ensuring strong equalities legislation after EU exit.

I am pleased to have the opportunity to share these with you this morning, although I appreciate that some of you will be already aware of our position. I would also like to take opportunity to reflect on the recent report from Westminster’s Women and Equalities Committee and last week’s White Paper on Legislating for the UK’s withdrawal from the European Union and how we will seek to influence at a UK level as well as here in NI.

The first of our recommendations is that government should ensure the promotion of equality and good relations are addressed as priority issues in EU exit negotiations and final agreement with the EU.

We know that equality and good relations are central to ensuring a prosperous and thriving Northern Ireland. Equality and human rights were central to the Good Friday/Belfast Agreement; addressing inequalities, promoting equality of opportunity and challenging discrimination were central to creating and maintaining conditions for peace here. This has been recognised, at least in principle, in successive Programmes for Government by the NI Executive – including, most recently, the need to achieve the societal outcomes of a “*more equal society*” and a “*shared society that respects diversity*” in Northern Ireland was proposed by the Executive in its draft 2016-21 Programme for Government.

The Commission believes that the principles of non-discrimination and equality, those fundamental principles of EU law, and its foundation on values that include respect for equality and human rights should underpin the negotiations and final agreement between the UK and the EU. These principles have focused the actions of the EU institutions over the years, including as regards the development of EU laws.

The negotiations and agreement should aim to maximise opportunities to promote equality of opportunity and good relations in Northern Ireland; and we want to see high level, visible commitment to addressing key inequalities and improving outcomes for Section 75 equality groups.

Secondly, we recommend that government should commit to ensuring that there is no regression from current levels of protection under equality law in Northern Ireland and no weakening of supporting equality mechanisms.

You all know that, whilst much of Northern Ireland equality law has not been introduced as a direct result of EU law, EU law has resulted in some significant changes to Northern Ireland equality law. Indeed, after 40+ years, as many commentators have pointed out, the reality is that EU and UK law have become deeply interdependent, each influencing the other.

Changes which have been as a result of EU membership includes requiring the introduction of new forms of protection against discrimination and the strengthening of existing equality legislation in Northern Ireland across a number of equality grounds. For example, improved protection against discrimination for disabled people, Lesbian, Gay, Bisexual (LGB) people, transgendered people, women, younger and older people in employment and training as well as minority ethnic individuals in Northern Ireland. Further, a body of case law from the Court of Justice of the EU (CJEU), including cases from EOC in Northern Ireland, has helped to promote greater equality across the EU.

Beyond equality law per se, EU law has also resulted in stronger employment rights in Northern Ireland that have particularly benefited certain groups, such as women with enhanced rights for pregnant workers, agency workers and part-time workers and in employment areas such as parental leave and working time.

It is essential that there is no erosion of the current levels of equality rights and protections in Northern Ireland after the UK leaves the EU. The other rights I have mentioned, for example, employment rights, that help promote equality of opportunity should also not be diluted.

We have also said that it is essential that government supports the range of mechanisms in place to ensure equality in Northern Ireland, including the Commission and our work to promote equality and challenge discrimination, to ensure adequate and sustained support for the effective implementation of equality law and practice as well as the work of others.

Thirdly, we want government to adopt a best practice approach that includes implementing future relevant equality enhancing protections and best practice emanating from the EU and elsewhere.

Government should commit to adopting such an approach to ensure that people in Northern Ireland have effective and robust protections under equality law after the UK exits the EU. It should seek to lead the way and be a model of international best practice in standards of equality protections. There are, for example, a number of proposed EU laws relevant to equality under consideration at present which have the potential to enhance protection against discrimination and strengthen equality rights, such the draft EU Horizontal Directive (GFS), the European Accessibility Act¹, and the draft EU Directive on improving the gender balance of non-executive members of companies.

We want government to take a proactive approach to ensuring that people in Northern Ireland are able to enjoy the same or higher levels of protection under equality law as people in the EU, particularly important in the context of cross-border workers. In some areas, government has already gone beyond the required minimum standards of EU law and proactively enhanced and strengthened domestic equality rights and protections - in circumstances where this was not required under EU law - so this is not a new phenomenon.

We also recommend that government takes action to ensure compliance with its obligations under international human rights mechanisms, including the UN Convention on the Rights of People with Disabilities

(UNCRPD). This should include addressing identified shortfalls at the earliest opportunity, and giving effect to relevant 'concluding observations' – including those on law reform such as in CEDAW (June 2013), CERD (Aug 2016), ECRI (Nov 2016) and FCNM (March 2017), mirroring our recommendations to these bodies.

And we point out that it is imperative, now, to address the significant gaps in equality protection that currently exist between Northern Ireland and Great Britain. This includes in areas such as race equality law where, unlike in NI, in GB individuals have the same level of protection on grounds of colour and nationality as well as race, ethnic origin and nationality; age discrimination protection on GFS (2012 in GB); disability legislation to be strengthened – including prohibitions on indirect disability discrimination and discrimination arising from disability, amending the definition to make it easier for people to fall within the definition, improved protection from harassment for disabled people when accessing goods and services; amongst other areas.

We want a single equality act also, to build on the significant body of work we've done on this, which included engagement with OFMDFM/TEO Ministers and officials over many years on this, evidence to Assembly Committees, contributions to the age gfs consultation. There is a real need for political will to enhance protections.

Further, following the UK's exit from the EU, government must ensure that *further* gaps in equality protections do not develop. Given that equality law and policy is devolved to the NI Executive, there is the potential that there could be further policy and legislative divergence within different parts of the UK in the area of equality law, as the UK will no longer be required to implement the minimum requirements of EU law, including EU equality directives.

I'll mention the other 2 recommendations we make very briefly, as they do not engage EU equality law per se.

We want to ensure there is no negative impact on equality and good relations for those living in Northern Ireland – we recommend that government should ensure that the exit from the EU does not negatively impact on race relations, there is a real need to effectively tackle prejudicial attitudes and hate crime in NI, including on the grounds of race,

which may arise as a direct result of the negotiations or in the aftermath of any agreement. Government should also consider and fully mitigate any potential negative impact on initiatives that support equality, good relations and the peace process, including on the work of the voluntary and community sector. The Government should also consider the likely impact on the institutions, guarantees and provisions of the Good Friday / Belfast Agreement of UK exit. While it was good to see reference to continue to uphold the Belfast Agreement in the Prime Minister's Art 50 letter and the emphasis on this in EU negotiating guidelines published last week, there is a need for more clarity on what this will look like in practice.

Finally, we recommend that government ensures there is effective engagement with key stakeholders, including Section 75 groups on any EU exit proposals that have implications for equality and good relations in Northern Ireland, both during the process of the UK exiting the EU and after the UK exits the EU and also effective application of the statutory duties as required.

So, that's our recommendations - we have been communicating on this over the recent months and all on our website. For example, we made a submission to the Westminster Women and Equalities Committee inquiry on *Ensuring strong equalities legislation after EU exit* in the autumn, along with over 40 other interested organisations and individuals. It produced its report at the end of February, and made a number of recommendations to Government.

The Committee concluded that ensuring equality protections are maintained is not simply a matter of transposing existing law. In order to protect rights, the government needs to take active steps to embed equality into domestic law and policy. The Report provides what it calls its initial consideration of the issues – the Committee signals it intends to monitor and contribute as the process unfolds.

It recommended, in summary terms, that:

the Government should bring forward an amendment to the Equality Act 2010 to empower Parliament and the courts to declare whether legislation is compatible with UK principles of equality;

it should include a clause in the Great Repeal Bill that explicitly commits to maintaining the current levels of equality protection when EU law is transposed into UK law – mirroring our recommendation that there should be no regression;

Government should develop a cross-government equality strategy in order to ensure engagement across government departments and provide a platform for linking with and drawing on the expertise of civil society organisations;

assess extent of research and other equality initiatives that currently received EU funds and replace and ring fence these funds to allow current equalities research to continue uninterrupted – again, similar to our recommendation on support for the voluntary and community sector and range of initiatives to promote equality and social inclusion.

We have now seen last week's White paper on Legislating for the UK's withdrawal from the EU; it makes a number of references to workers' rights and equalities.

For example, it says that the Great Repeal Bill will convert EU law into domestic law, which means that the workers' rights that are enjoyed under EU law will continue to be available in UK law after the UK's exit. It says that where protections are provided by the EU treaties as a final 'backstop' – such as the right to rely on Article 157 of TFEU (equal pay) directly in court – they will also be preserved.

It also says that protections will further strengthened by the Great Repeal Bill's incorporation of CJEU case law which means that where workers' rights have been extended by CJEU judgments, those rights will continue to be protected in the UK once it has left the EU.

Furthermore, it expressly states that all the protections covered in the Equality Act 2006, the Equality Act 2010 and equivalent legislation in Northern Ireland will continue to apply once the UK has left the EU.

How this will work in practice subsequently remains unclear; there will be certainty for a period but no guarantee of how long any laws transposed into UK law will be kept after exit date. There are also issues regarding the devolved administrations that will need to be addressed. In areas that

are the responsibility of devolved administrations, such as equality law here, it is not entirely clear whether the relevant EU law will become part of Westminster law or added to the statute book here. The White Paper says that Government is committed to work closely with the devolved administrations but, again, there is little detail.

Concerns about parliamentary scrutiny of any proposed changes have also been raised – the White Paper indicates that not all changes can be done through the Great Repeal Bill so Government intends to create powers to correct the statute book where necessary without full Parliamentary scrutiny.

And of course, the negotiations with the EU will be taking place while the repeal bill is going through Parliament – this could shape what UK's post Brexit laws look like but the Bill will need to be completed by the day the UK leaves EU.

We will continue to promote our recommendations and engage on the issues, in Britain as well as NI. We are discussing the issues with our counterparts in Britain, the Equality and Human Rights Commission. Later this month, we will be both participating at a seminar in London on the impact of Brexit on equality rights (Oxford Human Rights Hub).

EHRC has recently published a five point plan, available on its website, which has clear resonance here with what we are saying, while having a different emphasis.

At local level, we shared our thinking/recommendations at a joint meeting with NIHRC in the autumn, participated in Ireland's Department of Foreign Affairs events in relation to Brexit, equality and human rights, it was on agenda of meeting with ICTU in February when we discussed respective positions and need to influence the exit negotiations. I note, too, that NICVA has also highlighted in its key messages that Brexit should not erode peace and stability nor erode equality rights and protections.

We've also sent a briefing setting out our recommendations to all recently elected MLAs and had initial discussions with NICS officials, with a view to meeting after Easter.

Our ambition is to ensure that equality law and practice is protected and advanced over the coming years, that it is front and centre of negotiations and final outcomes, and we will promote our recommendations widely and monitor and contribute as the process unfolds. It is clearly in all our interests to ensure that there is strong equalities legislation after UK exits the EU.