

Submission to the Review of European Parliament Ireland Constituencies Committee

August 2018

About CAJ

The Committee on the Administration of Justice (CAJ) is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its obligations in international human rights law.

The EU Council decision

On 24 June 2018 the EU European Council adopted a decision on the number of MEPs to be elected for the 2019–2024 parliamentary term. This was in the context of a redistribution of UK seats as a result of Brexit. It determines an increase of two MEPs for Ireland (from 11 to 13), and the removal of the UK’s seats, including the current three MEP seats for Northern Ireland. This is dependent on a UK withdrawal from the EU having become legally effective by the beginning of the European Parliaments 2019 term. Should Brexit not proceed by this time the composition will remain the same as in the current mandate.¹

The Irish Government’s consultation

Further to this on the 24 July 2018 Minister for Housing, Planning and Local Government, Mr. Eoghan Murphy TD, made an order to establish a committee to review Irish MEP constituencies and a period of public consultation was established until 31 August 2018.² CAJ welcomes the opportunity to respond to this consultation with the present submission.

Context of Irish and EU citizenship law and the Good Friday Agreement

Like all citizens of EU member states Irish citizens are automatically EU citizens, including those in Northern Ireland. This is unaffected by Brexit.³ As provided for in Irish law almost all persons born in Northern Ireland are or are entitled to be Irish citizens; this will also continue to be the case for those born after Brexit.

The provisions on the birthright to Irish and British citizenship in Northern Ireland are enshrined in the UK-Ireland treaty appended to the Good Friday Agreement and

¹ EUCO 7/1/18 REV <http://data.consilium.europa.eu/doc/document/ST-7-2018-REV-1/en/pdf>

² See [Minister Murphy establishes Constituency Committee to review European Parliament constituencies](#), statement 25 July 2018.

³ Article 20(2) TFEU “Every person holding the nationality of a Member State shall be a citizen of the Union.”

hence are recognised by the UK as well as Ireland.⁴ In accordance with broader provisions of the GFA the choice to identify as, be accepted as and hold British or Irish citizenship or both is a choice to be exercised without differential or detrimental treatment.⁵

In its Brexit position papers the UK has again reiterated the right of the people of Northern Ireland “to identify themselves and be accepted as British or Irish or both, as they may so choose; to equal treatment irrespective of their choice”⁶ and has also emphasised that ‘full account’ needs to be taken of Irish citizens residing in Northern Ireland after Brexit continuing to enjoy EU rights, a matter also emphasised by the EU.⁷ The Taoiseach has also emphasised the protection of EU rights for citizens in Northern Ireland.⁸

Continued access to EU citizens’ rights in NI, including political rights

There have also been clear commitments from both the EU27 (including Ireland) and the UK that following Brexit Irish citizens residing in Northern Ireland will be able to continue to exercise rights as EU citizens. This is explicitly provided for in Paragraph 52 of the EU-UK Phase 1 Agreement of December 2017, which alludes to the GFA provision on the birthright to choose to be Irish or British or both and contains the following commitment:

...The people of Northern Ireland who are Irish citizens will continue to enjoy rights as EU citizens, **including where they reside in Northern Ireland**. Both Parties therefore agree that the Withdrawal Agreement should respect and be without prejudice to the rights, opportunities and identity that come with European Union citizenship for such people and, in the next phase of negotiations, will examine arrangements required to give effect to the ongoing exercise of, and access to, their EU rights, opportunities and benefits.⁹

The European Council (Article 50) Guidelines of December 2017 say that “all commitments undertaken in the first phase be respected in full and translated

⁴ British Irish Agreement Article 1(vi) (Ireland Treaty Series 2000 no. 18) The UK and Ireland “recognise the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both Governments and would not be affected by any future change in the status of Northern Ireland.”

⁵ As above, see for example Article 1(v) [The two Governments]: affirm that whatever choice is freely exercised by a majority of the people of Northern Ireland, the power of the sovereign government with jurisdiction there shall be exercised with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions and shall be founded on the principles of full respect for, and equality of, civil, political, social and cultural rights, of freedom from discrimination for all citizens, and of parity of esteem and of just and equal treatment for the identity, ethos and aspirations of both communities;

⁶ UK Government, ‘Northern Ireland and Ireland Position Paper’ 16 August 2017, Paragraph 12.

⁷ As above, paragraph 14 and page 26.

⁸ Irish Government News Service ‘Statement on Brexit negotiations by Taoiseach Leo Varadkar’, 8th December 2017.

⁹ Joint EU-UK Phase 1 Report, TF50 (2017) 19, 8 December 2017, paragraph 52 (emphasis added).

faithfully into legal terms as quickly as possible.”¹⁰ The current phase of negotiations alluded to above, is ongoing.

One of the core EU citizens’ rights is the right to participate in the democratic life of the EU, with EU citizens directly represented in the European Parliament.¹¹ Such rights are usually exercised in the Member State of residence.¹² The implementation of the commitments in Paragraph 52 require an arrangement to be made to ensure that MEP voting rights for those residing in Northern Ireland who are (or are entitled to be) Irish citizens are continued. In accordance with the broader equality of citizenship provisions of the GFA arrangements should encompass those in Northern Ireland who wish to solely identify as British (but who are entitled to be Irish citizens). There are already specific arrangements for British citizens in other areas of Irish electoral law.

In relation to the ongoing exercise of the above EU citizen political rights in Northern Ireland, the EU has stated that this is a matter for Irish electoral law.¹³

Implementation of the ‘Paragraph 52’ commitments

Whilst CAJ does not advocate a particular model to implement the above commitments, there appear to be two basic approaches that could be followed (other than a reversal of Brexit).

The first is a ‘special status’ type model for Northern Ireland agreed by the EU and UK that would provide for an ongoing UK Northern Ireland jurisdiction for the Parliament. There has been no progress on such a model we are aware of and the implementation of the current EU Council Decision, as it currently stands, before the mandate of the next Parliament, would effectively remove this as an option.

The second is changes to Irish electoral law to allow those not ordinarily resident in the State but living on the Island of Ireland to return MEPs. We understand that there are a range of arrangements across other member states that do not restrict franchise to residency, and that the UK has facilitated elections for other member states on its territory.

We are aware of the restricted Terms of Reference of the Committee but are also conscious that its work cannot be divorced from the broader legal framework provided both by the GFA and commitments to the aforementioned ongoing exercise of EU citizens rights in Northern Ireland, and wish to draw this to the Committee’s attention.

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¹⁰ Paragraph 1 <http://www.consilium.europa.eu/media/32236/15-euco-art50-guidelines-en.pdf>

¹¹ Treaty on European Union Article 10(2)-(3);

¹² TFEU Article 20(2)(b).

¹³ See [President Juncker Response to European Parliament EN E-002232/2018](#)