

Equality Commission

FOR NORTHERN IRELAND



NORTHERN IRELAND
HUMAN RIGHTS
COMMISSION

The Public Bill Committee on the Elections Bill
House of Commons
Westminster
London
SW1A 0AA

20 October 2021

Dear Sir/Madam,

Re: Clause 11 of the Elections Bill:

Proposed changes to Voting/Candidacy Rights of EU citizens in Northern Ireland and the implications of Article 2 of the Ireland/Northern Ireland Protocol

1. The Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission (the Commissions) are writing to you further to our powers under the EU (Withdrawal Agreement) Act 2020. This gives the Commissions new functions to monitor, advise, report on, promote, and enforce the implementation of Article 2(1) of the Ireland/Northern Ireland Protocol (the Protocol) to the UK-EU Withdrawal Agreement, as part of its 'dedicated mechanism' framework.
2. The Commissions are writing in relation to the provisions of the Elections Bill that relate to the voting/candidacy rights of EU citizens in Northern Ireland to vote and stand in local district council elections, in the context of the UK Government's non-diminution of rights obligation under Article 2 (1). In particular, we are concerned about the implications of the provisions in Part 3 of Schedule 7, brought into effect by clause 11 of the Elections Bill, should it become law, on the rights of EU citizens who come to reside in Northern

Ireland after the end of the Brexit Transition Period; namely at 31 December 2020.

3. In summary, we consider that the changes proposed by the Elections Bill could be in conflict with the UK Government's obligations under Article 2(1) of the Protocol, and may amount to a breach of Article 2(1). We recommend that the Committee gives further consideration to this matter as part of its scrutiny of the Bill and asks the UK Government to set out its assessment of the provisions of the Elections Bill, set out below, in the context of their conformity with its commitment under Article 2(1) of the Protocol.
4. We have set out our position in detail below.

Proposed Changes under the Elections Bill

5. The Committee will be aware that Clause 11 of the Bill gives effect to Schedule 7, which amends the voting and candidacy rights of EU citizens, including in Northern Ireland local councils. The changes will, if the Bill is passed into law, be accomplished through the creation of two new types of EU citizenship for the purposes of UK elections law: 'a qualifying EU citizen' and 'an EU citizen with retained rights'¹, in addition to a category of EU citizens who do not fall into either of these two categories. Only those EU citizens who fall into one or other of these two new categories will be able to stand or vote in Northern Ireland District Council and Assembly elections.
6. Part 3 of Schedule 7 provides for the specific amendments that apply these eligibility criteria to certain elections in Northern Ireland. Paragraph 6 amends the Electoral Law Act (Northern Ireland) 1962; paragraph 7 amends the Local Government Act (Northern Ireland) 1972; and paragraph 8 amends the Elected Authorities (Northern Ireland) Act 1989.
7. The effect of these, taken together, is to restrict the ability to stand and to vote in future District Council Elections to the two new categories of EU citizens. Paragraph 9 amends the Northern Ireland Act to accomplish the same result with regard to elections to the Northern Ireland Assembly.

¹ A 'qualifying EU citizen' is one who is a citizen of an EU state with which the UK has a reciprocal voting treaty with another country, whereas an 'EU citizen with retained rights' is one who was resident in the UK, Jersey, Guernsey, or the Isle of Man, prior to the end of the transition period and holds lawful immigration status.

Paragraph 10 provides for transitional arrangements which enable an EU citizen elected to these bodies before the new arrangements come into force to serve their full term of office.

Article 2 of the Protocol

8. Article 2 (1) of the Protocol states:

The United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, including in the area of protection against discrimination, as enshrined in the provisions of Union law listed in Annex 1 to this Protocol, and shall implement this paragraph through dedicated mechanisms.

Establishing a Breach of Article 2

9. The UK Government has indicated, as set out in its Explainer Document (2020), that in order to establish a violation of Article 2, the alleged violation must relate to a right contained within the Rights, Safeguards and Equality of Opportunity section of the Belfast (Good Friday) Agreement 1998.² The right must have been underpinned by domestic legal order in NI before the end of the transition period³ and any diminution of one or more rights must have occurred as a result of the UK's withdrawal from the EU.⁴

10. In the context of rights of voting/candidacy rights of EU citizens in Northern Ireland, and the UK Government's obligations under Article 2 (1), we consider that the relevant Belfast (Good Friday) Agreement rights engaged include: *'the right of free political thought'; 'the right to pursue democratically national and political aspirations'; 'the right to seek constitutional change by peaceful and legitimate means'*. We ask the Committee to particularly note that the first paragraph of the relevant part of the 1998 Agreement consists of a general provision protecting the *'civil rights'* of *'everyone in the community'*, which is then followed by a list of specific rights.⁵

² UK Government, "Explainer: UK Government commitment to no diminution of rights, safeguards and equality of opportunity in Northern Ireland" 7 August 2020, at para 10.

³ Ibid.

⁴ Ibid.

⁵ [The Belfast Agreement](#), 10 April 1998, at Rights Safeguards and Equality of Opportunity, Human Rights, para 1.

11. We also consider that the relevant Belfast (Good Friday) Agreement rights identified above were given effect in legal order in Northern Ireland as regards EU citizens prior to the end of the transition period⁶.
12. In addition, we consider that the rights of EU citizens to vote in local district council elections in Northern Ireland were underpinned by EU law up to the end of the transition period⁷.
13. Further, we are of the view that the UK's exit from the EU means that the EU Treaties no longer have effect in Northern Ireland and the Directives no longer have legal status as EU law in Northern Ireland domestic law, and their status as 'retained EU law' under the EUWA 2018 would be removed by the Elections Bill.
14. Finally, we consider that there is a potential '*diminution*' of these rights resulting from the provisions in the Elections Bill, and such a diminution could not, legally, have occurred had the UK remained in the EU.
15. In summary, the Commissions are of the view that the changes proposed by the Elections Bill with regards to this particular cohort of EU citizens in Northern Ireland who, if the Bill becomes law, will no longer be able to vote in Northern Ireland District Council elections, may amount to a breach Article 2(1) of the Protocol.
16. We believe that differentiating between certain sections of EU citizens lawfully living in Northern Ireland in terms of their voting/candidacy rights could lead to a diminution of rights protected by the 1998 Agreement, and would reiterate that the rights protected by the relevant section of the

⁶ In particular, the franchise for voting in district council elections in NI, is outlined in the Elected Authorities (Northern Ireland) Act 1989 at section 1. Section 1(1) specifies that a person is entitled to vote at a local election in any district electoral area if they are: registered to vote, a British or Commonwealth citizen; a citizen of the Republic of Ireland (RoI) or other EU citizen; 18 or older; and there is no legal reason why they cannot vote. The right to stand as a candidate in district council elections in NI is outlined in section 3 of the Local Government Act (Northern Ireland) 1972, as amended by SI 1995/1948. Section 3 identifies that a "relevant citizen of the Union" is entitled to stand for election to local council.

⁷ In particular, by Article 8b.1 of the Treaty establishing the European Community (as amended by Title II of the Treaty on European Union), which introduced a right to vote in municipal elections by EU citizens resident in another Member State, and two EU Directives which subsequently spelled out the detailed arrangements necessary to operationalise this right (Council Directive 94/80/EC of 19 December 1994 and Council Directive 2013/19/EU of 13 May 2013). Finally, the EU Charter of Fundamental Rights, in Article 40, protected the right to vote and to stand as a candidate at municipal elections. This applies because the UK in legislating these rights was acting within the scope of EU law.

Belfast (Good Friday) Agreement are to apply to *‘everyone in the community’*.

17. The Commissions advise that the UK Government can ensure that Article 2(1) is not breached if it maintains the position that existed prior to the end of the transition period and allows all EU citizen categories who would have been eligible to stand or to vote in District Council elections to continue to be eligible.

Conclusion

18. We ask the Committee to note that we wrote to the Secretary of State NI in June 2021, prior to the Elections Bill being introduced in Parliament, and highlighted that if EU citizens resident in NI should lose these rights, through a change to domestic law, given EU legislation on electoral rights for EU citizens, the Commissions believed Article 2 of the Protocol would be engaged. We have not to date received a formal response to that letter; though we were alerted by Government officials to the Government’s proposed changes to the rights of EU citizens in Northern Ireland set out its Policy Paper “Local Voting Rights for EU Citizens Living in the UK” published on 17 June 2021⁸.
19. We recommend that this important matter is closely scrutinised, and given further consideration, by the Committee as part of its scrutiny of the Bill. In addition we would request that the Committee asks the UK Government to set out its assessment of the said provisions of the Elections Bill in the context of their conformity with its commitment under Article 2(1) of the Protocol.

⁸ UK Government (2021) Local Voting Rights for EU Citizens Living in the UK, Policy Paper

Yours faithfully,



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