

Equality Commission

FOR NORTHERN IRELAND



NORTHERN IRELAND
HUMAN RIGHTS
COMMISSION

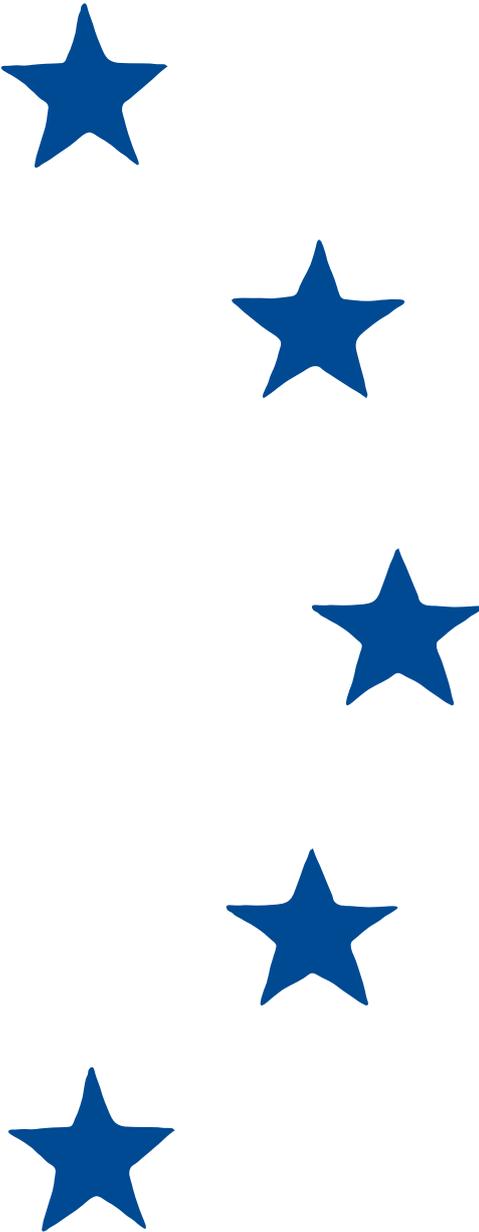
Your Rights



Equality and Human Rights after Brexit:

Challenging a breach of the UK Government's
commitment under the Ireland/Northern Ireland Protocol

Article 2(1) of the Protocol



Introduction

Under the EU/UK Withdrawal Agreement, the UK Government has committed, in Article 2(1) ('Article 2') of the Ireland/Northern Ireland Protocol ('the Protocol'), to ensuring that certain equality and human rights in Northern Ireland will continue to be protected after Brexit.

Set out below is further information on that commitment, the right of individuals to challenge an alleged breach of the UK Government's commitment and how the Equality Commission and the Northern Ireland Human Rights Commission can assist individuals who wish to make such a challenge.

What is the UK Government's commitment to equality and human rights after Brexit?

The UK Government has committed, in Article 2 of the Protocol, to ensuring that the protections currently in place in Northern Ireland regarding the rights, safeguards, and equality of opportunity provisions, set out in the chapter of the same name in the Belfast (Good Friday) Agreement, are not reduced as a result of Brexit.

The UK Government also committed in the Protocol to ensuring that certain equality laws in Northern Ireland will keep pace with any future changes to the EU equality laws which are set out in Annex 1 to the Protocol.

Who is covered by this commitment?

This commitment applies to Northern Ireland. Everyone who is protected by Northern Ireland law is covered by this commitment irrespective of whether the law has been passed by the Northern Ireland Assembly or the UK Parliament.



EQUALITY

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What rights are covered by the commitment?

The commitment in Article 2 of the Protocol applies to the rights, safeguards, and equality of opportunity provisions set out in the chapter of the same name in the Belfast (Good Friday) Agreement, which include:

- The right of free political thought
- The right to freedom and expression of religion
- The right to pursue democratically national and political aspirations
- The right to seek constitutional change by peaceful and legitimate means
- The right to freely chose one's place of residence
- The right to equal opportunity in all social and economic activity regardless of class, creed, disability, gender or ethnicity
- The right to freedom from sectarian harassment
- The right of women to full and equal political participation
- The right of victims to remember as well to contribute to a changed society
- Respect, understanding and tolerance in relation to linguistic diversity
- The need to ensure that symbols and emblems are used in a manner which promotes mutual respect rather than division

Some of these rights, as set out on the previous page, are underpinned by EU anti-discrimination laws which protect against discrimination on the grounds of: gender; racial or ethnic origin; religion or belief; disability; age; sexual orientation; and which promote equal treatment. These EU laws cover areas such as employment, access to goods and services, and social security, and are set out in Annex 1 to the Protocol.

There are also other EU laws which are relevant to the protection of these rights. These include EU laws such as the Parental Leave Directive, Victims' Directive and Pregnant Workers' Directive, as well as specific measures aimed at protecting the rights of disabled people.

Can I challenge a breach of the UK Government's commitment?

Yes, individuals have the right to bring legal actions before the domestic courts if they consider that there has been a breach, or a potential future breach, of the UK Government's commitment under Article 2 of the Protocol.

For example, if you consider that the Northern Ireland Assembly, or the Northern Ireland Executive, has acted in a way that is incompatible with the UK Government's commitment, you can challenge those actions in domestic courts, by taking a form of legal action known as a 'judicial review'.

Only the courts can decide whether a breach of Article 2 of the Protocol has occurred.



How do I show that there has been a breach of the UK Government's commitment?

In order to show that there has been a breach of the UK Government's commitment, there must be evidence that:

- ✓ **the right, safeguard or equality of opportunity protection is covered by the chapter of the same name in the Belfast (Good Friday) Agreement;**
- ✓ **it was protected under Northern Ireland law on or before the end of the Brexit transition period, namely 31 December 2020;**
- ✓ **the reduction in rights occurred as a result of Brexit.**

A failure by the UK Government to ensure that Northern Ireland equality laws keep pace with any future changes that the EU makes to update or replace the EU equality laws set out in Annex 1 to the Protocol, would also be a breach of its commitments under the Protocol.

How can the Equality Commission and the NI Human Rights Commission assist me if I consider there is a breach of this commitment?

In order to ensure that the UK Government meets its commitment under Article 2 of the Protocol, it created a 'dedicated mechanism' comprising of the Equality Commission and the Northern Ireland Human Rights Commission.

The Commissions have been given additional powers and responsibilities to ensure that the UK Government's commitment is met.

They are responsible for providing advice to Government and monitoring, supervising, enforcing and reporting on the ongoing implementation of this commitment.



The Commissions can bring or intervene in legal proceedings in respect of an alleged breach, or potential future breach, of the UK Government's commitment.

They can also provide advice and assistance to individuals¹, including, where appropriate, support to individuals to bring legal proceedings, where they believe that this commitment has been breached. The Commissions can exercise their powers and duties jointly or separately.

Are there time limits for making a complaint?

Yes, there are strict time limits for lodging judicial review proceedings with a court. A judicial review case for an alleged breach of Article 2 must be brought within **3 months** of the decision or action being complained of taking place.



Please note that contacting the Commissions or making an application for assistance to the Commissions for advice or assistance does not constitute issuing legal proceedings.

How do I find out more about making a complaint?

For further information and guidance on the UK Government's commitment under Article 2 of the Protocol or about making a complaint in the event of an alleged breach of this commitment, please contact:

Equality Commission for NI
www.equalityni.org/brexit

NI Human Rights Commission
www.nihrc.org/human-rights-after-brexit

[1] The relevant legislation (Section 78 D (1) & (2) of the Northern Ireland Act 1998) refers to the power of Commissions to assist 'persons' in legal proceedings.

Further information

For further information and guidance, please contact:

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 DMU@equalityni.org

 028 9050 0600

 Equality House,
7-9 Shaftesbury Square, Belfast, BT2 7DP

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