

## Opening Statement to the Seanad Special Select Committee on the Withdrawal of the UK from the EU

**Wednesday 8<sup>th</sup> May 2019**

We are very grateful to the Special Select Committee for the invitation to give evidence today on the subject of citizenship rights. As you may know, the Committee on the Administration of Justice, CAJ, is a Belfast based independent human rights organisation. We co-convene the Equality Coalition with UNISON, and were the NGO partner in BrexitLawNI, a joint project with the law schools of Queens and Ulster Universities.

The Good Friday Agreement recognises Northern Ireland birthrights to be Irish or British or both. This is a treaty-based duty on both States, the same provision also obliges both States to recognise dual citizenship (many States do not). The interface with related provisions on equality and parity of esteem, means that the birthright to be British or Irish or both is meant to result in equality of treatment regardless of that choice.

At the time of the 1998 GFA the good news was that there was a fairly comprehensive legal framework in the north across a range of areas that ensured Irish citizens in NI equality of treatment with British citizens. Bad news is that legal framework was EU law, which is going to be turned off by Brexit. Despite all the attempts to talk up the framework of the Common Travel Area, what is left is very precarious. In fact as things stand it is not possible for someone born in Belfast to land in a Belfast Airport on any international journey and enter and reside in Belfast, *as an Irish citizen*- that right currently only exists under EU law. Whilst there is a bill in Westminster to remedy that particular gap, the same clause also makes it easier to exclude or deport the same person. Whilst there are many assurances about the largely mythical ‘reciprocal rights’ of the CTA, the UK isn’t putting in place a replacement legal framework to ensure equality of treatment for Irish citizens. In fact, if you want a right as simple as not to be deported from your country of birth, then the direction of travel from the UK government you only have that right by virtue of being considered a British citizen.

Things are not so rosy either in NI for those who choose their GFA birthright to be British. Irish citizens in NI of course retain EU citizenship and the basic freedom of movement in the EU that comes with it; British citizens will not. Brexit has managed to turn everyone into a second class citizen in different ways. That’s before we get on to the implications for our migrant communities, already facing increased racial profiling and discrimination. Brexit leaves different groups of our citizens ‘divided by the rules’ – to quote the title of a recent conference we ran on this subject.

It is Brexit that is creating real difficulties in complying with the equality of treatment principle of the GFA. It is difficult to see how any form of Brexit, at least without some form of Special Status for the north that allowed British citizens to retain EU citizenship, can comply with these provisions of the GFA. Had Westminster discharged its duties under the

GFA to legislate for the Bill of Rights for Northern Ireland – that was to include a legally enforceable birth rights to be British or Irish (or both), without differential or detrimental treatment, it is difficult to see how Brexit could lawfully apply to NI.

Post 1998 the UK failed to bring its citizenship law in line with the Agreement, and continues to automatically confer British citizenship on almost all persons born in the North.

Nevertheless, the UK Home Office until 2012 did generally respect those rights of NI-born people that were attached to Irish citizenship, but post-2012, precisely to stop the exercise of particular EU rights, the policy changed to treat all NI-born people as also being British.

Whilst Irish citizens maintain EU citizenship and rights like basic freedom of movement in the EU, most other EU rights, opportunities and benefits are not automatically retained after Brexit, but require specific arrangements. This is the case with political rights to return MEPs, the European Health Insurance card, rights to cross border health or education, rights to be joined by family members.

Back in December 2017 in the EU-UK Joint Report (the Phase 1 Agreement), Paragraph 52 committed to continued access to and exercise of such EU rights, opportunities and benefits for Irish citizens in NI. The specific arrangements for this were to be examined. However, there is nothing to implement this commitment in the draft Withdrawal Agreement, and it is not even mentioned in the Political Declaration on the Future Arrangement.

The other route to retain certain EU rights and benefits is under the EU Settlement Scheme, this was possible during its pilot phase but the Home Office changed the criteria with the purpose and effect of excluding NI born Irish citizens, on the basis of also treating such persons as British. This leaves northern-born Irish citizens as almost the only EU citizens within the UK who will not be able to retain EU citizens rights under the Withdrawal Agreement.

This is not where we wanted to be at this stage. Where we wanted to be was Irish citizens having rightly retained EU rights and benefits (to the benefit of those who choose to be Irish or both Irish and British, and also, in the context of the GFA being in discussions about arrangements for equivalence for those who chose to be solely British. Instead, in pursuit of a lowest common denominator we have the UK Home Office actively seeking to strip every EU right and benefit possible from Irish citizens in NI, and doing so in a manner which fundamentally conflicts with the GFA. We really need significant movement from both Governments on this issue before it is too late.