



Northern Ireland
Assembly

Committee for The Executive Office

OFFICIAL REPORT (Hansard)

Article 2 of the Protocol on Ireland/Northern Ireland:
Executive Office

10 February 2021

NORTHERN IRELAND ASSEMBLY

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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:

Ms Siobhan Broderick	The Executive Office
Ms Janet Johnston	The Executive Office

The Chairperson (Mr McGrath): I welcome Siobhan Broderick, head of equality, rights and identity division at the Executive Office, and Janet Johnston, head of the equality, human rights and delivering social change unit in the Executive Office. You are both welcome to the meeting today. You are going to give us a short presentation, and then we will have some questions and answers on the funding arrangements for the dedicated mechanism element of article 2 of the protocol. We will pass over to you. You can give us a bit of background, and if there are any questions following that, we will ask them. What you are going to give us will be pretty factual, so I do not know whether there will be a massive number of questions afterwards, so do not take offence. We will see how it goes. I hand over to you, Siobhan. Are you going to lead on this?

Ms Siobhan Broderick (The Executive Office): Yes. We gave you a short paper, but, as you will know, the Equality Commission and the Human Rights Commission have agreed to undertake the scrutiny and monitoring role that will form the dedicated mechanism to ensure that there is no diminution of the rights, safeguards and equality of opportunity as set out in article 2 of the protocol.

As you will know, TEO sponsors the Equality Commission, the Human Rights Commission *[Inaudible]* funding for the Equality Commission to discharge the new role, which we are undertaking directly between the Northern Ireland Office and the Equality Commission. Our role was to ensure that the appropriate governance and mechanics were in place to get the funding from the UK Government to the Equality Commission in order for it to discharge its new role as the dedicated mechanism.

Our paper sets out the funding allocations until March 2023. The NIO has made clear its commitment to the dedicated mechanism and has advised the TEO that it should, in line with normal government practice, apply for funds for the period post-2023 in line with the normal spending review processes.

Future funding levels would therefore be discussed with Her Majesty's Treasury at that appropriate time. That is it. I am happy to take questions.

The Chairperson (Mr McGrath): OK. You got me there mid-biscuit [*Laughter.*] I was expecting that to take a bit longer.

Thank you for that. Does that mean that the funding is not set in stone? Can it be incorporated into the annual budget of the Department, and it will just be there, or are you explaining that Treasury will put it into the permanent part of the budget?

Ms Broderick: I think that that is where it will go. Because the funding arrangements were becoming mid-year, there were discussions between the NIO, the Department of Finance and the Treasury about how that would be done to allow the Equality Commission to have the assurance and access to the funding to allow it to start to recruit and put the dedicated mechanism in place. For the staff, there is now that commitment to £1.898 million over the next three years, which will get us to March 2023. Thereafter, TEO will probably make a bid to have funding for the dedicated mechanism.

The Chairperson (Mr McGrath): Given that so much of the entire Brexit process and the protocol is unknown, are reviews built into the process to allow you to see whether additional resources will be required? If the workload is absolutely massive in 18 months' time in a way that was not envisaged at the planning stage, is there scope for reviewing it and seeking additional resources, if required?

Ms Broderick: The NIO commitment was always to provide the appropriate level of funding, so I assume that the discussions would then be reopened on the basis of what was the appropriate level of funding in order for the dedicated mechanism to discharge its functions and the roles that are now set out in legislation. I think that we would have to open those discussions, and whether NIO and Treasury would be receptive to that would, obviously, depend on a number of factors.

The Chairperson (Mr McGrath): That is grand. Thank you for that, Siobhan. I will pass to Doug Beattie, the Deputy Chair. Doug, do you have any questions or comments?

Mr Beattie: I do not have any, to be honest, but it is interesting. Can you give us an idea of the body of work that you are doing or that, you think, you will be looking at over the next number of years or, certainly, in the short to medium term?

Ms Broderick: The Equality Commission, working alongside the Human Rights Commission, has started the work. Each of them will have the equivalent of a dedicated mechanism unit, and their functions are set out in the legislation, which is to monitor implementation of the article 2 commitment, to promote awareness and understanding — you might have noticed already some advertisements in local newspapers as the first stages of taking that forward — and to provide advice in respect of any measures required by the UK Government or the Northern Ireland Assembly in respect of the implementation of article 2. I assume that both commissions are now getting their resources in place. The Equality Commission started that last August with a recruitment exercise, and it has put staff in place, including the director of the new unit. It is working hard to set out a programme of work going forward, including the recruitment of more staff to get to the 10 or 11 people that it expects to be in that unit.

Mr Beattie: A lot of people will think that there has been a diminution of their rights in regard to a democratic deficit due to the Northern Ireland protocol and the withdrawal agreement. Will that be looked at so that people have that? Will people be able to say that they have a genuine concern, or will you pick up themes that you will look at? What way does that work? Can people come to you and say that they have a real issue and then you go and look at that? They might say that they cannot get access to goods and that that is not the way it was before the protocol. Or do you look for themes and then deal with those?

Ms Broderick: I suppose that is a question for the Equality Commission and the Human Rights Commission. We are in the Department, so we sponsor the unit. The protections provided by article 2 are in relation to the protections in the relevant chapter of the Good Friday/Belfast Agreement. That is the chapter on rights, safeguards and equality of opportunity. Obviously, it has to be a right, an equality of opportunity or a safeguard that is in that chapter. It has to be already protected in domestic law at the end of the transition period, and then there must be a reduction in that human right or equality that has arisen as a result of the UK exit from Europe. You might be better to ask the Equality

Commission and the Human Rights Commission about how they will approach that work. I know that they have been before the Committee a couple of times, but you might want to ask them to come back in a couple of months, when they have their resources and plans in place. I understand that both are working hard to do that now.

Mr Beattie: Thank you.

The Chairperson (Mr McGrath): Thanks very much for that, Doug. I welcome George to the meeting. Can you mute yourself, because we are getting feedback from what you are discussing in your office? Emma Sheerin is next to ask a question.

Ms Sheerin: Thanks very much to both of you for the presentation, short and snappy as it was. Following on from Doug's question about the implementation of the protocol, we have had an awful lot of rhetoric in recent weeks about the need to scrap the protocol because of its implications for trade, which, of course, are a by-product of Brexit and never would have come about without it. The protocol is important in that it sets out protections for people's rights in the North. The change to those protections has been one of the big concerns coming out of Brexit, as well the fact that we had so many rights protections in the Good Friday Agreement, particularly citizenship rights. What has been the demand thus far for the dedicated mechanism? How is having no representation from the North in the EU impacting on our rights here? We have a democratic deficit now, given that there are Irish citizens here who are still EU citizens but do not have representation in the EU. We had presentations from the Human Rights Commission, the Equality Commission and the Twenty-six Counties' equivalent on the role for rights organisations in the Twenty-six Counties in promoting rights after Brexit.

Ms Broderick: There are a number of questions there. I would have to check with the Equality Commission and the Human Rights Commission to get information on the demand so far for the dedicated mechanism. As I mentioned, you will have seen that they have done some awareness-raising advertisements already, so those may have elicited a response. If you do not mind, I will find out more and come back to you.

In respect of working across the island of Ireland, the Human Rights Commission did a presentation along with its counterparts from Dublin. I understand that they have a close working relationship and that will proceed. Again, I do not want to put words in the mouth of the Human Rights Commission or the Equality Commission; rather than responding on their behalf, I will ask them that question, if you do not mind.

The Chairperson (Mr McGrath): OK. Siobhan, on the back of that, given that you are sponsoring, as it were, that work, do you capture the level of interaction and the level of activity by saying, "There are six members of staff, and you are telling us that they are doing x amount of work". Are you capturing and monitoring that?

Ms Broderick: We, as the sponsor Department, capture information on the level of spend and the number of staff because, statutorily, that is our role. We have ongoing meetings with the Equality Commission, and one of the items that we discuss at those meetings is the dedicated mechanism. We also discuss the process that it is going through to recruit staff and what stage that is at because we have to approve the number of staff. That is also part of our statutory role. Aside from that, we have an ongoing relationship with it because we manage the equality practitioners group, which is made up of civil servants across all Departments who provide equality advice in Departments. We have an ongoing relationship with the Equality Commission, because of our coordinating, central role in the equality practitioners group, and we want to use that to raise awareness of the article 2 rights. We have already facilitated a webinar with the Northern Ireland Office to raise awareness of the content of article 2 of the protocol and the commitments. We, in partnership with both commissions, will go back to remind people of that and maybe do more awareness-raising work on it.

The Chairperson (Mr McGrath): OK. Thank you for that.

Ms Sheerin: Chair, I just wanted to come back in on that. What you said about awareness raising was what I was getting at. I am conscious that a lot of the issues that we initially talked about were to do with the impact of Brexit on cross-border movement and on people who work on one side of the border but live on the other. Those things may not have been in our face as much as they ordinarily would because we are in a lockdown. I know that we have had conversations over the past number of

days about fines for unnecessary cross-border travel, but, technically speaking, nobody should be travelling outside of their county or home unless they have a valid reason. Those things have been flagged up, and we need to have an awareness of them before we come out of lockdown and those things are more in our face.

I also know there is the summer deadline for frontier workers. There are EU migrant workers here who have concerns and worries, and we need to know where to direct them and have an open channel for communication for those people should they need redress.

The Chairperson (Mr McGrath): Siobhan, are you happy with that, or do you wish to comment?

Ms Broderick: There is a role for us to work with the commissions to raise awareness of article 2 across the Departments. We have started that work and will continue to do it.

Ms Anderson: Siobhan, thank you for that. We know that the protocol refers, in article 2 and even in annex 1, to the protections that we have against discrimination in the North. Those protections of our rights and safeguards for our equality of opportunity that we had prior to Brexit will not be reduced as a consequence of Brexit. It also states that the protocol will ensure that the Executive or anyone else in the North cannot undermine the rights that we have and that they will keep pace with EU rights.

I am a bit concerned about how you outlined the funding for the Equality Commission and the Human Rights Commission to implement such a dedicated mechanism that has been agreed in an international agreement — the withdrawal agreement — and under the future relationship. Perhaps I picked you up wrong, but it appeared to me that you suggested that the Executive Office might have to make a bid to the Finance Minister. It seems that so much has been committed to by the British Government and they are then telling the Executive in the North that they have to take it out of their Budget, the block grant. Is that what you are suggesting, or will the British Treasury do what it committed to do, which is to fund it?

When the representatives of the commissions were in front of the Committee, they quite clearly stated that, as currently constituted, they do not have the capacity to do that unless they receive the funding that would enable them to implement it. It is important for us, as the Committee that is scrutinising it, to be across what the British Government intend to do with the funding and the mechanisms to draw down that funding. Will you elaborate on what you said? I know that it was quite brief, but I did not quite capture what was said about the drawdown of funding.

Ms Broderick: There were discussions and agreement between the Equality Commission and the Northern Ireland Office on the amount of funding that was needed for the three years for it to discharge its role as the dedicated mechanism. That is the funding of up to £1.898 million that we set out in the table. That is a commitment. It is a separate line in our budget and comes from the Treasury into the block grant, so it is ring-fenced, if you want to call it that. The NIO has committed to ensuring that the dedicated mechanism stays in place after 2023. We will make a bid for that money to ensure that the dedicated mechanism continues in place post-2023. We envisage the dedicated mechanism being in place and funding being provided by the UK Government. *[Pause.]* Sorry, did you hear me?

Ms Anderson: I heard you. Yes. Thank you for that. I was just a bit concerned because of how it was explained, but you have elaborated on it, and that alleviates some of my concerns.

I do not know whether this would come from your end, Siobhan, and we will maybe need to engage with the Equality Commission and Human Rights Commission again. One of the six EU directives referred to in annex 1 to the protocol is the gender, goods and services directive. I find that somewhat challenging because services have not been part of the withdrawal agreement and the protocol. Services were not included. We have a directive that refers to the equality of treatment between men and women in the access and supply of goods and services. There is a bit more work to do just to delve down into it so that we can get an understanding of it. I know what Emma is saying about citizenship and rights, but I am a bit confused and have always been because we needed to wait until the end to see if services were going to be included in the future relationship in the withdrawal agreement, and it is not. For instance, services in the North accrue something like £3.6 billion, so we know that there will be a different arrangement with regard to goods, yet the EU directive in annex 1 of the protocol refers to "goods and services". So, I am just flagging that up, Chair, to develop our understanding as we go on. Siobhan, I am not saying that I expect that from you today, but perhaps you can take it away for further elaboration of the paper and provide some more information for an exchange of views with the Equality Commission and the Human Rights Commission on the subject.

Ms Broderick: To be clear, are you asking me to clarify that the Council directive 2004/113/EC — the first one listed in annex 1 — applies to the delivery or provision of services in some way that is contrary to or consistent with the protocol provisions?

Ms Anderson: It is in the protocol, so it is obviously consistent with it, but it could be one of those issues where, with goods, for instance, our access here in the North to the EU single market is not the same as it is in Britain. Is it dealing with the issue of services for the North in a way that it has not been dealt with elsewhere? The understanding has been that services have not been included in the withdrawal agreement, yet we have an EU directive that deals with goods and services, and, therefore, that is applicable in the North. I just want that explained, if that can be elaborated on and we can get some further information on it. It might be my misunderstanding of it. I have been across all the stuff pretty well, but that one has always jumped out as a bit of a challenge, if not a contradiction.

Ms Broderick: I will clarify, but my understanding was that that provides for protection against discrimination between men and women in the provision of goods, facilities and services. That has probably been brought into domestic law by some gender regulations. To me, that is distinct in nature from the free trade provisions that you refer to, but I will clarify it with the commissions.

Ms Anderson: I am not dealing with the context of free trade; I am dealing with the context of services and discrimination between men and women if EU law around services does not apply here. That could become a bit of a challenge, but let us get an understanding of it, and we can take it from there.

The Chairperson (Mr McGrath): Siobhan, do you know what you are going to look for to come back to us with?

Ms Broderick: I hope so.

The Chairperson (Mr McGrath): I know. It is not straightforward.

Trevor, I see that your "Hand up" button is on.

Mr Lunn: No, Chair. I think that is left over from the last session, so apologies to Siobhan. I enjoyed her presentation, but I do not have any questions.

The Chairperson (Mr McGrath): OK, Siobhan and Janet, you will be pleased to know that was a quick session. Thank you very much for coming along and giving us that update. It is always appreciated, as is the paper that comes with it. There is some information arising from today's meeting that we will get from you again. Thank you very much.

Ms Broderick: Thank you.