

# DÁIL ÉIREANN

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## ROGHCHOISTE SPEISIALTA AN TSEANAID UM AN RÍOCHT AONTAITHE DO THARRAINGT SIAR AS AN AONTACH EORPACH

## SEANAD SPECIAL COMMITTEE ON THE WITHDRAWAL OF THE UNITED KINGDOM FROM THE EUROPEAN UNION

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*Dé Luain, 24 Bealtaine 2021*

*Monday, 24 May 2021*

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Tháinig an Roghchoiste le chéile ag 3 p.m.

The Select Committee met at 3 p.m.

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Comhaltaí a bhí i láthair/Members present:

Seanadóirí/Senators	
Malcolm Byrne,	
Timmy Dooley,	
Robbie Gallagher,	
Tim Lombard,	
Vincent P. Martin,	
Joe O'Reilly,	
Niall Ó Donnghaile,	
Mark Wall.	

Seanadóir/Senator Lisa Chambers sa Chathaoir/in the Chair.

## **Business of Select Committee**

**Chairman:** I remind members to ensure that their mobile phones are switched off. We have received apologies from Senators Eileen Flynn and Róisín Garvey. I welcome all to today's meeting.

The correspondence we have received is a submission to the committee from the Equality Commission for Northern Ireland, dated 21 May. I propose to note the correspondence. Is that agreed to? Agreed.

We are looking to adopt the draft minutes of the meeting of 17 May 2021, which was attended by officials from the British Irish Chamber of Commerce. Is that agreed to? Agreed.

## **Citizens' Rights in Northern Ireland Post Brexit: Discussion**

**Chairman:** The agenda for today's meeting centres on the area of citizens' rights in Northern Ireland post Brexit. As members will be aware, our meeting will be broken up into two sessions.

I need to go through my usual spiel about privilege at the start of the meeting, so please bear with me. Witnesses giving evidence from within the parliamentary precincts are protected by absolute privilege in respect of the evidence they give to a committee. This means that a witness has a full defence in any defamation action for anything said at a committee meeting. However, witnesses are expected not to abuse this privilege and may be directed to cease giving evidence on an issue at the Chair's direction. Witnesses should follow the direction of the Chair in this regard and are reminded of the long-standing parliamentary practice to the effect that, as is reasonable, no adverse commentary should be made against an identifiable third person or entity. Witnesses who are to give evidence from a location outside the parliamentary precincts are asked to note that they may not benefit from the same level of immunity from legal proceedings as a witness giving evidence from within the parliamentary precincts and may consider it appropriate to take legal advice on the matter. Privilege against defamation does not apply to the publication by witnesses outside of the proceedings held by the committee of any matters arising from the proceedings.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable. I also remind members that they are allowed to participate in this meeting only if they are physically located on the Leinster House campus. In this regard I ask all members to confirm prior to making their initial contributions that they are on the grounds of the Leinster House complex.

Our first witness in the first session, from 3 p.m. until 4 p.m., is Mr. Daniel Holder, deputy director of the Committee on the Administration of Justice. Mr. Holder, I now call on you to make your opening statement to the committee. Thank you very much for coming here.

**Mr. Daniel Holder:** I thank the committee for its invitation. The Committee on the Administration of Justice is an independent human rights organisation with cross-community membership, Northern Ireland and beyond. We were the NGO partner in the BrexitLawNI project with the law schools of both Queen's University Belfast and Ulster University that looked at the

constitutional legal and human rights and equality aspects of Brexit. We have continued with a range of interventions to that end since. We very much welcome this opportunity to address the Seanad select committee on the subject of citizens' rights in Northern Ireland post Brexit. I will focus this opening statement on the following three themes. The first is the retention of EU rights by EU citizens, their family members and frontier workers under Part 2 of the withdrawal agreement and the related post-Brexit migration contexts. The second is commitments on the retention of EU rights by Irish citizens resident in the North and the third is the UK commitment in the protocol to the trade and co-operation agreement, TCA, to non-diminution in certain Good Friday Agreement rights as a result of Brexit.

On the retention of EU rights under Part Two of the withdrawal agreement, the committee will be aware EU citizens and family members who were resident or frontier working in the North prior to the end of the Brexit transition period on 31 December 2020, with some qualification, can essentially retain EU free movement rights to reside, work etc. under the citizens' rights section of the withdrawal agreement. The main vehicle for EU citizens who were resident in the North to do so was to obtain settled status under the UK Home Office's EU settlement scheme, which opened in March 2019. Of concern is that the equivalent scheme for frontier workers was not opened until December 2020 and has barely been publicised since. A pressing concern for us is that there is currently an arbitrary cut-off point for applications under the settlement scheme at the end of June, with very limited exceptions. There is also a similar requirement to have obtained a permit to continue frontier working on 1 July. This is particularly concerning because, after the Brexit transition, the UK's notorious hostile environment immigration measures have been extended to EU 26 citizens. I note that neither of those two schemes actually provides for a physical document to prove status of retention of EU rights.

It is also the case that the Home Office actively discouraged Irish citizens from retaining EU rights under the settled status scheme and legislated to block applications from Northern Ireland-born Irish citizens on the basis of the Home Office position that all such persons are to be treated as British, which is in conflict with the birthright provisions of the Good Friday Agreement. In general, the Home Office position of discouraging any Irish citizen from retaining EU rights under the withdrawal agreement was grounded in such persons being covered by the post-Brexit concept of reciprocal rights in the common travel area, CTA. However, it is the case that such provisions remain more limited and less enforceable than retained EU rights.

The fulfilment of the Good Friday Agreement provisions for equality of treatment for British and Irish citizens in the North was also, it has to be said, underpinned in practice by EU free movement law. Due to the litigation by Emma DeSouza, the Home Office did open a specific route for persons from Northern Ireland, whether Irish or British citizens or both, to retain EU rights to family reunion specifically via the settled status scheme. However, this will also largely end in June.

A further issue for consideration is the new context for passport and border controls within the CTA. Until Brexit, both states had sought to converge their immigration systems, which is no longer possible. While the UK has given a political commitment to no passport checks on the land border, it has continued to conduct both irregular passport checks on Irish Sea routes and in-country passport checks, at times on the basis of quite blatant racial discrimination. Our concerns about Northern Ireland becoming one big border are already transpiring, with in-country immigration checks by 2019 already proportionately four times higher in Belfast than London. Similar concerns also remain about checks by immigration gardaí on the land border going South.

These concerns will be exacerbated, it seems, by the UK's future immigration plans, which includes the European travel area, ETA, proposals whereby the UK will introduce an electronic pre-clearance requirement, similar to the US electronic system for travel authorisation, ESTA, system, that would be a requirement for travelling into the UK, including the North. This will not apply to Irish or British citizens but will apply to all other EU and non-EU non-visa nationals who can currently freely cross the land border within the island of Ireland as part of their daily lives. To date, this plan to require electronic pretravel clearance, the ETA system, has taken no account of local journeys within the common travel area and in practice will create a hardened land border. There was further information on that published today that again contains no reference to the context of the common travel area.

The second area is that of commitments on the retention of EU rights by Irish citizens resident in the North. While of course Irish citizens remain EU citizens and retain basic EU rights to free movement within the EU, it was clear other rights and benefits linked to matters such as residency in a member state would be discontinued after Brexit unless specific arrangements were made. In December 2017, paragraph 52 of the EU-UK joint report contained commitments to continued access to, and exercise of, EU rights, opportunities and benefits for Irish citizens where they reside in Northern Ireland. The specific arrangements for this were to be examined. However, this commitment was ultimately not taken forward in the withdrawal agreement. There was limited reference to it in the preamble of the protocol. While at the time, on the EU side, such issues were considered to be matters for the future relationship arrangements, they are ultimately not reflected in the TCA either.

Some welcome progress has been made on specific matters. In particular, the Irish Government made contingency arrangements to seek a de facto continuation of the European health insurance card arrangements for Northern Ireland, which was subsequently progressed instead through UK bilateral arrangements. Other gaps remain, most prominently in family reunification and political rights, and other specific more nuanced gaps are likely to become apparent over time. There is also a risk that the model of bilateral reciprocal rights under the CTA could lead to regression in some areas.

The final area is the UK commitment to non-diminution in certain Good Friday Agreement, GFA, rights as a result of Brexit. The original commitment was made under the Ireland-Northern Ireland section of the UK-EU joint report, which alluded to the Good Friday Agreement and stated the UK would ensure there was no diminution in rights caused by Brexit. It was ultimately taken forward in the form of a commitment in Article 2 of the protocol with an enforcement role for the equality and human rights commissions. It should be noted that this commitment itself became diminished before it was enacted. The Northern Ireland Office did not consult on its specific scope, despite having equality duty obligations flowing from the Good Friday Agreement to do so, and ultimately the commitment covers only two sections of the Good Friday Agreement, so it does not include things like birthright and equality of treatment provisions and rigorous impartiality duties. It does, however, cover other areas, including duties to incorporate the European Convention on Human Rights, ECHR, and a range of other GFA-affirmed rights, including equality of opportunity in all social and economic activity, democratic rights, and rights to choose one's residence.

At the start of January 2021, when the new powers of the commissions commenced, we issued a complaint to them over a number of areas of provision whereby we considered the UK was already in default of the non-diminution commitment. These areas related to civil service nationality rules; democratic rights for both EU 26 and Irish citizens in the North; family re-

unification and the cut-off date for the EU settlement scheme; loss of EU rights and benefits for Irish citizens specifically in the North; and frontier workers. It should be noted also that Article 14 of the protocol sets out that the specialised committee on the protocol is mandated to consider any matter of relevance to the non-diminution commitment brought to its attention by the equality and human rights commissions, although to date we are unaware if the specialised committee has dealt with any issues relating to compliance with this commitment.

We have also raised concerns with the UK in general that while the commitment to non-diminution of certain Good Friday Agreement rights as a result of Brexit is very welcome, it has been said a mockery is made of it if the UK continues to diminish the same Good Friday Agreement rights for other reasons, which has happened with some recent legislation.

I am happy to elaborate on any of these areas in response to the committee's questions.

**Chairman:** I thank Mr. Holder for his very comprehensive opening statement. If it is okay with him, I propose to take questions from committee members as they come in. Members should raise their hands and indicate if they would like to ask a question. We will then go back and forth with Mr. Holder to clarify some of the points made in his statement. Ultimately, we will be reporting as a committee in early July. We would like to give considerable attention to the issue of citizens' rights on the island, in particular Northern Ireland. We will look to Mr. Holder to hear what specific recommendations the committee should include in our report from the perspective he has just given.

I will kick off the question session. The reference to an electronic pre-clearance requirement caught my interest. Could Mr. Holder elaborate on that? Is that intended to work for people travelling through Belfast Airport and Belfast port between Northern Ireland and Great Britain? What is envisaged there because I am not fully *au fait* with the UK Government's plans in that regard?

**Mr. Daniel Holder:** The way electronic free travel authorisation will work is that it will be a requirement for anyone other than British or Irish citizens travelling into the UK, including the North, to first apply for electronic pre-travel clearance so it would not be a question of across the Irish Sea from Belfast to Britain. It would be a question of someone travelling from Dublin or Donegal to Northern Ireland. Clearly, the UK Government may have imagined introducing this requirement on EU 26 nationals. It may not apply to those EU 26 nationals who have settled status. Of course, proving that is a different matter when there is no physical proof of status. What the UK Government may have had in mind was the example of someone who lives in Warsaw, travels to London for a holiday or business and applies in advance for electronic pre-travel clearance. That is not particularly onerous. However, someone who lives a few miles over the Border and wishes to nip into Strabane, Derry or Newry to go shopping or go to a friend's birthday party because kids at school raise it at the last minute could be captured by this because there will be a requirement. The UK has set out that one of the objectives of doing this is to ensure that everyone is counted in and counted out of the UK through electronic clearance and digital borders but, of course where there are no controls at points of entry, and obviously we are not suggesting there should be. In the context of the common travel area and land border, that clearly is not going to happen. If the UK is trying to monitor and check that people have stayed only as long as visitors are allowed to stay, etc., that will not work crossing the land border because there will be no record of entry and people could be accused of overstaying without being able to prove the contrary.

The second point relates to impracticality. An EU citizen or non-visa national such as a Bra-

zilian residing in Donegal who up until now has been able to freely enter across the land border will no longer be able to do so, although the Border will be invisible because there will be no checks as such or at least none are planned to date. If such a person was captured by an in-country check, he or she could unwittingly find himself or herself in irregular status and could face arrest, detention and deportation, which are some of the most serious sanctions available. A number of MPs have raised the issue of how it is intended that this system will apply in the common travel area but there has been no response we are aware of from the UK Government. Certainly nothing in the policy paper that was published today deals with the specific circumstances of local journeys across the land border.

**Chairman:** Mr. Holder raised an interesting issue that we would not have considered in great detail before now.

**Senator Robbie Gallagher:** I thank Mr. Holder for his presentation. The latter point he made is very worrying for someone who comes from the Border region and crosses the Border on a daily basis. Crossing it two or three times a day would be common practice for many families living along the Border from Donegal down to Louth. They think nothing of it. What Mr. Holder is talking about here is quite serious. I would suggest that a lot of people are not aware of the point he has made. Have the authorities down here been made aware of it? Is Mr. Holder aware of the Irish Government speaking to the British Government about it? I must admit, and maybe this is my fault, that this is the first time I have heard of it being an issue. Perhaps that is ignorance on my part and if so, I apologise in advance for it but it is a serious issue about which we need more detail. How many issues are there in Mr. Holder's view? What would he rate as the top three or four of them?

**Mr. Daniel Holder:** The electronic travel authorisation has not commenced. I do not know if the Irish Government has made specific representations towards it. It would be very welcome if it did. It would be welcome if there was greater engagement from the Department of Foreign Affairs with some of the citizens' rights that are prevalent from this. Certainly at the time of Brexit and other issues, there was a very strong line of communication. That needs to be upped again. I know some of the trade issues may well have dominated but we as a sector would benefit from greater engagement with the Department and a channel to raise these issues quite quickly because there is a lot in the minutiae that can come up in general. That would be welcome but I do not know if the Irish Government has made representations. One of the issues is the existence of a common travel area forum but it meets essentially behind closed doors. This is between the two governments. I assume it involves the Department of Justice and the Home Office. We only really became aware of this forum because it was referenced in the memorandum of understanding that the two governments completed about the common travel area. There is no public record of these meetings or what they cover so certainly that would be a forum in which this could be discussed and where the Irish Government could raise it.

There are so many key priorities but some of the issues we are raising involve the gaps in retention of EU rates so that if people do not have settled status, they find themselves falling into an irregular situation. From a cross-border perspective, the issue of frontier workers is pressing. The Centre for Cross Border Studies estimates the number is between 20,000 and 30,000. There will be a number of rates deficits that come forward and become apparent, particularly if we move out of being so strangled by the pandemic and people begin to move, work and change jobs a lot more often. Some of the other rates deficits will come to the fore. It would be welcome if there was some channel to engage more regularly with the Irish Government regarding some of the non-economic issues such as the citizens' rights issues we are discussing today.

**Senator Malcolm Byrne:** I thank Mr. Holder for his presentation. I have been made aware of some of these issues by the North West Migrants Forum, which has been quite active in raising some of the concerns. As the Chairman said, we must make specific recommendations. I am thinking about non-EU migrants, including asylum seekers and refugees. Much of the information about the impact of all of this is not out there. A number of voluntary groups are doing it. Should this committee make specific recommendations on making those groups that are directly impacted by this aware of some of the challenges?

We have been looking at data and the flow of citizens' data. We might return to it more generally but last week, the European Parliament made a decision where it wanted to ask more questions about the adequacy judgment around the data arrangements between the UK and the EU. Does Mr. Holder have any specific concerns around the sharing of citizens' data in the new environment?

**Mr. Daniel Holder:** One of the issues is the gap created by the removal of EU free movement law as a result of Brexit. There have been attempts by both states to plug that through what is termed, and what is a post-Brexit invention, the reciprocal rights of the common travel area. That was more to deal with the situation of Irish citizens in Britain and British citizens in the EU within the State, rather than the equality of treatment provisions in the Good Friday Agreement, which are much more extensive in ensuring equality between Irish and British citizens and which has been underpinned by EU law. One of the adverse effects of the exercise of codifying things and the common travel area agreement rights is that because of the way it has been done it is largely restricted to British and Irish citizens, which means others who are permanent residents in the Border counties do not fit into those arrangements. I cannot recall off the top of my head whether it does, but if the memorandum of understanding, MOU, provides for continued arrangements for cross-Border schooling, there are hundreds of children who cross the Border yet there is an attempt within the MOU to restrict that to British and Irish citizens. The question is then, what about everyone else? What about Polish kids who live in Donegal and attend school in Derry, etc? How is that underpinned?

Even the freedom of movement issues we have discussed in terms of crossing the Border, is it really going to be the case that we will have a much more hardened Border? One without Border checks but with the real threat of arrest, detention and, indeed, deportation, for EU citizens or other non-visa nationals who live in Donegal, for example, and are used to crossing the Border but who have drawn no free movement rights in relation to continuing to do that. One of the solutions to that could be to look at the common travel area arrangements and ensure the freedom of movement within the island of Ireland. Local journeys, which are quite different to making longer journeys, encompass more than just British and Irish citizens. It could encompass Border communities, regardless of nationality, which is something the UK would have to agree to so that hostile environment measures would not apply.

As a broader point, when one considers people who have retained EU rights under the withdrawal agreement on the one hand, others who derive rights - they are not rights, in a sense, in that they are not enforceable - from the common travel area on the other, and all the various other machinations, things have become incredibly complicated. It is a phenomenon we have referred to as being "divided by the rules" in terms of the amount of different entitlements and the difference between them that various groups will have in the post-Brexit context. We know the Windrush scandal occurred in Britain when the emigration system was actually very simple. It was just divided between EU and non-EU citizens. The complexity of this is getting much worse. One has different sets of rights that are aligned to retain EU rights but with no physi-

cal proof. There are some entitlements that are not really codified in relation to the common travel area but are restricted to British and Irish citizens. A notable example, which is increasingly spoken about, is that there is no route to naturalise as an Irish citizen through residency in the North. That is something which is a big issue for many permanent resident migrants in the North who may want to avail of Irish citizenship. Currently, there is no path to do this except through marriage to an Irish citizen.

In terms of other specific issues, one of the other diminutions we flagged to the Commission is that it appears the UK Government is intent on stripping the most fundamental democratic rights from EU-26 citizens who are resident in the North. That includes the right to vote in local council elections and Northern Ireland Assembly elections, the next of which are scheduled for May next year. EU citizens have always had that right under EU law. It is not included in the withdrawal agreement and the UK Government has indicated its intent to strip EU citizens of that right in England and in Northern Ireland, where electoral franchise is a Westminster matter. That is not the case in Scotland and Wales, whose Governments have control over the franchise and have taken the decision that EU citizens will continue to have that vote. There is an issue of the diminution of basic political rights that were guaranteed under the Good Friday Agreement. That impacts more conversely. It will not impact as a matter of law on Irish citizens who will retain the provision, not an enforceable right, to vote in those elections but on those who have lost rights to vote, unlike other EU citizens who can vote in extraterritorial constituency in European Parliament elections. A query has arisen whether Irish citizens who have always had rights to vote in UK referendums could lose those rights as a result of the common travel area reciprocal arrangements. That is something which has been brought forward.

**Senator Malcolm Byrne:** Can Mr. Holder tease that out? I understood that the voter arrangements Ireland and the UK had are because there was a reciprocal arrangement entered into. Can he tease that out more for us?

**Mr. Daniel Holder:** This is something that was quite surprising. The European Parliament issue is perhaps clearer. For Irish citizens, there was an indication at the beginning of the Brexit process that political and other EU rights would be retained, but that has not happened. In terms of referendums, what has happened is this. Irish citizens, separate to other EU citizens, have had a right to vote in Westminster elections and referendums. When one looks at the memorandum of understanding on the common travel area that the two Governments signed, reference is only made to Westminster elections and not referendums. That obviously raised a few eyebrows. How could Irish citizens not be allowed to vote in referendums when that had always been the case? A number of parliamentary questions were submitted in Westminster about that. The response of the British Government was surprising. It would not confirm that Irish citizens would continue to have a vote in referendums. In fact, it argued that it was not reciprocal because British citizens resident within the state were not entitled to vote in referendums. We have gone down this route as we started to talk about the common travel area and reciprocal rights. One could conversely have a situation whereby what is intended to be a development or codification of what are referred to as “common travel area rights” could actually end up restricting rights based on the UK only willing to provide what is reciprocated. It would clearly be unthinkable that half the population in the North would be stripped of their vote in a referendum, but when it was put to the UK Government it did not give a clear answer.

To pick up on Senator Byrne’s point on data collection, one of the concerns we have relates to the risk of Irish immigration officials essentially enforcing British hostile environment immigration policies within Irish ports and airports. This has manifested itself, it has already

happened and there is legislative provision for it. It could manifest itself when someone lands in, for example, Dublin Airport but intends to travel onwards to Armagh or Derry, or wherever else. On the basis of either representations from the UK authorities or of an individual decision, a decision is taken that someone thinks he or she will not meet the UK entry requirements, particularly when they are discretionary for non-visa nationals, and is therefore not allowed to land in Dublin Airport and is turned away. One could have the situation whereby Irish immigration officials are essentially enforcing the hostile environment policy on Irish soil. That is quite concerning because we are not aware of the legal basis for information sharing in some of those issues.

**Senator Malcolm Byrne:** There have been some crucial points made there. If there were a second independence referendum in Scotland - I supposed there is no certainty on this - and if Irish voters were to be allowed to vote in it, would that be a matter for the Scottish Parliament or Westminster? Can Mr. Holder be clear on that?

I am curious about the issue of citizens who arrive in Dublin Airport, as Mr. Holder said, and if we were to try to enforce UK legislation. I would be particularly concerned if some of that UK legislation were in breach of European legislation. I refer to what would happen if the UK decided to change its commitment to the European Convention on Human Rights or something such as that and there were questions raised at a European level. I ask Mr. Holder to tease out that issue.

**Mr. Daniel Holder:** On the issue of the Scottish referendum franchise, obviously we have to be a little careful in the sense because, as all present are aware, the UK does not have a proper written constitution, so things can change and Parliament can change regulations. As things stand, the electoral franchise in Scotland is a matter devolved to the Scottish Government. That is why, for example, in the previous referendum on Scottish independence, 16 to 18 year olds were permitted to vote, which is not the case in England. Electoral franchise is also devolved to Wales but it is not devolved to Northern Ireland. Rather, that is a matter retained by Westminster.

As regards the specific issue of a border poll, the franchise is specifically prescribed by the Secretary of State. Under the Northern Ireland Act, it is a matter for the Secretary of State to decide on the franchise in terms of who would be able to vote in a referendum. The Secretary of State has been asked parliamentary questions on that issue but has not clarified the position. One would think it would be the easiest thing in the world to clarify that, of course, Irish citizens would be entitled to vote in that type of referendum, but the Secretary of State has not done so. In terms of the Scottish situation, it would very much depend on whether there was a second referendum and it was enshrined in Westminster legislation if any provision was made to change the franchise. However, as a general point, it is a devolved matter.

On the question regarding Dublin Airport, there have been several instances of persons landing at Dublin Airport being refused permission to land, not on the grounds of their not having permission to enter the State, but because they were going to travel onwards to the UK, usually to the North because Dublin Airport is the main hub for many people travelling there, and the immigration officer thought they would not meet UK immigration requirements. We do not know whether such decisions are based on representations from the British Home Office. Clearly, there are considerable concerns in that regard. The issue raised is an important one. Many of the examples heretofore involve US citizens who may have family in Tyrone, for example, and intended to travel up there but were refused permission to land. The point made by the Senator is an important one in the sense that such an approach could now be applied also

to EU citizens who have a right to freedom of movement and to enter the State but could end up being refused entry on the grounds that they intend to travel to the North, a third country, in spite of their freedom of movement rights to enter this State. That is a concern and the lack of transparency around those processes is something that could be greater explored.

**Senator Vincent P. Martin:** I refer to English citizens not being allowed to vote in constitutional referendums in the Republic although they can vote in national elections. That is an issue on which the two countries should work more closely. Some younger English citizens were not aware of that restriction and had the ignominious experience of going to the polling situation as usual on the day of a constitutional referendum but not being allowed to vote. Worse still, they are marked on the register, which is widely available, as British citizens. There is no need for such information to be so widely available or for such a differentiation to be made. What is Mr. Holder's view in that regard? Could we not have closer harmonious co-operation with our nearest neighbour to reciprocate that particular right? That would be a positive direct step in harnessing better relations.

I invite Mr. Holder to comment on the view of Lord David Trimble, whom I am old enough to remember as the former leader of Ulster unionism, as expressed in an article he wrote about rights in Northern Ireland and which was published in *The Irish Times* in February. I happen to disagree with his view. The article states:

My primary objection to the protocol is that it changes fundamentally the constitutional relationship between Northern Ireland and the rest of the UK. The laws that will apply to the economy, the environment, agriculture, workers rights, and regulations covering everything from building standards to use of weedkillers, no longer will be made at our parliament in Westminster or the local Assembly in Belfast. They will instead be determined by a foreign authority in Brussels.

The protocol lists 70 pages of EU laws to which Northern Ireland must adhere. This amounts to tens of thousands of separate regulations. In addition, all future EU laws on which no one in the UK or Northern Ireland is able even to discuss – let alone vote on – will apply to Northern Ireland.

I do not believe Lord Trimble is correct. Rather, I believe there is a golden opportunity to have the best of both worlds for Northern Ireland. I do not concur with him in this regard but there is a grain of reality in what he is saying. Has the time not come, with the new dispensation and the post-Brexit island of Ireland, for that voice of the Six Counties to move to centre stage? The only way I see of accommodating it with Britain having left the EU is for elected representatives of Northern Ireland to be formally involved in our EU committees in the Republic of Ireland, our Oireachtas committees and, with the assistance of a constitutional referendum and in order to give Northern Ireland voices a say in the EU on the island of Ireland, they should have a formalised place in the Seanad and the Dáil. According to Lord Trimble, the situation in the Six Counties is really bad. Even if it is not half as bad as that, I do not believe it is, unionists should not be worried as their position is cemented in the Good Friday Agreement and there will be no constitutional change without consent in Northern Ireland. I still think there is a golden opportunity to break down narrow tribalism. After all, a majority in Northern Ireland supported staying in the EU, although that is not what Lord Trimble said. We would welcome that voice and we will facilitate the Six Counties. I would be open minded on the matter and play my part as a Senator in promoting a formalised voice for all in Northern Ireland that can feed into the EU in the manner I outlined, that is, through Oireachtas committees, the Seanad and the Dáil. Has Mr. Holder considered that? Would he care to

respond to Lord Trimble's remarks on those rights being totally usurped?

**Chairman:** We are tight on time and due to wrap up the session at 4 p.m., so, if it is all right with Mr. Holder, I will bring in the final member who wishes to contribute and Mr. Holder can then respond to both members.

**Senator Niall Ó Donnghaile:** My apologies to Mr. Holder for being delayed in arriving. He will see on the screen over the shoulder of Senator Wall that the Minister for Health is in the Seanad Chamber addressing emergency Covid legislation. That is where I was for the first part of the meeting. The main thing for me is getting the Committee on the Administration of Justice to take part in this meeting and into the work of this committee because I know and value the breadth of work it and the other organisations represented here today carry out. They have given the committee a tremendous amount of food for thought, even just in the last bit of the meeting that I have been able to listen to directly.

I found the discussion relating to the issue of representation interesting. The big concern for citizens in the North heading into Brexit was the loss of the franchise to the European Parliament and that is obviously what transpired. We made the case that the Irish Government could have retained two of the additional seats it got for citizens in the North but unfortunately it went a different way.

Senator Malcolm Byrne is correct with regard to teasing out the issue of referendums in the North. It is a strange situation in that respect. Mr. Holder was involved in the campaign to resist the imposition of British citizenship universally on all those in Northern Ireland. The British Government position was that all those in Northern Ireland were British citizens, regardless of the provisions of the Good Friday Agreement, but now it wants to distinguish between British and Irish in the context of future referendums, if I understand Mr. Holder correctly.

I have two questions for Mr. Holder. What can the Oireachtas and the Irish Government do on that matter with the British Government directly? Regarding broader rights and ensuring that citizens retain their rights, Article 2 of the Constitution states that it is the birthright of everyone born on the island to be part of the Irish nation. I am forever asking what that means in a tangible, mechanical, legislative sense for people born in the North. Will Mr. Holder give us a quick response on this matter, although it probably warrants a much broader discussion?

**Mr. Daniel Holder:** I will deal with some of those questions first. Senator Martin asked whether British citizens in the Republic should be allowed to vote in referendums. While examining that idea is open to the State, it should not have to happen in order for Irish citizens in the North to retain the right to vote in referendums. The British Government is bound by the Good Friday Agreement, which requires equality of treatment between British and Irish citizens in the North. For the UK to say that Irish citizens in the North are only allowed to vote in a referendum by virtue of being British citizens, which would be the imposition of British citizenship, would conflict with the agreement. For us, the priority is retaining the franchise without it being diminished. This goes directly to the Article 2 commitments in the protocol on the non-diminution of Good Friday Agreement rights.

Regarding David Trimble's position and comments, from our perspective, we were long concerned about Brexit because it would be in conflict, *per se*, with the Good Friday Agreement, in particular with the agreement's underpinning of equality of treatment for British and Irish citizens. One had a choice to be British or Irish or both and there was to be no differential treatment regardless of that choice. That will become extremely difficult with any form of hard

Brexit. Irish citizens retain EU rights to freedom of movement and British citizens do not. Providing for the latter would have required a special status agreement. Many of the issues that Lord Trimble is discussing relate to the protocol, but all of these contradictions were present in Brexit *per se* and the support for Brexit *per se*.

Of course, there is no requirement for the North to be the same as England. It was certainly not the case for most of the last century between 1921 and 1972 when there was a different arrangement. Certainly, since the Good Friday Agreement, there has been the context of differentials. We have had to battle over many rights deficits. The borders on the Irish Sea are actually rights borders, for example, LGBT rights. Clearly, there are differences.

The argument that both Senators raised is that there is a deficit in representation. We have a unique situation whereby almost anyone born in the North either is or is entitled to continue to be an EU citizen but is outside a member state and is unable to exercise many of the rights under the EU that are dependent on residency in a member state, for example, co-ordination of social security systems. One of the deficits relates to the electoral franchise. It was within the gift of the Irish Government under the current mandate of the European Parliament to have done what many countries do, that is, allow extraterritorial voting for some constituencies. This might be something that the Oireachtas wishes to consider again during the next mandate of the European Parliament. That avenue is open to the Oireachtas. For the UK to do that would involve a new future arrangements agreement that would be far more complex.

On what can be done, I would be grateful if the committee considered the areas – we can provide a broader briefing document on them – that we have identified whereby the UK has already breached its commitment to non-diminution of certain rights under the Good Friday Agreement as a result of Brexit. The Irish Human Rights and Equality Commission may have more to say on these areas, which cover a broad range of provisions. That would be a significant step. Concerns about the impact of the hostile environment on EU nationals are at the forefront as well. It would also be useful for the Irish Government to monitor formally some of the rights deficits as they emerge. We have spoken about obvious issues, for example, the loss of Irish citizens' right to family reunification with non-EU family members. I suspect that, once people start working and moving more post referendum, many more micro issues that will have a significant impact on someone's life will come to fruition for the other EU 26 but also for Irish and British citizens, for example, a frontier worker no longer being able to avail of tax credits for cross-border childcare, which was an EU right and is now gone. There are plenty of issues that can be raised.

Regarding freedom of movement within the common travel area, we are concerned that there continue to be *ad hoc* or irregular, and often without legal basis, passport checks conducted on the basis of racial profiling. Either a country has formal passport controls or it does not. This is a border in the Irish Sea that is rarely spoken about. In some of the checks between Northern Ireland and Britain, we have examples of black passengers and so on being targeted, as well as the risk of increased enforcement. As co-guarantor of the agreement, the Irish Government could raise this issue.

**Chairman:** I thank Mr. Holder. He has great timing because the bells have just started to ring for a Seanad vote and we are approaching our concluding time of 4 p.m. I thank him for his evidence to the committee. He has dealt with many questions across various areas. The committee has focused heavily on the trade aspect of Brexit, but this session was important for bringing the discussion back to the human level and Brexit's impact on people across the island. It will form a significant part of our report in July. I thank Mr. Holder for his time. It

was appreciated.

We will now go into private session before resuming with session 2 in a few moments.

*The select committee went into private session at 3.58 p.m. and resumed in public session at 4.18 p.m.*

**Chairman:** Apologies for our slight delay in restarting. A vote was called in the Seanad, so I and other members had to make our way to the Chamber for that.

I ask Mr. Allamby, Ms McGahey and Ms Gibney to bear with me. I have a little spiel about privilege for witnesses that I have to read out so I will just run through that again, as is required. Witnesses giving evidence from within the parliamentary precincts are protected by absolute privilege in respect of the evidence they give to a committee. This means that a witness has a full defence in any defamation action for anything said at a committee meeting. However, witnesses are expected not to abuse this privilege and may be directed to cease giving evidence on an issue at the Chair's direction. Witnesses should follow the direction of the Chair in this regard and are reminded of the long-standing parliamentary practice to the effect that, as is reasonable, no adverse commentary should be made against an identifiable third party or entity. Witnesses who are to give evidence from a location outside the parliamentary precincts are asked to note that they may not benefit from the same level of immunity from legal proceedings as witnesses who give evidence from within the parliamentary precincts and may consider it appropriate to take legal advice on the matter. Privilege against defamation does not apply to the publication by witnesses outside of the proceedings held by the committee of any matters arising from the proceedings.

I welcome to our second session our three witnesses: Mr. Les Allamby, chief commissioner, the Northern Ireland Human Rights Commission; Ms Geraldine McGahey, chief commissioner, the Equality Commission for Northern Ireland; and Ms Sinéad Gibney, chief commissioner, the Irish Human Rights and Equality Commission, IHREC. You are all very welcome to our committee meeting. We really appreciate your time to appear before us to make statements and to take questions from our members. I now call on you to make your opening statements. I gather there is one joint opening remark.

**Ms Sinéad Gibney:** We will go in order. I will speak first and I will be followed by Ms McGahey and then Mr. Allamby.

**Chairman:** No problem. Thank you very much, Ms Gibney. I will hand over to you.

**Ms Sinéad Gibney:** I am chief commissioner for IHREC. The commission is Ireland's independent national human rights institution and the national equality body. I am joined today by Les Allamby and Geraldine McGahey who are the chief commissioners, respectively, for the Northern Ireland Human Rights Commission, NIHRC, and the Equality Commission of Northern Ireland, ECNI. In Northern Ireland there are two separate national bodies for human rights and equality, whereas here we are a merged institution, following the merger of our two legacy bodies in 2014. We have co-ordinated our opening remarks today to maximise the time we have and to leave plenty of opportunity for questions. I will give some background to the three organisations and some details of the work we have done on Brexit, particularly as the joint committee of the two human rights organisations. Ms McGahey will then cover the establishment of the dedicated mechanism through Article 2 of the Northern Ireland protocol, and its all-island scrutiny. She will also talk about the importance of non-diminution of rights and of

keeping pace. Mr. Allamby will then focus in on today's agenda of citizens' rights, including freedom of movement, cross-border issues and citizenship.

Our three organisations - I include here the legacy bodies that preceded the IHREC merger - are all about 20 years old. We are a great example of North-South co-operation, with good relationships enjoyed between all three organisations. IHREC and the ECNI were founding members of Equinet, the European network of equality bodies, and we have worked together on equality issues over those two decades. IHREC has a more formal co-operative arrangement with the NIHRC rooted in the Belfast or Good Friday Agreement. As committee members may know, that agreement laid the groundwork in 1998 for the establishment of new human rights commissions in both Northern Ireland and the Republic of Ireland. It set out the importance of maintaining existing rights and protections, bringing the standards of rights to an equivalent level, and building on those into the future. The agreement also established a joint committee of the two human rights commissions, to foster collaboration and co-operation between the two organisations. The first official meeting of that joint committee took place in November 2001 and it has since then been an important forum for ongoing engagement and collaboration on human rights issues across the island. In recent years the joint committee has had a particular focus on the human rights and equality implications of Brexit. The equality and human rights framework, which underpinned the 1998 agreement had assumed both countries continuing common membership of the European Union. Following the 2016 UK referendum to withdraw UK membership, both commissions agreed that this potentially created significant risks for rights protection and for the effective functioning of the 1998 agreement. The joint committee identified the following six priorities for ensuring the ongoing protection of rights on the island of Ireland: ensure commitment to there being no diminution of rights is evident and enforceable in the final withdrawal agreement; safeguard North-South equivalence of rights on an ongoing basis; guarantee equality of citizenship within Northern Ireland; protect Border communities and migrant workers; ensure evolving justice arrangements comply with commitment to non-diminution of rights; and ensure continued right to participation in public life for EU citizens in Northern Ireland. The joint committee has addressed these concerns in a series of publications including our March 2018 policy statement on the United Kingdom withdrawal from the European Union, and important discussion papers and research studies on Brexit, the common travel area, justice arrangements, EU citizenship rights and the birthright provisions of the Good Friday Agreement.

In progressing this work, the joint committee engaged with policymakers and civil society in Ireland and Northern Ireland, with both Governments, and with the European Commission's Article 50 task force. Through both the joint committee and now the dedicated mechanism, which unites us with the NIEC, we will continue this work. There are significant issues of which we need to be mindful on an all-island basis as the relationship evolves between the UK and the EU. They include those frontier workers and migrant workers whose livelihoods are dependent on the free flow of people and clear and consistent employment practices; those accessing cross-border services, for example childcare and healthcare and; those who may have their traditional ways of life challenged, including Traveller and Roma communities. My colleagues will go into more detail on some of those in their comments.

The reality is that Covid-19 and the restrictions that are only now beginning to ease have masked the immediate consequences of Brexit. As lives and movement return to normal, we will start to see more of the real impact it has had on rights and equality. We are committed to doing all we can as the human rights and equality body for this jurisdiction, working closely with the commissions in Northern Ireland and with civil society, to protect and promote rights

and equality for everyone on the island of Ireland. I look forward to our discussion. I will now hand over to Ms McGahey.

**Ms Geraldine McGahey:** I thank the committee for the invitation to attend today. We are delighted to give evidence at today's session and for the opportunity to brief the committee in the context of our joint oversight work and the roles we have in relation to the UK Government's commitment under Article 2 of the Ireland-Northern Ireland protocol.

I will start by briefly outlining what this commitment means and then I will provide an overview of the roles and responsibilities of the Equality Commission of Northern Ireland and the Northern Ireland Human Rights Commission, as that dedicated mechanism. I will conclude by providing the committee with a short update on our all-island work to date.

Committee members can find further information on these matters in the brief that was sent by the three commissions last Friday. I will start first with what the UK Government's commitment means under Article 2 of the protocol. The UK Government has committed that as a result of Brexit, there will be no reduction in the protections currently in place in Northern Ireland regarding the rights, safeguards and equality of opportunity provisions as set out in the chapter of the same name in the Belfast-Good Friday Agreement. This chapter contains a range of rights, including for example, the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity. Some of these rights in the agreement are underpinned by EU anti-discrimination laws, which protect against discrimination on a range of grounds such as gender, race, disability, religion or belief, age, sex and sexual orientation and which promotes equal treatment. There are also other EU laws which are relevant to the protection of these rights such as the EU laws on parental leave, the rights of victims and pregnant workers, as well as specific measures aimed at protecting the rights of disabled people. The commitment means that neither the Northern Ireland Assembly nor the Northern Ireland Executive can act in a way that is incompatible with the Article 2 commitment.

The UK Government also committed in the protocol to ensure that certain equality laws in Northern Ireland will keep pace with any future changes in EU law that may refer to the equality laws that are set out in Annex 1 to the protocol.

As regards the role and remit of the dedicated mechanism from 1 January, the three commissions have additional powers and responsibilities to ensure the UK Government meets its commitment under Article 2. We have new duties and powers to provide advice to the Government, to monitor, supervise, enforce and report on the ongoing implementation of the UK Government's commitment. For example, in addition to monitoring how the commitment is being implemented and reported on in its implementation, we are tasked with advising the Northern Ireland Assembly and its committees on whether a Bill is compatible with the commitment. The commissions have also been given significant enforcement powers. For example, we can bring or intervene in legal proceedings in respect of an alleged breach of the commitment. We can also support individuals in relevant legal proceedings if they believe that their equality or human rights have been reduced as a result of Brexit.

In terms of our progress to date, the commissions have already undertaken a wide range of work. We have proactively undertaken a series of joint stakeholder engagements, including with a range of equality and human rights stakeholders, as well as the Executive office and other departmental officials, the EU delegation to the UK, Northern Ireland Office officials, the Labour Relations Agency, trade unions and the independent monitoring authority.

We are also planning research work on Assembly and parliamentary scrutiny mechanisms that are linked to Article 2. We are planning to commission some research on the impact of Brexit on equality groups in Northern Ireland, including the potential impact of the loss of EU funding. The Northern Ireland Human Rights Commission is also planning to commission research on immigration and healthcare.

In terms of our legal work, we have progressed important work to examine the scope of Article 2, including identifying EU law and EU-derived rights that could potentially fall within the scope of Article 2. We have also started tracking and monitoring domestic and EU legislation in order to ascertain whether they have any potential impact on Article 2.

We consider it vitally important that people and groups are both aware of and understand what their new rights mean. As part of our awareness-raising programme, we have recently produced a short video and a number of accessible user-friendly publications explaining about equality and human rights after Brexit, the role of the dedicated mechanism and how individuals can make a legal challenge if they consider that their rights have been breached. We are also planning further promotional work over the coming months.

I should also state that all three commissions have made regular briefings to the Committee for the Executive Office at Stormont. The Equality Commission and the Northern Ireland Human Rights Commission have jointly engaged with the Northern Ireland Assembly's *ad hoc* committee on a bill of rights, including on the implications of Brexit on equality and human rights, particularly in the context of a bill of rights.

As Ms Gibney has mentioned, both commissions are working closely with the Irish Human Rights and Equality Commission as part of our scrutiny role on rights and equality issues within the scope of the UK Government's commitment that have an island-of-Ireland dimension. The three commissions have established a working group to take forward this role. We have recently agreed a memorandum of understanding for progressing this important work. The working group comprises the three chief commissioners, a commissioner from each of the organisations, as well as the respective chief executives. The working group meets quarterly and the secretariat role is rotated annually.

Most recently, last Tuesday, working with the Centre for Cross Border Studies, the commissions ran an event focusing on cross-Border issues. We heard from a range of civil society and community groups about the issues and concerns affecting their Border communities. These included concerns about the impact of Brexit on women's rights and protections and the rights of Roma and Traveller communities on the island of Ireland. Issues were also raised about cross-Border healthcare, including the recognition of the registration of healthcare professionals, as well as the need for the rural-proofing and Border-proofing of policies by governments and agencies and the potential impact of the loss of EU funding on rural and cross-Border communities. All three commissions found this session very useful and we will use the evidence to inform our future work. Indeed, we look forward to developing and strengthening these relationships with civil society groups going forward.

Since acquiring our new roles and duties at the start of January 2021, the commissions have been working very closely and in partnership across a wide range of areas. We are also engaging with Departments and advice-giving organisations as part of our overall work to ensure equality and human rights continue to be protected and areas with an all-island dimension are addressed after Brexit.

I thank the members for their time. I will hand over to Mr. Allamby, who will brief the committee on the citizens' rights issues.

**Mr. Les Allamby:** I am going to canvass some of the key citizen's rights issues, which were raised by the joint committee prior to the UK leaving the EU. A number of these remain outstanding. I will cover five issues in particular, some of which fall within the dedicated mechanisms while others sit outside but are nonetheless relevant.

First is the question of people in Northern Ireland retaining their EU law rights post Brexit. The commission has sought to-----

**Senator Malcolm Byrne:** Sorry to interrupt, but I am having difficulty hearing Mr. Allamby.

**Chairman:** The Senator is not alone. Mr. Allamby's connection is dropping in and out.

**Mr. Les Allamby:** I ask the members to bear with me.

**Chairman:** I sympathise. I live in County Mayo. It is an ongoing issue there too. We will proceed and see how we get on. If there are major difficulties, I might suggest that Mr. Allamby turns off the video, because sometimes that allows the sound to come through.

**Mr. Les Allamby:** I will try that now and plough on.

**Chairman:** We will give it a go.

**Mr. Les Allamby:** The first issue is the question of people in Northern Ireland retaining their EU law rights post Brexit. The commission has sought to ascertain what those rights are and how that can be made consonant with the Good Friday Agreement provisions. It is clear it applies to freedom of movement within the EU and freedom from discrimination alongside access to EU institutions, for example, the right to appeal to the EU ombudsman-----

**Chairman:** I apologise to Mr. Allamby but it seems that we are not getting a much better connection. I make the following suggestion. A hard copy of Mr. Allamby's opening statement has been circulated to all members. If members and the witnesses are agreeable, we can take it as having been read by the members and proceed straight to questions. It might be easier. Is that okay with you, Mr. Allamby?

**Mr. Les Allamby:** Yes, that is fine.

**Chairman:** Is that agreed with members and the other witnesses? Yes. We will take Mr. Allamby's statement as read. It is a difficulty we encounter often at our virtual committee meetings. We have found ways of working around it.

I thank the witnesses for their most comprehensive opening statements. It is great to hear that the three organisations are working so closely together. It is very important for an all-island approach. The committee has had a major focus on all aspects of trade. It is great to have a session that is focused on the human aspect and the impact of Brexit on people and citizen's rights. It is an important part of the committee's work. We will be reporting, as a committee, in early July. I ask the witnesses if they could frame their remarks with that in mind. We are looking for recommendations from them as to what we should include in that report in terms of the committee's recommendations to Government and issues they would like to see in black and white in that report, if they have any suggestions on that front.

As the witnesses will be aware, we engaged with Mr. Daniel Holder of the Committee on the Administration of Justice in the first of two sessions being held today. If the witnesses are agreeable, I will open the floor to members and we will go back and forth. I am conscious we are due to finish at 5 p.m. due to Covid-19 restrictions. I will take questions from Senators. Perhaps Ms Gibney can start each response and indicate which of the three witnesses is best placed to answer particular questions. Senator Malcolm Byrne indicated first.

**Senator Malcolm Byrne:** I thank the witnesses. I agree with them that we are seeing co-operation. It is most welcome. My concern is that if the UK starts to move away from the European Convention on Human Rights, it will have significant implications on data sharing and co-operation in the areas of policing and security. I would like to hear the views of the witnesses on whether the UK Government will move away from the convention.

**Ms Sinéad Gibney:** I ask Mr. Allamby to respond to that question. It is quite possible that I will be asking him to respond to some of the issues, as the token lawyer among the three of us. Obviously, that is assuming we can hear him.

**Mr. Les Allamby:** It is to be hoped that is the case. I can turn off my camera if that helps. I thank the Senator for his question. There are two answers to it. First, the UK Government is undertaking an independent review of the Human Rights Act. At the moment, I do not think there is any suggestion of it leaving the European convention. In fact, it has made very public statements that it does not intend to do so. However, the administrative machinery on the enforcement of rights is very much under review. The Senator is right to keep a weather eye on that issue.

On the justice and security issues, the trade and co-operation agreement was procured on security and justice co-operation. We now need to see how it works in practice. There are some issues still outstanding, especially around civil justice, family issues, cross-Border issues, maintenance, enforcement of judgments and some issues around child abduction and falling back on the European convention. Those are citizens' rights issues on which I suggest the committee might want to focus its attention. One of my big concerns has been around the data adequacy judgment. The EU has started asking questions around the UK's data adequacy regime. I have some concerns around the direction in which the UK has been moving in how it is gathering data, cyber surveillance and so on, which will become a bigger issue. Do the witnesses have similar concerns? Obviously, if there is not an agreement on the EU and UK sharing data, that has significant implications for citizens' rights.

**Mr. Les Allamby:** It is one of the things we very much need to keep an eye on. There are a number of cybersecurity issues. One is the Five Eyes, which the UK is part of with other governments, which is around national security and which is separate from the arrangements. The UK has implemented EU law to date in terms of the recent directives. How we move forward, particularly as the EU develops laws around these issues, is very important. I am very conscious that developments in technology and digital law issues often leave human rights behind to catch up in their wake, and the EU has been pretty good at trying to move forward quickly. We know some of the issues from Schrems and other cases. It is important to see where we go from here. I do not think the EU has been behind the curve to date, but the UK may diverge as the EU develops and that will cause quite a big issue.

**Chairman:** Ms Gibney said Covid-19 has masked over many of the problems. It is almost hard to imagine that prior to Covid, we discussed Brexit daily for the previous three years. It was the big issue which was taxing people North and South, across the water and beyond in

mainland Europe. She identified six priorities for protection of rights on the island of Ireland. One is the continued right to participation in public life for citizens in the North. How do we go about doing that? Has the working group reached a point where it has suggestions or proposals to make around that? That has come up at this committee on a number of occasions and there are differing views. I would welcome some elaboration on that.

The DeSouza case on the right to identify as British or Irish in Northern Ireland, remains largely unresolved. Suggestions have included that a person wanting to access their rights as an EU citizen can simply get an Irish passport, but that is not keeping true to the Good Friday Agreement. Do the witnesses have anything to say on that issue and how we might find a workaround?

There are broader issues around the protection of women's rights and domestic violence. That is something that has come to the fore during the pandemic, and the real vulnerability of women and minority groups is something we should be concerned about. Has the working group come to any conclusions on that that the committee can note for its report?

**Ms Sinéad Gibney:** I agree that it is hard to remember the time pre-Covid when Brexit was so dominant. Ms McGahey mentioned the event we held last week which heard from Border communities and community groups which work across the Border. My recommendation to the committee would be that it should take note of the experiences of those communities which are living on the Border. I do not think we have yet seen the impact of Brexit in the daily routine of people's lives and how that has been impacted by Brexit. We heard in that very powerful session from rural women's groups, for example, about already having to juggle two systems in the locations they are in and the psychological toll that takes as well as the practical toll of organising your life around these two systems that you straddle in your life. That is heavily exacerbated by Brexit. They spoke of concepts like border-proofing and rural-proofing, how communities in Border regions are already far from services and that Brexit will have an additional impact on access to services. Border-proofing and rural-proofing the work of Government are things the committee should take into account of into the future.

I referenced a series of papers which the joint committee worked on coming up to Brexit in which we examined specific issues around political participation in the North for EU citizens and the birthright issues around the DeSouza case. Rather than go into detail now, I am happy to share links with members with specific recommendations which the committee can take into account. Mr. Allamby and Ms McGahey will have some more comments to add. Perhaps Ms McGahey might like to speak on women's rights issues.

**Ms Geraldine McGahey:** We have called on the Executive to promote participation in public life, especially by women and disabled people as well as minority and ethnic groups. We published recommendations and research on this whole topic. We stressed to government, both the UK Government and the Northern Ireland Executive, the need to hear the voices of the equality groups in Brexit policymaking. We have some concerns about the potential for further divergence between North and South on a range of equality rights. For example, Northern Ireland does not have a single equality Act for a region that was quite advanced in equality protections, and we now find ourselves slipping behind the rest of Great Britain and Ireland. There is real concern that divergence could widen further. Some work needs to be done on that.

An area of research we committed to undertake in the very near future is the impact of Brexit on the various equality groups across the nine categories, and looking to take the views of those affected groups into account so that proper meaningful recommendations and policy

positions can be adopted leading from that.

**Mr. Les Allamby:** There are three areas on which the committee might concentrate. First is the rights of those who identify as British in Northern Ireland to retain their EU law rights and how that might be done. The EU suggested it could be done by simply applying for an Irish passport. I do not think that sits comfortably with the Good Friday Agreement any more than if you asked someone who identified as Irish in Northern Ireland to exercise their rights by having to apply for a British passport. There are a set of issues there around freedom of movement and freedom from discrimination. Second, on 30 June, we come to the end of the settlement scheme apart from some late applications. That means we are back to square one on the DeSouza case. The joint committee has suggested ways that can be done through changes to immigration and nationality law. It is not the only answer to this but it is an answer that recognises the current law which assumes everyone is British, which is anathema to many in Northern Ireland who identify as Irish and are perfectly entitled to do so under the Good Friday Agreement. The UK can sustain durable alternatives around family reunion, and highlighting that would certainly be very useful.

The third area is to look at the common travel area and how we might strengthen its legal underpinnings. It was mentioned earlier by Mr. Holder in his evidence. Effectively, we have a memorandum of understanding. A gentleman's agreement has very little legal standing. Some documents have slightly greater legal capacity but by leaving the EU, the underpinnings of freedom of movement have potentially gone. That is, therefore, a third area in which there should be some examination from the committee.

Finally, I should have said this when I answered Senator Malcolm Byrne's question. There is an explicit recognition in the EU-UK Trade and Cooperation Agreement that data sharing is contingent on a continued adherence to the European Convention on Human Rights and a recognition of retaining data protection standards. There are, therefore, some safeguards in the agreement around data sharing. We have to see whether those can work in practice.

**Ms Geraldine McGahey:** Excuse me, Chairman.

**Chairman:** I thank Mr. Allamby. Go ahead, Ms McGahey.

**Ms Geraldine McGahey:** Referring back to Mr. Holder's presentation to the committee earlier when he spoke about voters' rights, I will add that it is within the gift of Ireland's Government as to whether it gives its Irish citizens living in Northern Ireland the right to vote in EU elections, etc. That needs to be borne in mind. It is something that is within the Government's gift as opposed to being within the UK Government's gift. I am sorry for interrupting.

**Chairman:** That is okay. The debate is ongoing in terms of extending the franchise. Ms McGahey is correct; there is a job of work to be done in the Republic on that particular issue. I am conscious that we are coming close to our finishing time of 5 p.m.. Members might please let me know if they wish to come in and ask a question. We will have a few extra minutes beyond 5 p.m. because we suspended due to the Seanad vote.

I also wish to quickly raise a couple of issues, the first of which is around the common travel area and the fact that we just have a memorandum of understanding. When this was first signed, I raised directly with the Minister, Deputy Coveney, at the time the question of why we did not have a legally binding treaty. There were reasons for that relating to the inflexibility of a treaty. There were benefits to having a memorandum of understanding. Do either of the three organi-

sations have a view on the status of the memorandum of understanding? Do we need to look at perhaps putting it on a stronger legal footing longer-term?

Mr. Allamby's final paragraph outlines one of five practical issues that might arise when travelling across the Border if a person falls within or outside the mechanisms that are in place. In the previous session, one of the issues raised by Mr. Holder was the UK Government's proposal to have an electronic pre-clearance requirement for non-Irish and non-British citizens coming into the UK. He raised the issue that we could have an EU citizen who is not Irish and not British on the island of Ireland. He or she could be a Polish person living in County Donegal, for example, who may want to travel back and forth across the Border, as is normal for people living in the Border area. That person could be subjected to an on-the-spot check on the ground and may not be in compliance with this pre-clearance. Might any of the three organisations have looked at that issue?

Of course, I wish to raise with witnesses the issue of the ongoing discussions on the protocol. We have had much debate on the protocol in this committee, the majority of which is probably coming from a very defined view that it is a good thing. That would certainly be my view and it has been expressed by members of this committee.

Obviously, however, the unionist community have a very different view on the other side. We have heard from some members that they feel it undermines the unionist position under the Good Friday Agreement. Do any of the witnesses have a view on the Northern Ireland protocol and its impact on the Good Friday Agreement as it affects citizens' rights?

Those are my few questions. Does anyone else wish to come in before I hand back to our commissioners?

**Senator Niall Ó Donnghaile:** May I come in quickly?

**Chairman:** Go ahead, Senator Ó Donnghaile.

**Senator Niall Ó Donnghaile:** It is a quick point. I will be understanding to the guests. It will probably take a bit more time but I want to flag it as I believe it is important. I will touch on the status of the all-island charter of rights. Obviously, in many ways, it is an unfulfilled aspect of the Good Friday Agreement. How should we approach that issue in the context of two different sets of rights, inside and outside the EU, now existing across all of Ireland. The charter is an important issue with which our guests will be very familiar.

**Chairman:** I thank Senator Ó Donnghaile. Apologies, I had not spotted that his hand was raised. I will hand back to Ms McGahey and Ms Gibney.

**Ms Sinéad Gibney:** Perhaps I can start with some comments and then hand over to my colleagues. In short, we believe the common travel area needs to be strengthened in legislation. As Mr. Allamby alluded to, at the moment, it is a set of agreements that we believe are not strong enough for what we are currently facing. As the Brexit process has unfolded and we have seen threats to the rule of law, it underpins that we need a very clear legislative footing for the common travel area.

As the Chairman identified, the other issues relating to that are the challenges faced by those citizens in Ireland who are not UK or Irish citizens and are, therefore, not covered by the common travel area, and the threat to their freedoms. That is definitely an area of concern.

Along with the cross-Border movement, the other issue I would raise is the potential for racial profiling. I am going to let my colleagues talk to the committee about the protocol. However, as Senator Ó Donnghaile said, the all-island charter was not acted upon following the Good Friday Agreement. I believe the priorities at the moment, particularly of my northern counterparts, have to be around dealing with the dedicated mechanism. I see no reason, however, this could be revisited in the future as a potential mechanism to strengthen the equivalence of rights on the island.

I will hand over to Mr. Allamby and Ms McGahey.

**Ms Geraldine McGahey:** I will come in on the point made by Ms Gibney about racial profiling, for example. We are very aware of concerns about the increased incidences of racial profiling that have apparently been taking place on the Border. In the past, the commission used its powers very successfully to challenge racial profiling.

In a public area of Belfast City Airport, for example, a member was sadly challenged as to her legal status for being in Northern Ireland by virtue of the colour of her skin. We are supporting a number of other cases in a similar vein. We will, therefore, challenge racial profiling where we see it and have the evidence to back it up. We have also called for the strengthening of race equality laws in this area of profiling and emigration. We are really looking for greater protection against racial profiling generally.

A couple of other points were made. It should, perhaps, be important to highlight the judicial reviews and the protocol, and various people's views on the protocol. All three commissions firmly believe that Article 2 is a very important part of the protocol. We are well aware of the discontent and concerns some sections of society have regarding the protocol in its entirety and the ongoing judicial reviews. We are also listening very carefully to the arguments that are being made by both sides and we will keep them under review. We will defend the retention of Article 2 but we will wait and see how those arguments evolve and the implications as we move forward. The economic and trading aspects of it do not fall within our remit, however. Article 2 is very specific on that. The committee can be assured that we will keep it under review, however.

**Mr. Les Allamby:** I have two or three comments. On the issue of the common travel area, we are very clear as to why putting it on an equal footing would make sense. It gives some clarity and avoids any kind of uncertainty in the long term. There are some issues. Senator Byrne asked earlier about the North West Migrants Forum with which both ourselves and the Equality Commission have engaged. There are some issues about the common travel area not applying to asylum seekers. There are also practical difficulties about travelling. If one wants to go to Dublin, for example, it would be much easier to go via Derry but one is not entitled to go into Ireland. There are similar issues for people who have the right to travel throughout the UK because of their immigration status but cannot travel from Derry to Donegal without risking their immigration status. There are some issues around the common travel area.

The idea of the charter of rights is important. It was very much about symbolising that all bodies, North and South, agree to abide by rights. We are keen to keep looking at where the Ad Hoc Committee on a Bill of Rights of the Northern Assembly can work in this area because that is much more likely to have practical enforcement issues, beyond the commitment. Commitment is important in the charter of rights.

To respond to the Chairman's first question, the Home Office of the UK Government today

issued a document about electronic travel authorisations, ETAs, for entering. I understand the Home Office has made it clear in that document that the arrangement does not affect the common travel area and Irish citizens. I have not had a chance to read that document in detail. It would be worthwhile for the committee to examine that document. It is important because the UK Government is tightening borders elsewhere but using a different approach to that being taken to the border on the island of Ireland. The set of issues we raised in our opening remarks included how to balance an open border against what the UK Government wants to achieve. It might want sovereign borders and preventing human trafficking and other issues. We are not sure how that can be done in practice. There are some tensions there.

**Chairman:** I thank Mr. Allamby, Ms McGahey and Ms Gibney. Do any members of witnesses wish to make any final remarks before we bring our meeting to a close?

**Ms Sinéad Gibney:** I will make a couple of short comments, if I may, and make some recommendations for the committee to consider as it approaches this stage of its interim reporting. I mentioned Traveller and Roma rights in my opening comments and that is an important area to consider. The Border represents a whole different concept for those communities because of the nomadic lifestyle they enjoy. It is important to consider how Brexit will impact those groups and their freedom of movement.

I also suggest that the committee takes into account an issue I have raised in passing with the shared island unit and on which I hope to have more in-depth discussions with the unit, that is, the awareness raising or information provision about Brexit for communities on this side of the Border. I believe there has been an emphasis on the impact of Brexit on businesses and trade but perhaps not enough on how it will impact those communities. We need clarity on where that responsibility lies and how it will be undertaken. Those communities are in a slightly suspended state at the moment because of Covid but their lives are going to be transformed because of this process and support needs to be given. IHREC remains available to support in that area. Our role within the dedicated mechanism and our connection with the two commissions means we are well placed to report in that regard and potentially to assist. The Government needs to consider how the State is supporting those communities, providing information and raising awareness of the potential impacts Brexit is going to have on their daily lives.

**Chairman:** That is a fair assessment. Much of the focus has been on trade and the impact on businesses. We have had some discussions and conversations about the impact on citizens' rights but Ms Gibney is correct that there is a deficit in the level of awareness among citizens as to the true impact. When the pandemic settles, we will get back to focusing more on Brexit and its true impact will become apparent over the coming months and years. The committee will certainly take those comments on board.

On behalf of the committee, I thank the three commissioners for being with us this afternoon. It has been a good discussion and they have raised interesting issues. They will not be solved quickly but they can be solved and by discussing and debating them, we will get that bit closer to solving them. The area of citizens' rights on the island will form a significant part of our report and, in particular, the impacts flowing from Brexit on areas around the Border and in the North. I thank the commissioners and committee members for their attendance.

It is anticipated that our final draft report will be available from Tuesday, 15 June. We will have a couple of meetings to complete beyond that date but the committee will start working through that draft and making the necessary amendments and changes. We are looking at a target release date for our interim report of the week of Monday, 5 July. I ask members to take

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note of a number of dates. We will be looking to have private meetings to go through the draft report, line by line, on 19 and 26 June, and 3 July. Those dates are Fridays and most members should be available. We will then look to report in the week of 5 July, before we head into summer recess.

If there are no questions on the above, I take it that the proposed schedule is agreed. If there are any issues at all, members can always contact me or the clerk to the committee and we can work through them. Those are provisional dates to give people advanced notice.

The select committee adjourned at 5.06 p.m. until 3 p.m. on Monday, 31 May 2021.