



Committee for The Executive Office

OFFICIAL REPORT (Hansard)

Article 2 of the Protocol on Ireland/Northern Ireland: Joint Committee of the Northern Ireland Human Rights Commission and the Irish Human Rights and Equality Commission and the Equality Commission for Northern Ireland

16 December 2020

NORTHERN IRELAND ASSEMBLY

Committee for The Executive Office

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Members present for all or part of the proceedings:

Mr Colin McGrath (Chairperson)
Mr Doug Beattie (Deputy Chairperson)
Ms Martina Anderson
Mr Trevor Clarke
Mr Trevor Lunn
Mr George Robinson
Mr Pat Sheehan
Ms Emma Sheerin

Witnesses:

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| Ms Geraldine McGahey OBE | Equality Commission for Northern Ireland |
| Ms Sinéad Gibney | Irish Human Rights and Equality Commission |
| Mr Les Allamby | Northern Ireland Human Rights Commission |

The Chairperson (Mr McGrath): Representatives are in attendance today to talk about article 2 of the protocol. I take the opportunity to welcome, in the room with us, Les Allamby, the chief commissioner of the Northern Ireland Human Rights Commission (NIHRC), and Geraldine McGahey, the chief commissioner of the Equality Commission for Northern Ireland (ECNI). Joining us via StarLeaf, along with Committee members, is Sinéad Gibney, the chief commissioner of the Irish Human Rights and Equality Commission (IHREC). As ever, today's session is being recorded by Hansard, and a transcript will be published on the Committee web page.

I know that it has not been a long time since we last saw you, but, with Brexit, a day can be a long time. Perhaps you can update us on how things have progressed from each of your perspectives, and then we can have a bit of a chat.

Ms Geraldine McGahey (Equality Commission for Northern Ireland): Thank you, Mr Chairman. Hello, members. It is good to see you all again. Thank you for the opportunity to give you a bit of an update on the work that we have been doing since we last spoke to you, in September.

I will say a few words about the work that has been undertaken to raise awareness of the Government's commitment; about our work as a dedicated mechanism; and about governance arrangements. Sinéad will follow me and give you some more detailed information on the all-island dimension. Les will follow her, and provide some detailed information on the Internal Market Bill and other domestic rights developments, if that is OK.

The Chairperson (Mr McGrath): Sure.

Ms McGahey: As you are aware, both the Equality Commission and the Northern Ireland Human Rights Commission have key roles to play as part of the dedicated mechanism to oversee the implementation of the Government's commitment to:

"no diminution of rights, safeguards and equality of opportunity",

including to monitor, advise on, report on and enforce the Government's adherence to that commitment.

We previously advised you that we had received additional resources from government. Those were to enable us to commence work over the past few months. As a priority, we have been recruiting staff to undertake the necessary work. The last time that we spoke, I advised you that we had appointed a director. Since then, we have appointed some other staff, mainly in the areas of legal, policy and promotional work, and more appointments will follow in the near future. Les has been working very hard as well to ensure that his appointments have been filled.

We continue to look in detail at the scope of the article 2.1 commitment, and not only at the equality laws in place to implement the directives that are listed in annex 1 to the protocol but at the provisions in the relevant part of the Belfast/Good Friday Agreement, and at the extent to which those are underpinned by EU rights that are enshrined in Northern Ireland law.

We have been raising awareness and undertaking engagements with officials from Departments and public bodies, with academics and with equality and human rights organisations. Last week, for example, we held an online event, as part of the Human Rights Consortium's Northern Ireland Human Rights Festival 2020, on how equality and human rights will be protected in a post-Brexit Northern Ireland. Last month, some of our representatives spoke, specifically on fundamental rights, at a joint Queen's University and Irish Centre for European Law (ICEL) event on the Ireland/Northern Ireland protocol.

Les and I also wrote an article for the 'Belfast Telegraph', published on 5 December, on the commissions' commitment to and role in overseeing the protocol's effective implementation by the Government. We are planning general awareness-raising activities in the coming months, including through public advertisements early in January.

As to holding the Government to account, you will recall that, when I was before you in September, I stated that, at that time, we did not foresee any significant issue with the Internal Market Bill but that, should matters evolve, we would vigorously defend the protocol and article 2.1.

As a consequence of Government amendments, the Government did exactly what we feared they might do, which was that they undermined the commitment of the dedicated mechanism unit. In line with our role of holding the Government to account, we raised concerns about the potential for the Internal Market Bill to impact on the implementation of the article 2.1 commitment, including the fact that Government amendments to the Bill would disapply the scope of the European Convention on Human Rights (ECHR). We welcome the fact that the Government have indicated in a joint EU/UK statement, issued on 8 December, after reaching an agreement in principle with the EU in some areas covered by trade talks, that it will withdraw Part 5 of the Bill.

We had also raised some concern about the potential impact of specific clauses in the Bill, namely clauses 5, 6 and 11. We were concerned that those provisions would permit challenges to any future equality legislation introduced in Northern Ireland to keep pace with EU equality laws and in line with the article 2 commitment and that that would undermine the commitment of the Government. We raised those concerns with the Secretary of State and with various Members of the Houses of Lords and Commons, and our concerns were addressed in exchanges with the House of Lords on 2 December at Third Reading, when Lord Callanan assured the House that the rights of individuals in Northern Ireland captured within the scope of the article 2 commitment will continue to be protected going forward and will not be impacted on by the workings of the Bill. Les will talk to you in more detail about that. We will, however, continue to challenge proactively any measure, including Westminster legislation, that potentially undermines the commitments to equality and human rights set out in article 2.1 in delivering our monitoring role, and we will challenge any such measures with vigour and purpose.

The third point that I want to talk about is governance and the developments that we have been involved in since we last spoke. We believe that an essential component of the framework is the all-island oversight arrangements, specifically that the commissions, together with the Irish Human Rights and Equality Commission, will work together to oversee and report on rights and equality issues that fall within the scope of the commitment that has an island-of-Ireland dimension. We see that as being a critical part of the overall framework, particularly in the light of the potential issues that may fall within the remit of the dedicated mechanism's work, including any cross-border issues that fall within the scope of article 2. Moreover, we have been discussing over the past number of months how best we in the three commissions might organise ourselves to do that. Each commission has agreed that our joint working on an all-island dimension of the article 2 commitment will be overseen at a strategic level by our three boards, with regular reports going to them on joint working. Any decisions that are required will be undertaken by the three boards individually, in accordance with their own governance arrangements. The Equality Commission has appointed its commissioner who will participate in that.

The working group will comprise the three chief executives of the three commissions, the three chief commissioners and relevant staff, plus one commissioner from each body. The chief executive of the Equality Commission, Evelyn Collins, and I were delighted to meet our counterparts at the joint committee meeting that took place in November, and we plan to have further meetings in January to look at how the issues will pan out. As our work develops, we will plan to have quarterly meetings of the working group and potentially an annual meeting of the entire three commissions. That scheme will be launched in January, as we plan to have a meeting of all three commissions, albeit online.

That is as far as I will go without trying to steal the thunder of Sinéad and then Les, so, if it is OK with you, Mr Chairman, I will hand over to Sinéad.

The Chairperson (Mr McGrath): Yes, of course.

Ms Sinéad Gibney (Irish Human Rights and Equality Commission): Thanks very much, Chair, and thanks to members for the opportunity to address you again. It has been a tumultuous time since our previous meeting on 14 October but a vital one in the framing of the post-Brexit relationship and, within that, a new horizon for the protection of human rights and equality.

At our previous meeting, we focused significantly on the provisions of the Internal Market Bill, and I am deeply relieved to see that a resolution has been found to allay our stated concerns about the immediate impacts for the Northern Ireland protocol and to ensure that the Internal Market Bill does not have any negative ramifications for the work of the dedicated mechanism. Les will speak to that in more detail.

When the dust settles on 2020, we need to be in a position to ensure that we can reassure people that they can be aware of, secure information on and, if necessary, vindicate their rights and protect themselves against discrimination. As Geraldine outlined, the dedicated mechanism is the key piece of institutional architecture to provide people with those reassurances in a changed geopolitical environment.

Although the ECNI and the NIHRC are at the coalface of the dedicated mechanism in the context of the article 2 commitment, both organisations, and we in IHREC, will continue to work together to provide oversight of and reporting on rights and equality issues that fall within the scope of the commitment that have an island-of-Ireland dimension. From an all-island perspective, such arrangements, as set out in the UK Government explainer document, do not alter the constitutional status of our joint committee but rather add significant weight to our work. The joint committee of the NIHRC and IHREC met last month, with many new commissioners in attendance, to discuss Brexit and the dedicated mechanism. We were also joined for part of that day by Geraldine and Evelyn from the ECNI. As you can see, the three commissions are already working closely. As Geraldine has outlined, we have agreed our understanding and joint working arrangements on how we operationalise the dedicated mechanism, with, of course, the two Northern Ireland commissions being the primary actors. Consistent with current reporting and accountability structures, the NIHRC and ECNI will provide regular reports to the UK Government and Northern Ireland Executive. Similarly, all three organisations will be able to report separately to the Governments of the UK and Ireland, as appropriate, on any issues with an island-of-Ireland rights and equality dimension that we have jointly addressed in the context of monitoring the no-diminution commitment.

Last week, I met Tánaiste Leo Varadkar and, as part of that meeting, discussed with him the work that has been done by the joint committee and the forthcoming work of the dedicated mechanism. Throughout this process, we have found very positive engagement with both Ministers and senior

officials, domestic and EU, which we aim to maintain. There are significant issues, which, on an all-island basis, we need to be mindful of as the relationship evolves between the UK and EU: those frontier and migrant workers whose livelihoods are dependent on the free flow of people and clear and consistent employment practices; those who access cross-border services, such as childcare and healthcare; and those who may have their traditional ways of life challenged, including the Traveller and Roma communities. We will also maintain our wide-horizon view on how the relationship develops in respect of the evolving dynamics of different governance and regulatory regimes.

The protections that are outlined in the protocol's first annex and the specific provisions of EU laws which are listed there must be a key part of the dedicated mechanism's all-island work. As Les pointed out at our last meeting, everything else beyond annex 1 is about having no regression or diminution of rights. That will be a much longer process, looking over how the settlement will develop in respect of more broadly defined rights issues referenced in the equality, rights and safeguards sections of the Good Friday Agreement, such as the rights of women and girls, the rights of persons with disabilities, and access to equal opportunities, among others. Of course, it would be welcome to see the UK and Northern Ireland progressing positively to exceed EU provisions in that area and, perhaps, act as an external driver of evolving rights and equalities for the EU and beyond.

Thanks again, members, for the opportunity to address you. I will now pass over to Les. Thank you, Chair.

Mr Les Allamby (Northern Ireland Human Rights Commission): Thanks, Sinéad. At our last session, Doug Beattie pressed us diligently about why we changed our minds over the fact that the UK Internal Market Bill could potentially have an impact on the work of the dedicated mechanism. We were influenced, in effect, by legal advice that suggested that it could. The two commissions then drafted an amendment to the Bill to put beyond doubt that the Bill could seep into the work of the dedicated mechanism. That amendment was tabled by Margaret Ritchie with the support of Peter Hain and Alison Suttie, a Liberal Democrat peer, among others, at the Report Stage of the Bill in the House of Lords. Margaret was persuaded to withdraw the amendment following the kind of machinations that you will be familiar with, which Parliaments engage in in trying to reach agreement. As part of that withdrawal, it was agreed that an exchange of correspondence would be placed in the public domain through the Westminster House library, offering, effectively, the assurance that we were seeking. In effect, what that letter confirms is that the relevant clauses on non-discrimination that were mentioned by Geraldine earlier apply to goods that are sold and the conduct of the regulation of businesses that engage in the sale of goods. Although it did not completely rule out, for example, covering employment law, the letter nonetheless makes clear the purpose and intention of the clauses and provides significant reassurance that it will not affect implemented legislation applying to Northern Ireland under the protocol. Given that the initial response that we had to the two commissions' correspondence to Government was, essentially, "There is nothing to see here", that is a significant advance and a recognition that our worries had potential foundation. I hope that they have been fully allayed.

Beyond that, I want to make a number of brief observations, which you may want to pick up on in questions. The first is that the Ireland/Northern Ireland protocol contains provisions which ensure that Northern Ireland will keep pace with specific equal treatment and non-discrimination law, as well as the non-diminution of existing rights under the relevant section of the 1998 agreement. It is worth pointing out that keeping pace with developments in EU law is clearly one of the issues that are vexing the UK Government and EU negotiating teams.

The second point is that the gap between the protections in the rest of the UK and those in Northern Ireland through the non-diminution commitment will be determined, to a significant extent, by whether an agreement is reached, not just on free trade but on the wider provisions that have been agreed but that are contingent on the rest of the free trade agreement.

The third point is that the absence of an agreement has much wider ramifications than for just goods and services. It strikes me that we have focused on the movement of goods and services but not on the movement of people. One illustration of the wider ramifications came last month when the chair of the National Police Chiefs' Council, Martin Hewitt, wrote to the Chair of the Westminster Home Affairs Committee on the ramifications of, for example, leaving without a deal. What Martin Hewitt said in his correspondence was that, in a non-negotiated outcome, the UK will "lose access to" EU law enforcement and national security tools and capabilities:

"and will rely on contingencies. As an overarching principle, the loss ... will mean that, even with contingencies in place, the fallback systems will be slower, provide less visibility of information/intelligence and make joined up working with European partners more cumbersome."

That mirrors the findings of the Joint Committee's recently commissioned research in which senior PSNI officers referred to the alternatives to, for example, the European arrest warrant, various data-sharing provisions and other tools as "suboptimal". We also know from a National Audit Office report last week that the Home Office's border management IT system is being further delayed until at least the financial year 2021-22. The competing tension of an open border alongside the UK Government's new immigration laws and preventing trafficking and other security issues remains very much a live issue.

Fourthly, and finally by way of opening observations, the UK Government have been very firm and clear on their aim to leave behind the oversight and accountability mechanisms in the EU, particularly the European Court of Justice. The UK will leave the European Court of Justice, in some cases immediately and in others over time, and will no longer play a role. Depending on whether you believe in happenstance or coincidence, in July the Government set up an independent review of administrative law to examine whether judicial review strikes the right balance between enabling citizens to challenge the lawfulness of Government action and allowing Government and local authorities to carry out their business. Then, in December, the Government announced a second independent review of the Human Rights Act 1998, this time to look at the relationship between domestic courts and the Strasbourg courts and, again, whether the right balance is struck between courts, Government and parliaments. That review will not consider the scope of the substantive rights that are covered in the Human Rights Act. Nonetheless, the rights are only as good as their remedies, so we are looking at the machinery and remedies amongst other issues.

I think that those reviews are an important wider backdrop that may go beyond the protections that are provided by the Ireland/Northern Ireland protocol and the work of the dedicated mechanism. Therefore, we need to be very mindful about protections that we may have for Northern Ireland and the overlap between the Government's potential ambitions to deal with domestic remedies when freed beyond the idea that EU law will continue to have supremacy, which it clearly will not from 1 January 2021.

The Chairperson (Mr McGrath): Thank you very much. We will move to some questions and discussion. I can make a start, but do not feel that all three of you need to answer each question; if seven or eight members ask questions and we get three responses to each, we will be here to Christmas.

Does somebody want to give a sense of the aftermath of the UK Internal Market Bill? It has left a really bad taste amongst a considerable number of people that things that were so definite were up for grabs. You had to engage in a process with various legislators and individuals to try to overcome what was suggested in it. I am trying to get a sense of your independent perspective. Do you think that it was an unintended outcome that rights, potentially, could have been impacted, or do you think that it was just a lack of care about rights being impacted? Do you think that it was just too blinkered on resolving Brexit and that things were not noticed? It has left concern. Do you share those concerns within your various commissions?

Mr Allamby: I will kick off on that one. The succinct answer is that we do. It is pretty clear that an underwhelming message is sent out when you say, "We are prepared to breach international law", even if it is for only a short time and a specified period. If you reach an agreement and then start to unpick it, frankly, whether that is for tactical or other reasons, it sends out a very negative message about whether you can trust the UK Government in other spheres.

The human rights issues bring me back to the last point that I made: we are pleased to see that those clauses have been removed. The clauses included that you could not challenge the Bill under specific parts of the Human Rights Act, so we began to move into provisions that, somehow, said that the Human Rights Act would not apply to certain parts of legislation. That fills me with a degree of gloom when I look at the independent review of the Human Rights Act. Are we getting the balance between the executive, the legislature and the judiciary and the role of the courts right? It suggests that that was not just necessarily a short-term ambition to deal with a specific issue around negotiating. You do not have to be a conspiracy theorist to take that particular view.

The Chairperson (Mr McGrath): Leading on to that review — I am by no means an expert, so correct me if I stray to the wrong sides of this — many of our human rights have been protected through judgements that have been taken in court. This review is potentially reviewing the connection between EU courts and domestic courts. If it is suddenly decided that the domestic courts should not have an input in terms of protecting rights, that might not play too well here, where so many rights have been protected through judgements. Is that a fair assessment? Is there a way of inputting that consideration into the process of that review?

Mr Allamby: The Government have been very clear that it is not about looking at the substantive rights that are covered by the Human Rights Act. We are not opening up the convention rights, as I understand it from the terms of reference. However, we are looking at the machinery; I think that Robert Buckland talked about the machinery and the balance. The Strasbourg court talks about rights that must be real and practical rather than theoretical and illusory. The devil, of course, will be in the detail. We will have to see what exactly it is. It is an independent review, but it is pretty clear that, if the Government thought that the balance was right, they would not be commissioning an independent review of both judicial review and the Human Rights Act. It is pretty clear that the UK Government do not see that balance as being the one that they wish. We know what is likely to come down the track next year. We have been presaged their intention to look again at fixed Parliaments and the right of Parliament to prorogue etc. So it is pretty clear that this Government do not view the judiciary and its role in terms of the traditional role of the three pillars, and, frankly, want to find a way, I suspect, to have a degree more autonomy. Both reviews have talked about interventions on policymaking and what the role of the courts should be in intervening on policymaking. The courts are an important bulwark and safeguard in terms of human rights and wider scrutiny of policy, and legitimately so, along with the executive and the legislature.

Ms McGahey: It is my understanding that existing case law that has gone through the judicial process before the transition period still stands on the statute books, and that it is not to be revisited but will become part of the bigger issue.

The Chairperson (Mr McGrath): Some of the difficulty is that this review can be quite abstract at the minute, but wind forward 20 years and decisions could be taken as a result of what is decided now in a review and could really impact on people's daily lives. That is why it is critically important that there is a commission such as yours assessing, reviewing and inputting into that process, and that there is that level of independence for you.

Mr Allamby: That is right. Both of those reviews are independent reviews, so we will have to see what each makes of the terms of reference that they were given. I guess that part of our role is to make sure that we have an input and that Northern Ireland's voice is heard in this, particularly so when you also have the protocol. In terms of the remedies and some of the issues, it seems to me that there is a Venn diagram with a potential overlap between the work of those two independent reviews and any outcomes, and the work of the protocol, the safeguards and the non-diminution commitment that was made by the UK Government around the Belfast/Good Friday Agreement.

The Chairperson (Mr McGrath): Finally for me, we spoke on your last visit about the fact that our rights will be side by side from 31 December, but that there is the potential for divergence as we go forward, and that there might have been a need for a memorandum of understanding between the UK and EU to keep an eye on those rights to make sure that, if there were any step changes, those were being observed. Has that been progressed or developed?

Ms McGahey: The three of us have had some discussion as to how best we might move on that issue. We are fortunate that Sinéad is close to the Irish Government's role in that discussion and planning for any amendments to legislation, so we have the benefit of Sinéad's input on that. We also have the likes of Equinet. I think that we will be continuing our membership of that, and there will be dialogue in that process. Northern Ireland should not be a consultee in that process, under the terms of the exit from the European Union. However, we need to find a way of being able to try to exert influence. If we are expected to keep pace with EU legislation, it is to our benefit to be able to have some influence in that. At present, however, there is no clear channel as to how that can be developed. It is something that we have been discussing. Sinéad might want to add something on that specific issue, because we are very concerned about how we might do that.

Ms Gibney: As Geraldine pointed out, we are in the position whereby, because it is law that affects us and is operational in our jurisdiction, we will be able to have in our sights and on our minds the equivalence concept, and to work with the two Northern Ireland commissions to make sure that any

issues that we anticipate to be coming down the line are flagged in advance. That will be a potential advantage as it progresses. However, Northern Ireland's role within that process is not clear to me. Obviously, there is not going to be any influence coming from Northern Ireland in the development of those rights at a European level. It is hypothetical at the moment, or just unclear, exactly how it is going to play out, but we will do everything that we can to assist. We work very closely together anyway, as you can see, and we will continue to do so, but this will be very much front-of-mind for us as we continue.

Mr Beattie: Thank you all for your briefings. It is always great to hear where we are going, and we all want to be going in the same direction. Trust is something that is really important, but it has to be underpinned by the right legislation. Looking back at everything that has been going on, if we were sitting here talking about a border between Northern Ireland and the Irish Republic, I guess that you would be really digging into the equality and human rights issue in regard to that. Many British citizens in Northern Ireland will feel that their rights may well be diminished by a border east-west in the Irish Sea. Also, we will have to follow many EU rules but will have no say on them, so there will be a democratic deficit there. Have you all taken the time to dig into that to make sure that, with what is being put in place, no rights are being diminished with regard to those people who view themselves purely as British?

Ms McGahey: Yes, that is something that we are very conscious of. There was a meeting with officials from both commissions and the Northern Ireland Office today, and that is something that they have been discussing. There is input from the Joint Consultative Working Group, and it should have a role in informing the three Commissions of what is happening. I am very conscious and mindful that people of a British and unionist persuasion will feel that there is a threat to the east-west relationships. However, we will be working to ensure that that issue is fully explored and that there is no diminution of rights in that regard.

Mr Allamby: I will talk about some of the work that the Joint Committee has done. The identity rights that are in the 1998 agreement — the right to consider yourself as British or Irish or both, without any adverse consequences — are not part of the section that forms the work of the dedicated mechanism for the no-diminution commitment. During the negotiations, we have raised two sets of questions with the UK Government, the Irish Government and the European Commission. In the December 2017 agreement, it was agreed between the EU and the UK that the people of Northern Ireland, to use the phrase of the 1998 agreement, who consider themselves to be Irish would retain their EU law rights. We have made a number of representations to say that, for that to be consonant with the 1998 agreement, it must apply to the people of Northern Ireland, whether they identify themselves as British, Irish or both. We never really got to the bottom of that, although it was interesting that when it looked like we were heading for no deal, the Irish Government announced that they would guarantee the European health insurance cards for all the people of Northern Ireland. If we end up without a deal, there is the prospect of that happening again, and I would expect it to once again apply to everyone in Northern Ireland, regardless of their identity.

We have raised that as an example of where British identity needs to be recognised and protected. On the other side of that equation, the Joint Committee produced a legal analysis of UK immigration law. UK immigration law assumes that everybody born in Britain is British, whether you choose to identify that way or not, which has a number of ramifications. We spent a great deal of time on producing a potential solution to that, which would have still entailed people born in Britain being seen British in the law but provided readily accessible ways for those who do not identify as British to be able to identify as Irish and retain all of their immigration law rights and identity rights under the agreement. Frankly, it goes back to 2010 when, in response to the Northern Ireland Human Rights Commission's work on a bill of rights, one of the things that the UK Government recognised needed to be in such a bill was the recognition in effective domestic law of those identity provisions, so that nobody was affected adversely either way. We have had progress in what I might call a short-term quick fix on immigration rules in allowing family reunion. It led to Emma DeSouza's case being withdrawn and then resolved, but it is a quick fix. If you enter into a relationship after 31 December, or if you do not apply before 30 June, then you are back into the same set of issues. I would anticipate that we would have another Emma DeSouza case coming towards us at some point.

On the identification issues that you outline about identity rights, there are issues for those who identify as Irish and British. The Joint Committee has interrogated both sides of that coin.

Mr Beattie: What about the democratic deficit? How are we squaring this? If we look at this in primary colours and talk about equality and human rights, how are we squaring the democratic deficit? I am

being held to an EU rule or law without representation. However, others, just across the border from me at no distance, maybe a mile from somebody else, are not. How do we square that?

Ms McGahey: That is the very point that I alluded to earlier, in the fact that we recognise that there is a democratic deficit. We do not have the power in Northern Ireland to influence, despite the fact that we are required to keep pace. That has advantages, but it also has disadvantages in that we cannot exert that degree of influence to make it fit our needs that little bit better. However, we are outside the EU, so we have not been given direction as to how that will work. It is something that we will continue to explore and try to exert influence on. However, at the minute, it is an unknown that we do not have an answer to, and there is nothing anywhere that gives us direction as to how that will work. That is where I was referring to the close working relationship that we have with Sinéad and her team — that we can get some information and use our influences through their good offices. However, I do not believe that that is sufficient. It is still very much unknown. That is not the answer that you were hoping to get, but we are conscious of that gap.

Mr Beattie: I get that. I could dig myself down a hole by looking at the complications and get lost. If you are sitting here, as a Northern Ireland unionist, talking about whether you feel that your rights are being diminished, whether they are or not, by a border that has been placed east-west — we can argue the reasons why whenever — you can see people who are willing to put out statements to the British Government to say that the Internal Market Bill is a danger to their rights and the equality of the people living in Northern Ireland but who are, maybe, not quite so willing to say to the European Union that what it is pressing for is diminishing the rights of the people of Northern Ireland.

I am not saying that it is the case, but from where I and my constituents sit, you get a sense that it is the British or unionist citizen whose rights are being diminished. They do not feel that scope of people screaming for them.

Mr Allamby: I understand that perception. There are two things to say on that. We very vigorously pursued the equality of identity and those issues with the European Commission, publicly as well as privately, and the asymmetry of rights is not in accord with the spirit and intention of the agreement.

On the larger democratic deficit, it is about keeping pace with equality and non-discrimination rights. Nobody in Northern Ireland should fear that. If the UK Government decided that — and in our meetings with them they have said time and again that they have no intention of unpicking equality and anti-discrimination laws — if the EU was to move more quickly, then there is a potential gap between Northern Ireland and elsewhere, but that is a gap that I will personally live with. It is about providing equality protections and non-discrimination in employment and social security, in access to goods and services and in self-employment, and those, to me, seem to be a good thing.

I recognise that we have to make sure that people understand why equality and human rights are a good thing for everyone in Northern Ireland. I think that they are, and therefore I do not think that there is anything to fear about keeping pace with EU law. If Northern Ireland, which, in the last few years, has been behind in many ways in providing protections, were to move ahead of the UK again, I personally would not lose any sleep at night over that. I understand your wider point about the perception.

Mr Beattie: It is a wider point. We had a discussion about that, Les.

Mr Allamby: We did.

Mr Beattie: We discussed the UK's rights, maybe, outstripping those of the EU. Then, Northern Ireland would suddenly have to keep pace with GB in order for people from Northern Ireland to be able to work in the GB market, so if the UK's rights outstrip those of Europe, that is a good thing for Northern Ireland, but you can —.

Mr Allamby: I should say that I will not lose any sleep either if the UK's rights outstrip those the EU and we get greater protections.

Mr Beattie: Yes, of course, but it is a wider issue.

Mr Allamby: Yes.

Ms McGahey: It is a much wider issue. We are continuing to explore the scope of the directives and the other aspects of legislation that are covered by it. As issues arise, or as we discover those, we will pursue them. It is about equality for everybody in Northern Ireland and about everybody being treated the same. It is therefore still very much on our radar.

Mr Beattie: Thank you.

Ms Anderson: Thank you all for the presentation. I will pick up where Doug left off. The EU is not a panacea for rights, but it is better than what we have at the minute. We talk about having no diminution of our rights, whatever about the highest standards, and that is why we need a bill of rights here that will offer rights protections for everyone.

I just want to say to Doug that, when I was an MEP, bearing in mind that there were also two unionist MEPs, I was the only one who brought Jim Allister over to the Commission to talk to it about the issue of identity rights, because I do not want — we do not want — a situation here, where those of us who are Irish are afforded our EU rights and those of you who identify as British are not afforded those rights. We are arguing for everyone here and across the island to have the same kinds of rights protections. It goes back to the issue of nationality and its application in the national law that exists here. It would be good for people in the republican and nationalist community to hear that we should be able to identify as being Irish and not have our rights stripped away from us because of a law that bestows on us the unwanted gift of being British.

I think that Geraldine started off talking about this, and then Les picked up on the point about the movement of goods and the focus on trade. Without doubt, in terms of protections, more attention seems to have been given to the movement of cows and sheep than to the movement of people and to unfettered access across the island, whatever about the common travel area, because that is not embedded in law. A gap could emerge that will affect EU citizens living here.

Last night in the Chamber, we had a debate during which some of the participants claimed, once again, that some of us are scaremongering, that EU citizens who live here feel unwanted and unwelcome and that they are going because we have pointed that out. In the context of the Windrush scandal, I would like to ask about people here who are not covered by the common travel area, so they do not have those kinds of protections. Do they have to apply for settled status? It was assumed last night that, because the British Government said that they would be OK, they can live here, that they do not have to apply for anything and that they will still retain the same EU rights that they have. What happens to EU citizens who live here, who have, thankfully, made this place their home and who are wanted and welcome? We want to see them protected, but are they protected automatically?

Ms McGahey: I will hand over to Les. It is a complex issue.

Mr Allamby: If you have applied through the EU settlement scheme —.

Ms Anderson: But what if you have not done so?

Mr Allamby: Anyone who is here under the EU settlement scheme, or has pre-settled status, should have the same rights as anybody else, assuming that they remain here for long enough. Clearly, there are issues about what happens to those people who, for whatever reason, have not applied to the EU settlement scheme, even though they would qualify. The UK Government have said that they will look at extending it, but I am not sure about the detail of how that will look. EU citizens who have been here, have applied to the settlement scheme and have settled status have the same rights as anyone else.

We now, at this late stage, have the rules under which frontier workers — people who move across the border to work — can apply for the frontier workers' scheme. It will continue to apply. Applications can be made up until the end of June. If a frontier worker applies and has that status, the practical issues are going to relate to how we manage our borders. I am sure that you remember the rhetoric about regaining control of our laws, borders, etc. We are going to have an open border, for obvious political reasons, and people move across the border, every day. We are now going to have people moving across the border, exercising their common travel area rights, North/South and South/North. We will have frontier workers, people from the EU and people with other immigration status. How are we going to police that? What kind of controls will there be?

The worry, particularly on the southern side of the border, has always been about stopping somebody at random when you have stopped a bus or train. How will they decide who to stop? As a public-transport user, I have never been stopped at random and asked for my passport or documents, but, on a number of occasions, I have seen that happen to people whose skin is a different colour from mine. How do we avoid those kinds of approaches? If it is intelligence-led, I do not know how you are going to know who is on a bus from Belfast to Dublin or Derry to Dublin, who you would stop, and on what basis you would do so. Those are the practical outworkings of the issues for those who are entitled to be here and, for some reason, have failed to apply, and how we will manage the borders.

Under our new immigration laws, an EU citizen who decides that they want to come to the UK for the first time, after we have left the European Union, will have to go through a points-based system. There will be schemes for students, obviously, and there will still be a small seasonal-workers' scheme. How will that be managed? How will you divine whether somebody from Poland is here under the settlement scheme? What happens if somebody from Poland, for instance, has arrived for the first time and does not have a basis for being here? How is all of that going to be managed? I am not sure that we have the answers that would give a sense of reassurance that all of that is going to work seamlessly once we leave the EU.

Ms Anderson: Just so that I understand it, is there the potential for racial profiling, albeit I believe that it is already happening?

Mr Allamby: In the past, I have had correspondence on my desk from human rights NGOs, for example, expressing concerns about the arrangements under which people are checked and the basis on which it is done. When the issue has been raised, it has always been said that there is no racial profiling, etc, but anecdotal evidence suggests otherwise. I remember cases that the Equality Commission took, successfully, when people who had a lawful right to be here were being stopped and detained for significant periods with no basis. The Equality Commission intervened, and it ended up with compensation being paid to the people who were stopped without basis. Those are the worries. We are going to have to be vigilant to see what happens.

Ms Anderson: The points-based system that you spoke about is evidence that it is not business as usual.

Mr Allamby: The points that an individual will acquire will depend on their qualifications or level of salary. There are a number of things that suggest that they are designed to look at the high end, if you like, of migrants with particular skills, rather than low-skilled migrants. A number of organisations that deal with these issues have expressed concerns that, in the absence of a managed migration process, you may find people trying to bring people in at a lower end. If you bring people in unlawfully, then, nearly always, those people will find it very difficult because they tend to be in exploitative jobs. Questions have been raised about how we manage that.

The Government have said that they do not want us to become a low-skilled migrant economy. That is fine if, for example, nursing homes and care homes are going to be paid the kind of rates for publicly funded residents that will allow them to employ people at the salaries that meet those requirements. However, I do not see much evidence that the Government are about to put that kind of money into funding care.

If the Government are going to say, "We do not want to be reliant on low-skilled migrant labour that is exploited perfectly properly", they must fund the kind of arrangements that allow — in social care, for example — avoidance of that kind of thing happening.

Ms Anderson: People could have left the EU as the EU citizens that they are to come here, but, instead of arriving here as EU citizens, they will arrive as migrants.

Mr Allamby: You will still be able to come here for holidays —

Ms Anderson: I am making the point that some people are saying that nothing has changed, but everything has changed for those people.

Ms McGahey: Anyone who lives in Northern Ireland is entitled to the protection of our equality laws. Les has already referred to some successful cases that we have assisted people with, where they have been subjected to racial profiling etc. They are still covered by our equality legislation.

Ms Anderson: Thank you.

The Chairperson (Mr McGrath): Nobody on StarLeaf, by way of raising their hand, has indicated that they wish to speak. It is very much like we are in school, but raising your hand is an available function on StarLeaf. *[Laughter.]* I will just wait a few seconds to see if that rouses anybody. I see that Emma Sheerin would like to come in. Go ahead, Emma. It takes a second to kick in.

Ms Sheerin: Sorry, I was waving at the camera *[Laughter]* and wondered why you had not seen me, and then I realised what you meant. My apologies.

Thank you all very much for the presentation today. I note the statement that we received in our tabled papers, before you joined us this afternoon. I wanted to draw attention to one of the comments. Sinéad referred to the issues which, on an all-island basis, we need to be mindful of as the relationship evolves between the UK and the EU as we come out of the transition period. Could you expand on that and the sort of issues that you refer to?

Ms Gibney: Absolutely. Thank you, Emma. In my initial contribution I listed some of them: frontier workers; people accessing cross-border services; the Roma and Travelling communities, who, with their nomadic lifestyle, will now face additional challenges. There is any length of examples that we could look at, and unfortunately, as of yet, it is all hypothetical. These are specific experiences that people have. We know that there are 30,000 people crossing the border daily and that they will be impacted. From the discussion that you have just heard, the group that is probably going to be most immediately impacted, which is front of mind for me, will be people who are resident in the Southern border counties who are EU citizens but are not Irish, because the common travel area safeguards do not apply to them. Those are some of the major concerns that we have. Racial profiling and human trafficking are another two issues that are on our radar.

Given the comments that you have just heard, it is about the administrative responses to that. If we are unclear, which we are, as to the exact mechanics of how administrative measures are going to be put in place to ensure that Brexit is enforced, regardless of whether or not we have a border, the appearance of a border may start to emerge. That is the wider view that we are always conscious of, given the North/South cooperation that we enjoy, which is there because of the lack of a border. All of that is part of a bigger picture; what exactly are the mechanics? What are the day-to-day experiences going to be of people who live so close to the border and whose daily lives do not see it at the moment but will see it all of a sudden?

Those are some of the additional concerns. I know that, in previous sessions, mention was made of, for example, somebody travelling across the border with an assistance animal such as a guide dog. The movement of animals is another question in itself. The two commissions, represented by Les and Geraldine, will see the majority of those queries coming through in January. There will be a slow build-up from 1 January as things start to dawn and the changes begin to have an impact on people's lives.

Ms Sheerin: Thanks, Sinéad. That is useful. In your presentation and in everything that you have compounded there, what is coming through is the confusion and the lack of information. You are trying to anticipate what the issues will be but with less information than you need.

This morning, I took part in a Women's Resource and Development Agency (WRDA) event, which focused on the EU settlement scheme and on concerns around the tight time frame and the lack of information that has been made available. As a constituency MLA in an area where we have quite a large population of migrant workers from various parts of Europe, I have a particular concern about people from some of the Portuguese colonies who are based in south Tyrone, in Cookstown and Dungannon, and who are working in the meat processing plants and the dairy factories. In many cases, there are a lot of them living in one house, in cramped conditions. 2020 has been difficult for them already with COVID-19, zero-hour contracts and all of the issues that they have had to deal with. Added to that is the language barrier and the confusion around living in the North and working in the South or vice versa. They are unsure about the frontier scheme *[Inaudible.]* I have concerns about that and I know that Les mentioned the potential for an extension from the British Government. My worry is that we are going to come to the cliff edge. They have said that, in extenuating circumstances or if someone meets certain criteria, they will accept late applications. However, I worry, bearing in mind the language barrier, about people who have a genuine lack of knowledge or information and who do not realise what it is that they should be applying to.

At the start, Les and Geraldine mentioned the fact that we have lost some of the worrying clauses from Part 5 of the Internal Market Bill, which were causing great concern around the lack of rights to judicial reviews and others which threatened to break international law. From your perspective as the three bodies that are trying to deal with the principle of non-diminution of rights, do you still have concerns about that? Has your trust in the British Government to do the right thing on that been restored?

Ms Gibney: I will let Les take that one.

Mr Allamby: It is not a matter of trust or otherwise. The two commissions tabled the amendment in order to put it beyond doubt in the legislation. It became clear that we were not going to get that and we would not have succeeded with votes in Parliament on that. However, through the negotiation, it was important that the correspondence that we got is on the record and in the public domain. As recorded in Hansard, the debate set out where the Government are. As part of the discussion, it was agreed that we would make sure that the Government's position on that was read into the record. Does that give an absolute cast-iron guarantee you could never take some legal action around the Internal Market Bill and the protocol? We think that it would be a great deal more difficult to do that with those reassurances in the public domain. That is probably as good a result as we could have got, bearing in mind that the Government have a significant majority, and if they want to get their way in the House of Commons, they, eventually, almost certainly can do so. So, I think that it is a decent result. It is at least something that says something about the UK Government that they were finally prepared to accept that there was an issue here and to give us the reassurances that we were looking for. So, I am as sanguine as I possibly can be that we have achieved something that is worthwhile, and it shows the value of the work of the two commissions in doing that.

The Chairperson (Mr McGrath): OK. Are you happy enough, Emma?

Ms Sheerin: I do not know whether I would say that I am happy. *[Laughter.]* I do not think that it will come as a surprise to anyone that, as a Sinn Féin MLA, I do not trust the British Government, and the actions of the past couple of weeks have compounded that for me. I appreciate the work that is being done. This is a difficult time for everyone. The issue of rights is very serious and concerning. Thanks for the presentation and for the answers.

The Chairperson (Mr McGrath): OK. Thank you, Emma. No one else has indicated that they want to speak, so we will leave it at that. Thank you very much indeed for your presentation. It is very complex but utterly fascinating. I have enjoyed all the presentations from you to date. It is something that we need to keep a watching brief on because there could be significant changes, as I said earlier, that could have massive ramifications in the future, and it is great that we have people like you, with your understanding and ability to see what is being discussed now and the impact that it can have in the future.

We appreciate your work and appreciate all three of you giving up your time for us today. Thank you very much indeed. I wish you all a very happy Christmas, as good as it can be, and a happy new year.

Ms McGahey: The same to all of you. Thank you.

Ms Gibney: Thank you, Chair.

The Chairperson (Mr McGrath): I am sure that we will see you again early enough in the new year.

Ms McGahey: Hopefully not too early.