

Dear Alan and Conor –

I am writing from human rights NGO CAJ just on one aspect of the interim report in relation to the franchise where I think there maybe a gap, appreciate you were looking for feedback in January and hopefully this is still in time.

The issue relates to the impact of the two Governments in the post Brexit context to seeking replace some entitlements hitherto flowing from EU free movement law with the novel concept of “reciprocal rights of the Common Travel Area”, set out in loose provisions that are generally restricted to British and Irish citizens but are also restricted to what is ‘reciprocal’.

It is notable that the attached 2019 UK-Ireland CTA MoU in its provisions on voting (para 13) only covers local and national elections and not referendums, despite Irish citizens always having been previously able to vote in UK referendums. The UK response to questions about this has been that as Ireland does not allow British citizens to vote in referendums so therefore there will be no reciprocal right to same. This could of course be understood as no reciprocal right under the CTA but the franchise otherwise remaining unchanged. However, given the opportunity to clarify that Irish citizens would be allowed to vote in a ‘border poll’ referendum given what was in the CTA MoU, the SOSNI, in response to a PQ from Conor McGinn MP, declined to do so and rather stated the following: <https://questions-statements.parliament.uk/written-questions/detail/2019-03-08/230086>

This would of course not presently necessarily lead to the unthinkable scenario perhaps where half the NI population would be excluded from the franchise given the ongoing conferral of British citizenship on most persons born in NI under the British Nationality Act 1981; although it would exclude non UK born Irish citizens, plus the NIHRC/IHREC has recently published an analysis by Alison Harvey of how the BNA could be amended to bring it in line with the GFA and end such automatic conferral on those who wish to exercise the GFA birth right to be ‘accepted as’ solely Irish: <https://www.nihrc.org/publication/detail/a-legal-analysis-of-incorporating-into-uk-law-the-birthright-commitment-under-the-belfast-good-friday-agreement-1998>

There is some commentary on this issue in the following BrexitLawNI briefing paper (former ESRC funded project with QUB/UU law schools in which CAJ was the NGO partner), see pages 7 & 20 <https://brexitlawni.org/library/resources/paragraph-52-briefing-paper/>

Hope this is useful, regards, Daniel

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