



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Call for Expressions of Interest on Brexit,
Free Movement and its Potential Impact on
Article 2 of the Ireland/Northern Ireland
Protocol**

July 2021

The Northern Ireland Human Rights Commission is seeking to contract research on the potential implications on free movement rights resulting from the UK's exit from the EU.

The deadline for submitting a quotation is 3rd September 2021.

Background

The Northern Ireland Human Rights Commission (NIHRC), pursuant to section 69(1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland (NI). Alongside the Equality Commission of Northern Ireland (ECNI), the NIHRC has been given a new mandate under the EU (Withdrawal Agreement) Act 2020. This mandate grants both 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 the 'dedicated mechanism' framework. The NIHRC and ECNI will collaborate with the Irish Human Rights and Equality Commission (IHREC) to provide oversight of, and reporting on, rights and equalities issues that have an island of Ireland dimension.

Article 2 of the Protocol, which contains the non-diminution of rights guarantee, 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.

In order to demonstrate a breach of the non-diminution of rights guarantee, it is necessary to demonstrate that a right, safeguard or equality of opportunity protection as set out in that chapter of the Belfast (Good Friday) Agreement 1998 has firstly been engaged; secondly, that it was underpinned by relevant EU obligations before the end of the transition period and finally, that it could not legally have occurred but for the UK's withdrawal from the EU. This amounts, first of all, to a non-regression commitment in respect of the range of rights set out in the relevant chapter of the Belfast (Good Friday) Agreement and underpinned by EU obligations – EU treaties, Regulations, Directives etc. – in place at the end of the transition period. Annex 1 of the Protocol sets out six EU equality Directives.¹ Under the Protocol, the UK Government has committed not only

¹ These include Directive 2004/113/EC, 'EU Council Directive on Implementing the Principle of Equal Treatment between Men and Women in the access to and supply of goods and Services', 13 December 2004; Directive 2006/54/EC, 'EU Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation', 5 July 2006; Directive 2000/43/EC, 'EU Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin', 29 June 2000; Directive 2000/78/EC, 'EU Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation', 27 November 2000; Directive 2010/41/EU, 'EU Parliament and EU Council Directive on the Application of the Principle of Equal Treatment between Men and Women Engaged in an Activity in a Self-employed Capacity', 7 July 2010 & Directive 79/7/EEC, 'EU Council Directive on the Progressive Implementation of the Principle of Equal Treatment for Men and Women in Matters of Social Security', 19 December 1978.

to ensure that there is no diminution of the rights contained in these Directives but also to ensure that Northern Ireland equality law will keep pace with any changes made by the EU to these rights to improve the minimum levels of protection available, after 1 January 2021. Moreover, under Schedule 3 of the EU (Withdrawal Agreement) Act 2020, either Commission may intervene in, or bring legal proceedings in respect of an alleged, or potential future breach of Article 2 of the Protocol.²

Research Context

On the 31st of December 2020, the principle of free movement for UK citizens ended. Described by Barnard and Leinarte as “a cornerstone of the single market”³ and regarded as one of the foundational principles of the European Union (EU), the principle reflected the benefits which attached to possession of EU citizenship,⁴ and gave all EU citizens the right to live, work and study across the EU. These benefits were further underpinned by explicit legal protections under EU law. These included, amongst others, Article 45 of the Treaty of the Functioning of the European Union (TFEU) which granted free movement to workers, EU Directive 2004/38/EC (known as the ‘Citizens’ Rights Directive’) which set out further guarantees for EU workers and their families, the right to move and reside freely in any EU member state,⁵ the right to vote and stand in European parliamentary and municipal elections,⁶ and the rights enshrined for workers and their families in EU Regulation 492/2011. Further rights and protections were contained within the EU Charter of Fundamental Rights which contained, *inter alia*, robust equality and anti-discrimination guarantees,⁷ explicit protection for workers’ rights,⁸ the right to free movement itself,⁹ and a wider category of personal rights which were integral to the exercise of EU citizenship, and the benefits which flowed from it.

The implications of the cessation of free movement are wide-ranging and extensive and present unique challenges from a NI perspective in view of the Irish border and the cross-border flow of people, goods and services. One area in which the ending of free movement is likely to have an immediate, direct and potentially long-term impact is on the rights of frontier workers and those who cross the Irish border for work purposes and who now find themselves subject to new legal and regulatory

² Section 78 (c), Schedule 3 of the EU (Withdrawal Agreement) Act, 2020.

³ Catherine Barnard and Emilija Leinarte, *Mobility of Persons in the New UK-EU Relationship* (March 2021), DCU Working Papers, p1.

⁴ EU Citizenship was first enshrined in Part 2 of The Maastricht Treaty 1992.

⁵ Article 21 of the TFEU.

⁶ Article 22 (1) of the TFEU.

⁷ Articles 20 – 26, EU Charter of Fundamental Rights.

⁸ See, for example, Articles 27 – 28 of the EU Charter of Fundamental Rights.

⁹ Article 45, EU Charter of Fundamental Rights.

measures.¹⁰ Rights derived under the Common Travel Area (CTA), a long-standing bi-lateral arrangement between the UK and Ireland, and which pre-dated the accession of both countries to the EU remain though the legal underpinnings were often associated with EU law on freedom of movement.

Legal Position Post UK-EU Withdrawal

The current relationship, and rules, governing free movement of workers following the UK's withdrawal from the EU is set out across several important bi-lateral and domestic legal provisions, regulations, and policies.

1. The EU – UK Withdrawal Agreement ('Withdrawal Agreement')

Agreed on the 17th of October 2019 and entering into force on the 1st of February 2020, the Withdrawal Agreement (WA) sets out the conditions governing the UK's withdrawal from the EU.¹¹ Part 2 of the Agreement deals with citizens' rights which include the provisions pertaining to free movement. The WA also contains a Protocol on Ireland and Northern Ireland¹² which imposes specific legal obligations on the UK government as alluded to earlier. The WA was given domestic legal effect in the UK through the European Union (Withdrawal Agreement) Act 2020,¹³ which pursuant to Part 3 thereof sets out the rights of EU citizens in the context of free movement and in particular their rights of entry and residence in the UK. Despite, however, leaving the EU on the 31st of January 2020, a transition or implementation period, was agreed between the UK and the EU between the 1st of February 2020 and the 31st of December 2021, during which time EU law would continue to apply in the UK.¹⁴

In giving effect to the ending of free movement but to protect the rights of EU, EEA and Swiss citizens already living and working in the UK, the EU Settlement Scheme (EUSS) was introduced which effectively gives effect to the Citizens' Rights provisions of the WA.¹⁵ Under this scheme, and with some exceptions, EU citizens who have been resident in the UK prior to the end of the transition period are eligible for status under the EUSS. Applicants, and their families, can be granted either settled status or pre-settled status. For EU citizens with 5 years continuous residency in the UK, they will ordinarily be granted settled status which is tantamount to permanent residency while those with less than 5 years continuous

¹⁰ For more on the Irish Border, see Colin Harvey (2020), 'The Irish Border' in 'The Law & Politics of Brexit: Volume II', (OUP), pp. 148 – 168.

¹¹ See [GEN \(publishing.service.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/824247/20191017-uk-eu-wa.pdf)

¹² Ibid, p 292.

¹³ See [European Union \(Withdrawal Agreement\) Act 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2020/23/section/1)

¹⁴ European Union (Withdrawal Agreement) Act 2020, Part 1.

¹⁵ House of Commons Library, (2020), 'EU Settlement Scheme', Briefing paper,

residency will be granted pre-settled status. This allows the applicant to remain in the UK, subject to conditions, until they fulfil the residency requirements to apply for settled status.¹⁶

2. The Common Travel Area

The Common Travel Area (CTA) is a bi-lateral arrangement between the Government of Ireland and the UK Government which pre-dated the accession of both countries to the EU and has always remained outside the remit of EU law. The CTA is specifically referenced in Article 3 of the Protocol which recognises the right of the UK and Irish governments to make arrangements between themselves in furtherance of free movement of persons between their territories. Following the withdrawal of the UK from the EU, the CTA has been subject to revised intergovernmental formalisation. In May 2019, both governments signed a Memorandum of Understanding setting out what they understood to be included within the CTA and its associated rights and privileges.¹⁷ This included recognition of the right to free movement; a right to reside; the right to work; the right to healthcare; the right to social protection (or social security);¹⁸ the right to social housing; the right to education; and the right to vote.

The CTA extends to British and Irish citizens and does not create any “legally binding obligations”,¹⁹ and therefore the protections and rights contained within it are legally unenforceable. Research previously commissioned by the NIHRC and the Irish Human Rights and Equality Commission highlighted the shortcomings of the CTA, by noting that the “failure to ground the CTA in a binding international agreement will also hamper any future efforts by courts in Ireland and the UK to interpret domestic legislation in light of the CTA’s overarching objectives, which could contribute to the gradual erosion of the protections”.²⁰ This research further suggested that a “Gold Standard” approach to the CTA would be “a Common Travel Area treaty encompassing common immigration rules, travel rights, residency rights and related rights to education, social security, work, health, and security and justice”.²¹ Whilst still relevant, the Withdrawal Agreement and Trade and Co-operation Agreement have since been agreed and significant legal steps have been taken to implement the Protocol and Citizens’ Rights provisions since the research was published,

¹⁶ For more on EUSS, see [Apply to the EU Settlement Scheme \(settled and pre-settled status\): Who should apply - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/apply-to-the-eu-settlement-scheme-settled-and-pre-settled-status-who-should-apply).

¹⁷ Memorandum of Understanding between the UK Government and the Government of Ireland Concerning the Common Travel Area and Associated Reciprocal Rights and Privileges, 8 May 2019.

¹⁸ See also Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland, 1 February 2019.

¹⁹ Ibid, para 2 and 17.

²⁰ Sylvia de Mars, Colin Murray, Aoife O’ Donoghue and Ben Warwick, ‘Discussion Paper on the Common Travel Area’ (NIHRC and IHREC, 2018) at page 20.

²¹ Ibid, at page 11.

meriting further consideration of the CTA in this context. Moreover, the legal shortcomings of the CTA have been further underscored by Harvey who argues that “it remains an elusive entity that continues to lack comprehensive codification”.²² Furthermore, Lock has recently argued that the CTA neither replicates the expansive catalogue of citizenship rights which EU law previously accorded, nor is it suitable for the “realities of life on the island of Ireland, where short term visits to the other jurisdiction – social or work-related, to receive services or buy goods or to simply transit through the other jurisdiction in a car or on a public bus – are a daily occurrence for many and an occasional occurrence for most”.²³

Therefore, the lack of legal protections contained within the CTA raise numerous questions in the context of free movement of workers for all people in NI, especially those who are non-Irish and non-British and who therefore fall outside the protections it offers. According to Lock, individuals who fall outside the protective scope of the CTA account for around 10% of the population of the island of Ireland.²⁴ Moreover, in recognition of the questions surrounding the legal uncertainties associated with the CTA, the Oireachtas (The Irish Houses of Parliament) has called on the Irish Government to take “the necessary steps to provide certainty and clarity about reciprocal rights and privileges associated with the memorandum and those responsible for the delivery of relevant services”.²⁵

3. Frontier Workers

Under EU law, a frontier worker is defined as ‘any person pursuing an activity as an employed or self-employed person in a Member State and who resides in another Member State to which he returns as a rule daily or at least once a week’.²⁶ The position of frontier workers assumes increased significance in light of the cross-border nature of employment and work, (often sporadic and temporary), on the island of Ireland where according to some estimates, between 20,000 to 30,000 people in NI and Ireland cross the border daily for work purposes.²⁷

Under Article 26 of the Withdrawal Agreement, frontier workers are entitled to be issued with appropriate documentation which certifies their rights as frontier workers. Their rights are further set out in the Withdrawal

²² For more on the Irish Border, see Colin Harvey (2020), ‘The Irish Border’ in ‘The Law & Politics of Brexit: Volume II’, (OUP), pp. 148 – 168, at p 158.

²³ See Tobias Lock (2021) (Forthcoming), A Common Travel Area? Brexit and the New (Northern) Irish, in Chris McCrudden (ed), The Law and Practice of the Ireland/Northern Ireland Protocol.

²⁴ Ibid.

²⁵ Houses of the Oireachtas, (2019), ‘Brexit and the Border: The Impact on Rural Communities’, at p.15.

²⁶ European Parliament and Council Directive 2004/38/EC (29 April 2004), Article 1(f).

²⁷ <https://borderpeople.info/site/wp-content/uploads/Briefing-5-revision15June2016.pdf>

Agreement in Article 10 1(c) which states: "Union citizens who exercised their right as frontier workers in the United Kingdom in accordance with Union law before the end of the transition period and continue to do so thereafter".²⁸ In practical terms, this means that from the ending of the transition period on the 31st of December 2020, Irish, British and EU citizens who commenced a cross-border job on or before the 31st of December 2020 will benefit from the Withdrawal Agreement, meaning that EU citizens living in the South of Ireland but working in NI on or after 1 July 2021, would need to have a Frontier Workers Permit to enable them continue to do so. British or EU citizens living in NI but working in the Republic of Ireland do not have to apply to the scheme on account of the benefits derived from the CTA and EU citizenship, respectively. After the 31st of December 2020, EU citizens wishing to come to the UK to work would have to apply to the new points-based immigration system.²⁹

Pursuant to section 8 of the European Union (Withdrawal Agreement) Act 2020, and to give effect to the new rules surrounding frontier workers, the UK Government introduced the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020 ('the 2020 Regulations').³⁰ These set out the rules governing the application of the frontier workers permit scheme, the time frames within which applications have to be made, and the grounds upon which a refusal can be issued.³¹ They also set out the circumstances in which a worker or self-employed person can retain their status.³² These cover instances involving accidents, illnesses, engagement in vocational training and pregnancy or childbirth.³³ In essence, according to the 2020 Regulations, those coming to Northern Ireland to work after 1 July 2021 must be in possession of a Frontier Worker Permit,³⁴ and such applications can be refused on grounds of public policy, public security, public health or on grounds of misuse of rights.³⁵ Importantly, family members are not covered by the grant of a frontier workers permit.³⁶ In their assessment of the 2020 Regulations, the Committee on the Administration of Justice (CAJ) highlighted that no public consultation or human rights impact assessment accompanied their enactment, and further that the Government did not and does not possess accurate data in relation to how many individuals the scheme would impact, or apply to, and so therefore its uptake and success would be almost impossible to quantify.³⁷ Further concerns outlined by the CAJ included:

²⁸ Article 10 1 (c), Withdrawal Agreement.

²⁹ See [New immigration system: what you need to know - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/new-immigration-system-what-you-need-to-know).

³⁰ See also, statutory guidance for case-workers. [Frontier workers casework guidance \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/912347/Frontier_workers_casework_guidance.pdf)

³¹ See [The Citizens' Rights \(Frontier Workers\) \(EU Exit\) Regulations 2020 \(legislation.gov.uk\)](https://legislation.gov.uk/uk/2020/1100/1)

³² Regulation 4, 2020 Regulations.

³³ Ibid.

³⁴ Regulation 1 1(2)(a), 2020 Regulations.

³⁵ Regulation 9, 2020 Regulations.

³⁶ See [Frontier Worker permit - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/frontier-worker-permit)

³⁷ See [Letter to Secretary of State for the Home Department-26-10-20-.pdf \(caj.org.uk\)](https://www.caj.org.uk/letter-to-secretary-of-state-for-the-home-department-26-10-20/)

- the inadequate resourcing of frontline advice services to engage with queries pertaining to the scheme.
- the failure to conduct any outreach or awareness raising in relation to the scheme.
- the failure to provide Irish citizens with the necessary information “to make an informed choice about applying to the scheme and to ensure there is no loss of rights caused by failing to do so.”³⁸
- the failure to elaborate on how the scheme impacts the rights of British people and people of NI.
- the extremely broad grounds for refusal.
- the lack of a physical document.
- the lack of provisions for non-EU family members of frontier workers.
- the language found in the schedule to the legislation, which contains extremely restrictive definitions of integration and extremely broad definitions of ‘the fundamental interests of society’.³⁹

Moreover, given that frontier workers may operate on both sides of the Irish Border, the Oireachtas has recommended that the EU Working Time Directive,⁴⁰ which sets out important entitlements regarding working conditions, be continued in Northern Ireland after Brexit.⁴¹

4. Free Movement of Workers under the Trade and Co-operation Agreement

Further provisions regarding the movement of workers are set out under the Trade and Co-operation Agreement between the EU and the UK. Signed on the 30th December 2020, the EU – UK Trade and Cooperation Agreement (TCA)⁴² provisionally applied from the 1st January 2021 upon the conclusion of the transition/implementation period, and entered into force on the 1st May 2021 after ratification by the European Parliament and the Council of Europe of the EU.⁴³ The TCA comprises a free trade agreement which sets out cooperation on economic, social, environmental and fisheries issues, policing, security and judicial cooperation and an overarching governance structure regarding its implementation and the resolution of any disputes.⁴⁴ The TCA was given effect in domestic law by the European Union (Future Relationship) Act 2020.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ See [EUR-Lex - 32003L0088 - EN - EUR-Lex \(europa.eu\)](#)

⁴¹ Houses of the Oireachtas, (2019), Joint Committee on Rural and Community Development, ‘*Brexit and the Border: The Impact on Rural Communities*’, at p.36.

⁴² See [The EU-UK Trade and Cooperation Agreement | European Commission \(europa.eu\)](#)

⁴³ See [Parliament formally approves EU-UK trade and cooperation agreement | News | European Parliament \(europa.eu\)](#)

⁴⁴ See [The UK-EU Trade and Cooperation Agreement: summary and implementation \(parliament.uk\)](#)

Significantly, the TCA does not contain an independent chapter on mobility or free movement but rather, as Barnard and Leinarte argue, it

cements the transformation of the UK-EU relationship from one of a union of states tied by a common supranational citizenship to that of an economic partnership. The mobility regime under the TCA reflects this new dynamic: there no longer exists a stand-alone right to move; instead, mobility is a composite part of trade.⁴⁵

In practical terms, this aligns mobility rights with specific trade and work-related purposes which, as will be discussed below, confines the free movement of workers to very narrow parameters.

Articles 140-143 of the TCA distinguish five categories of persons entitled to stay temporarily in the UK, including NI. These include:

- 'business visitors for establishment purposes',
- 'contractual service suppliers',
- 'independent professionals',
- 'intra-corporate transferees', and
- 'short-term' business visitors'.

However, the practical impact of these classifications on workers' free movement rights raises further questions regarding their effect on the rights of individuals on the island of Ireland, and their families, and especially those from border communities. For example, Lock argues that these classifications do not reflect the integrated nature of the economies of Ireland and Northern Ireland, where services are provided daily on a cross-border basis. By invoking the construction sector as an example, he further argues that these restrictions on non-Irish EU citizens for example, could act as an incentive for employers that are active in the supply of cross-border services to employ Irish citizens rather than EU citizens.⁴⁶ More widely, the potential effect of this arguably engages the equality and anti-discrimination guarantees contained within the EU Race Equality Directive under Annex 1 of the Protocol which prohibits discrimination in the field of employment on grounds of ethnic origin, amongst others.⁴⁷ Additionally, the limitations of the mobility rights associated with these classifications of workers have been further outlined by Barnard and Leinarte who argue that they not only result in substantially depleted family rights for such workers, but further, that significant groups of individuals

⁴⁵ Catherine Barnard and Emilija Leinarte, *Mobility of Persons in the New UK-EU Relationship* (March 2021), DCU Working Papers, p.3.

⁴⁶ See Tobias Lock (2021) (Forthcoming), *A Common Travel Area? Brexit and the New (Northern) Irish*, in Chris McCrudden (ed), *The Law and Practice of the Ireland/Northern Ireland Protocol*.

⁴⁷ See [EUR-Lex - 32000L0043 - EN - EUR-Lex \(europa.eu\)](#)

will be excluded from the TCA even if they are engaged in the provision of services.⁴⁸

5. Cross-Border Families/Communities

Closely aligned with the issues facing frontier workers, and the broader legal provisions governing mobility rights under the TCA, is the impact which UK withdrawal from the EU is likely to have, on cross-border communities and families, many of whom traverse the Irish border every day for work, health, educational, childcare, retail and other reasons. Provisional research carried out by Derry and Strabane Councils in 2017, for instance, on the impact of Brexit on the North West Region of Ireland revealed that the complex cross-border relationships that exist across all the above-mentioned areas underscored the “essential” significance of free movement for cross-border communities.⁴⁹ Moreover, the Oireachtas has stated that in the context of border communities:

There is the continuing need to ensure free movement of people, goods and services. The consequences of significant disruptions could be devastating on the area, and in the rural community context this includes access to health and education services straddling the border.⁵⁰

In oral evidence presented to the Oireachtas, Paul Bell, Chairperson of Louth County Council stated that: “Denying free movement of citizens, goods and so on will cause poverty. It will set us back.”⁵¹

Therefore, the impact of the UK’s withdrawal from the EU and the legal, regulatory and administrative measures, which have thus far been implemented to counteract the consequences of the ending of the principle of free movement, remain unclear and potentially problematic across a number of significant areas for workers who routinely cross the border.

Research Brief

Conscious that some reductions in free movement rights flow directly from the terms of the Withdrawal Agreement (and noting previous research on the effect of UK withdrawal from the EU in removing some of the limited

⁴⁸ Catherine Barnard and Emilija Leinarte, *Mobility of Persons in the New UK-EU Relationship* (March 2021), DCU Working Papers

⁴⁹ See [Initial-Analysis-of-the-Challenges-and-Opportunities-of-Brexit-for-the-North-West-City-Region-150217.pdf](https://www.derrystrabane.com/Initial-Analysis-of-the-Challenges-and-Opportunities-of-Brexit-for-the-North-West-City-Region-150217.pdf) (derrystrabane.com)

⁵⁰ Houses of the Oireachtas, (2019), Joint Committee on Rural and Community Development, ‘*Brexit and the Border: The Impact on Rural Communities*’, at p.123.

⁵¹ *Ibid*, 209.

legal underpinning of the Common Travel Area) the Commission is seeking to conduct research which examines:

- the known and potential impacts on the rights of workers deriving from developments since our earlier research was conducted,⁵² including the implementation of the EU Settlement Scheme, the Frontier Workers' Scheme and the Trade and Co-operation Agreement of 2020, and
- the potential protection afforded by the Article 2 'no diminution' commitment in the context of any loss of rights identified.

The Commission is particularly keen to explore gaps in rights that may be implicit, indirect, ambiguous or result from policy decisions in addition to treaty provisions.

The NIHRC also wishes to make recommendations on how the NI Assembly, the UK Government and the Government of Ireland could address any potential legal and/or policy gaps which arise with a view to protecting the rights of workers within NI and border communities, and their families.

It is expected that the research will address the following non-exhaustive list of issues:

- Any potential interaction of Article 2 of the Ireland/Northern Ireland Protocol with the Rights, Safeguards and Equality of Opportunity section of the Belfast/Good Friday Agreement 1998 and changes to the free movement entitlements resulting directly or indirectly from the UK's withdrawal from the EU.
- Specifically, the impact of the Withdrawal Agreement, and, where appropriate, the UK's implementation of it, on the free movement rights of frontier workers and their families, on the island of Ireland. This includes consideration of any limitations of the implementation of the Frontier Worker Scheme and issues regarding the security of status of these workers and the rights of family members not resident in the competent state. This also includes how, if at all, this may engage Article 2 of the Ireland/Northern Ireland Protocol.
- The impact of the Withdrawal Agreement, and, where appropriate, the UK's implementation of it, on the free movement rights of border communities on the island of

⁵² Previous research includes Sylvia de Mars, Colin Murray, Aoife O' Donoghue and Ben Warwick, 'Discussion Paper on the Common Travel Area' (NIHRC and IHREC, 2018) & Sylvia de Mars, Colin Murray, Aoife O' Donoghue and Ben Warwick, (Continuing EU Citizenship 'Rights, Opportunities and Benefits' in Northern Ireland after Brexit, (NIHRC, March 2020).

Ireland. This includes an analysis of any potential legal or policy gaps which may apply to individuals who are not frontier workers and therefore not covered by the scheme but who may reside and work on one side of the border and access services on the other. Consideration should also be given to the rights of persons not covered by the CTA as well as those who are covered.

- Any diminution of rights under the EU Settlement Scheme not directly required by the Withdrawal Agreement, that might engage Article 2 of the Ireland/Northern Ireland Protocol.⁵³
- Any diminution of rights under the Trade and Cooperation Agreement (TCA), that may engage Article 2 of the Ireland/Northern Ireland Protocol. Consideration should be given to whether the mobility rights under the TCA, and the practical application and implementation of them, may either actually or potentially engage any of the equality and anti-discrimination guarantees under the Annex 1 Directives of the Protocol.
- Potential amendments to legislation and policy which may be relevant to ongoing compliance with Article 2 of the Protocol in the context of free movement.
- Potential amendments to policy and legislation to protect free movement rights including for border communities, frontier workers and their families.
- Any other identifiable issues not covered by the above which should be brought to the attention of the Commission.

Exclusions

This research is not concerned with matters pertaining to the provision of, or access to, healthcare as a result of the UK's withdrawal from the EU. Parallel research is currently being carried out in this area. Therefore, consideration does not have to be given to any loss of rights and how the provision of healthcare is impacted by the UK's withdrawal from the EU, nor to ensuring the protection of access to healthcare within NI and to cross-jurisdictional (North/South and East/West) and all-island services including

⁵³ One such example identified by the Commission relates to electoral rights of EU citizens, in respect of which the Withdrawal Agreement is silent. The relevant chapter of the BGFA sets out a number of rights in relation to democratic participation and, prior to withdrawal, the right of EU nationals to stand and vote in council elections in the UK was underpinned by EU legislation. The Commission, along with ECNI, therefore wrote to the Secretary of State to advise that such electoral rights of EU citizens should be protected in order to comply with Article 2.

for border communities, frontier workers and their families. We recognise that this research touches on immigration law and separate research in this area has been commissioned. We will ensure that the researchers are kept apprised of this work. Therefore, detailed analysis of immigration law will not be required for this piece of research.

Specification

The successful contractor will be required:

- to engage with the NIHRC to clarify the parameters of the project;
- to undertake both desktop research and any potential interviews with key stakeholders which may include civil society organisations, practitioners, service providers, academics or policy makers in this field; and
- to submit an interim report by **15 November 2021** and, having taken account of the Commission's comments, a final report by **1 December 2021**. These timeframes are negotiable in consultation with the Commission.

The Northern Ireland Human Rights Commission retains all rights to the intellectual property and will be responsible for future decisions regarding the publication of the report. In all publications, the role of the contractor will be duly acknowledged.

Further dissemination opportunities will follow from this research in the form of a seminar and/or round table event which will be hosted and funded by the Northern Ireland Human Rights Commission.

The Head of Service (Dedicated Mechanism – EU Withdrawal) will be available to liaise with the successful contractor for the duration of the project, to resolve any queries concerning the research or the Commission's requirements in respect of the final draft.

Application

Interested contractors are invited to:

1. Write a brief letter of motivation, alongside an annex of relevant experience and publications (no than four pages in total), demonstrating:
 - experience of each member of the research team in undertaking research in the field of EU law & policy, human rights law or any other areas related to the work under this tender;

- knowledge and understanding of the key issues relating to EU free movement, workers' rights, UK withdrawal from the EU and the Common Travel Area;
- how they will conduct the research, including how the research team will ensure the research adds value to pre-existing research;
- how they will ensure value for money; and
- how quality assurance will be guaranteed.

It is expected that interested contractors will provide an outline of the proposed approach to the project, including the methods they will employ for ascertaining and ensuring that the Commission's requirements are met.

2. Quote a fixed price of no more than £15,000 (inclusive of VAT) for writing and presenting a final report detailing a breakdown of how many days will be allocated to specific tasks undertaken by research team members, alongside a daily financial rate for each researcher. The proposals will be assessed for value for money.
3. Provide details of two referees who can comment on their ability to deliver the type of document described in the above specification.
4. The award of the contract will be based on: the applicant's competence to undertake the work, judged from the content of the letter of motivation and previous experience; how effectively the proposal will be delivered in practice; and value for money. The Commission reserves the right not to accept the lowest quotation.

Any questions about the project should be emailed to Eilis.Haughey@NIHRC.org who will arrange for a prompt response.

Please email your application to Jacqueline.McClintock@NIHRC.org by 1.00pm on Friday 3rd September 2021.

www.nihrc.org | info@nihrc.org | +44 (0)28 9024 3987

Northern Ireland Human Rights Commission, 4th Floor, Alfred House, 19-21 Alfred Street, Belfast, BT2 8ED