



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Call for Expression of Interest on Remedies
and Windsor Framework Article 2**

July 2024

The Northern Ireland Human Rights Commission is seeking to contract research on the interaction between Article 2 of the Windsor Framework and EU law remedies.

The deadline for submitting a quotation is 12 noon on Wednesday, 4 September 2024.

Summary

The Commission is interested in exploring the remedies available in accordance with the non-diminution and keep pace commitment in Windsor Framework Article 2. This research should aim to explore how and to what extent the obligation to ensure the full effectiveness of EU law informs the interpretation of available domestic and EU law remedies pursuant to Windsor Framework Article 2. This research should also explore the role of the Commissions in overseeing the implementation of Article 2 and the interaction of the oversight mechanisms of the Withdrawal Agreement, and associated dispute resolution procedures, with Windsor Framework Article 2.

Introduction

- 1.1 The Northern Ireland Human Rights Commission (the Commission), 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). In accordance with section 78A(1) of the Northern Ireland Act the Commission monitors the implementation of Article 2(1) of the Windsor Framework,¹ to ensure there is no diminution of rights protected in the 'Rights, Safeguards and Equality of Opportunity' chapter of the Belfast (Good Friday) Agreement 1998 as a result of the United Kingdom (UK)'s withdrawal from the EU. The Commission exercises this mandate alongside the Equality Commission for Northern Ireland (ECNI), as part of the 'dedicated mechanism' framework.
- 1.2 Pursuant to Section 78A(7), the Commission is seeking to conduct research to examine the availability of remedies in respect of Windsor Framework Article 2.

Background

Article 2 of the Windsor Framework

- 1.3 During the negotiations leading to the UK's withdrawal from the EU, both the UK and EU recognised that human rights and the

¹ The Protocol on Ireland/Northern Ireland was renamed by Decision No 1/2023 of the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023 laying down arrangements relating to the Windsor Framework.

Belfast (Good Friday) Agreement required consideration and protection. Both parties affirmed that the 1998 Agreement must be protected in all its parts, including in its practical application and the totality of relationships set out in the agreement.²

- 1.4 Windsor Framework Article 2 requires the UK Government to ensure that there is no diminution of the rights, safeguards and equality of opportunity protections contained in that chapter of the Belfast (Good Friday) Agreement, as a result of the UK leaving the EU. To fall within scope of Article 2, the human right or equality protection being relied on must therefore be covered by the relevant chapter of the Agreement and have been underpinned by EU law on 31 December 2020.
- 1.5 In the rights, safeguards and equality of opportunity chapter of the Belfast (Good Friday) Agreement, the parties affirmed their commitment to “the mutual respect, the civil rights and religious liberties of everyone in the community”. The UK Government also committed to incorporation of the ECHR into NI law and the Agreement envisaged a Bill of Rights for NI drawing on international instruments and experience.
- 1.6 In 2022, following extensive engagement and internal and external research and legal advice, the Commission, along with ECNI set out its initial assessment of Windsor Framework Article 2.³
- 1.7 The UK Government has committed to ensuring that there will be no diminution of protections as were contained in relevant EU law on 31 December 2020.⁴ In addition to the non-exhaustive list of EU measures identified by the UK Government,⁵ the Commissions have identified a range of EU measures which fall within the non-

² Joint report from the Negotiators of the EU and UK Government progress during Phase 1 of Negotiations under Article 50 TEU on the UK’s Orderly Withdrawal from the EU, 8 December 2017, para 42.

³ NI Human Rights Commission and Equality Commission NI, ‘Working Paper: Scope of Article 2(1) of the Ireland/NI Protocol to the Withdrawal Agreement 2020’, (NIHRC and ECNI, 2022).

⁴ NI Office, ‘UK Government Commitment to “no diminution of rights, safeguards and equality of opportunity” in Northern Ireland: What does it mean and how will it be implemented?’ (NIO, 2020).

⁵ The UK Government has identified a non-exhaustive list of measures, including the EU Victims’ Directive; the EU Parental Leave Directive; EU Pregnant Workers’ Directive; and measures aimed at protecting the rights of disabled people (see NI Office, ‘UK Government Commitment to “no diminution of rights, safeguards and equality of opportunity” in Northern Ireland: What does it mean and how will it be implemented?’, (NIO, 2020), at para 13).

diminution commitment.⁶

1.8 Article 13(3) of the Windsor Framework provides that “where this Protocol makes reference to a Union act, that reference shall be read as referring to that Union act as amended or replaced”.⁷ Windsor Framework Article 2 therefore entails a commitment by the UK Government that NI equality law will dynamically align or “keep pace” with any EU law developments falling within the six EU Equality Directives listed in Annex 1 to the Windsor Framework⁸ after 1 January 2021. Therefore, if the minimum standards in the Annex 1 Directives are updated or replaced, the UK Government must ensure that domestic legislation in NI reflects any enhancements in relevant protections.⁹

1.9 In line with Article 13(2) of the Windsor Framework, “the provisions of this Protocol referring to Union law or to concepts or provisions thereof shall in their implementation and application be interpreted in conformity with the relevant case law of the Court of Justice of the European Union (CJEU)”. Therefore, the Annex 1 Equality Directives will continue to be informed by future CJEU rulings and, to the extent that such rulings evolve general principles of EU law, the EU Charter of Fundamental Rights and relevant EU Treaty provisions, these will continue to have relevance in NI.¹⁰

1.10 The UK has incorporated the Withdrawal Agreement, including the

⁶ See Appendix 1, NI Human Rights Commission and Equality Commission for NI, ‘Working Paper: Scope of Article 2(1) of the Ireland/NI Protocol to the Withdrawal Agreement 2020’, (NIHRC and ECNI, 2022).

⁷ The changes to Article 13(3)(a) following the political agreement between the UK and EU on a new way forward on the original Protocol are limited to measures in Annex 2. See Decision No 1/2023 of the Joint Committee established by the agreement on the withdrawal of the UK of Great Britain and NI from the EU and the European Atomic Energy Community of 24 March 2023, laying down arrangements relating to the Windsor Framework.

⁸ Council Directive 2004/113/EC, ‘EU Council Directive 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 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; Council Directive 2000/43/EC, ‘EU Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin’, 29 June 2000; Council Directive 2000/78/EC, ‘EU Council Directive establishing a general framework for equal treatment in employment and occupation’, 27 November 2000; Directive 2010/41/EU, ‘EU Directive on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC’, 7 July 2010; Council 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.

⁹ NI Office, ‘UK Government Commitment to “no diminution of rights, safeguards and equality of opportunity” in Northern Ireland: What does it mean and how will it be implemented?’, (NIO, 2020), at para 13.

¹⁰ Article 13(2) and 13(3), Windsor Framework to the UK-EU Withdrawal Agreement; Re Allister [2021] NIQB 64, at para 234.

Windsor Framework, into domestic law through the EU (Withdrawal Agreement) Act 2020. Section 7A of the EU (Withdrawal) Act 2018 gives effect to all the rights, obligations and remedies arising under the UK-EU Withdrawal Agreement, including Article 2, and ensures that they are recognised and available in domestic law. The Commission, alongside the Equality Commission for NI, has been given additional powers to oversee the UK Government's commitment under Article 2.¹¹ The Commission is responsible for providing advice to government and monitoring, supervising, enforcing and reporting on the ongoing implementation of this commitment.

1.11 In 2023, the Court of Appeal set out a six-part test for establishing a breach.¹² The Commission takes the following approach when assessing whether Article 2 is engaged, and establishing a potential breach, which is broadly aligned to that of the Court:

- (i) Does the right, safeguard or equality of opportunity protection fall within the relevant part of the Belfast (Good Friday) Agreement?
- (ii) Was the right, safeguard or equality of opportunity protection:
 - (a) underpinned by EU law binding on the UK on 31 December 2020?
 - (b) given effect in NI law, in whole or in part, on or before 31 December 2020?¹³
- (iii) Has there been a diminution in the right, safeguard or equality of opportunity protection on or after 1 January 2021?
- (iv) Would this diminution have been unlawful if the UK had remained in the EU?

Applicability of Annex 1 Measures

1.12 As noted above, Windsor Framework Article 2 provides that the UK Government should ensure that there is no diminution of certain

¹¹ Sections 78A-E, Northern Ireland Act 1998

¹² *Re SPUC Pro-Life Limited* [2023] NICA 35, at para 54.

¹³ Where UK and NI law was out of alignment with EU law on 31 December 2020, the absence of a 'domestic implementing measure' is not an insurmountable obstacle to demonstrating a diminution of Protocol Article 2, provided the EU legal obligation existed and was binding on the UK on that date. See also *Re SPUC Pro-Life Limited* [2022] NIQB 9, at para 88-90 for further discussion of the relationship between EU underpinning law and Article 2.

rights and safeguards, including in the area of protection against discrimination and lists six EU Equality Directives in Annex 1. In accordance with Article 13(3) of the Windsor Framework this list automatically includes any amendment or replacement to those measures.

1.13 In accordance with Articles 5(4) and 8-10, the provisions of EU law in Annexes 2-5 to the Windsor Framework continue to apply in the UK in respect of NI. Similar to Article 2, these provisions are subject to Article 13(3) which provides that EU measures in the Windsor Framework should be read as referring to that EU act “as amended or replaced”. The provisions of EU law in Annex 2 have the same effect in NI as they do in the EU and EU institutions retain their powers in the UK in respect of NI to the extent required by the measures listed in Annex 2.¹⁴ Following the political agreement between the UK and EU on a new way forward on the original Protocol in February 2023,¹⁵ Article 13(3) has been amended as it relates to Annex 2.¹⁶

1.14 Article 12(4) provides for the continued role of the EU institutions in respect of Article 5 and Articles 7 to 10,¹⁷ this does not extend to Windsor Framework Article 2. Therefore, the continued jurisdiction of the CJEU, including the possibility of a preliminary references to the CJEU and for infringement proceedings to be taken against the UK by the EU Commission for violation of their obligations is limited to Articles 12(2), 5 and 7-10.¹⁸ The obligation in accordance with Windsor Framework Article 2 and Article 13(3) in respect of the six EU Equality Directives in Annex 1 is on the UK Government to ensure NI law is updated to reflect these improved protections.

¹⁴ Thomas Liefländer, ‘Article 5 – Customs, movement of goods – A Commentary’ in Thomas Liefländer, Manuel Kellerbauer and Eugenia Dumitriu-Segnana (Eds), ‘The Withdrawal Agreement – A Commentary’ (OUP, 2021), at para 8.67.

¹⁵ Political Declaration by the European Commission and the Government of the United Kingdom of 27 February 2023.

¹⁶ See Decision No 1/2023 of the Joint Committee established by the agreement on the withdrawal of the United Kingdom Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023, laying down arrangements relating to the Windsor Framework. New measures which amend or replace those currently listed in Annex 2 will no longer be automatically read as ‘amended or replaced’. Article 13(3)(a) of the Windsor Framework provides for additional scrutiny of such measures by the NI Assembly in respect of Annex 2 measures. This has been given effect in UK law through the draft Windsor Framework (Democratic Scrutiny) Regulations 2023, which implement the ‘Stormont brake’ mechanism in domestic law. This will allow the UK Government to potentially stop the application in NI of amended or replaced EU legal provisions in Annex 2 of the Windsor Framework.

¹⁷ This also includes Article 12(2) on the exchange of information on the application of Article 5(1) and (2).

¹⁸ Thomas Liefländer, ‘Article 12 – Implementation, application, supervision and enforcement – A Commentary’ in Thomas Liefländer, Manuel Kellerbauer and Eugenia Dumitriu-Segnana (Eds), ‘The Withdrawal Agreement – A Commentary’ (OUP, 2021), at paras 8.138-8.140.

1.15 The UK Government has committed to ensuring NI law dynamically align with any enhancements made by EU law on or after 1 January 2021 in respect of the Annex 1 equality directives.¹⁹ As noted by Denman:

if the rights protected by the directives listed in Annex 1 were no longer given effect in the law of Northern Ireland in a way that individuals could enforce, that would appear to be a diminution in the protection of the rights.²⁰

1.16 Oversight of issues arising relating to other provisions of the Windsor Framework, including Article 2, are addressed through the bodies established under the UK-EU Withdrawal Agreement and through the UK courts. The UK Government has recognised that “individuals will also be able to bring challenges to the Article 2(1) commitment directly before the domestic courts”.²¹ The UK further recognised that judicial protection and remedies for individuals in respect of Windsor Framework Article 2 will be through the UK domestic courts rather than the CJEU.²²

Withdrawal Agreement and Effectiveness of EU law

1.17 Windsor Framework Article 2 must be interpreted in light of the UK-EU Withdrawal Agreement. Article 4(1) of the Withdrawal Agreement states that provisions of the Withdrawal Agreement and EU law made applicable by it “shall produce in respect of and in the UK the same legal effect as those which they produce within the Union and its Member States”.²³ It further provides that natural and legal persons shall be “able to rely directly on the provisions contained or referred to in this Agreement which meet the condition for direct effect under Union law”.

¹⁹ The UK Government has also recognised this commitment in its explainer on Windsor Framework Article 2. See NI Office, ‘UK Government Commitment to “no diminution of rights, safeguards and equality of opportunity” in Northern Ireland: What does it mean and how will it be implemented?’, (NIO, 2020), at para 12.

²⁰ Daniel Denman, ‘Article 2 – Rights of Individuals – A Commentary’ in Thomas Liefländer, Manuel Kellerbauer and Eugenia Dumitriu-Segnana (Eds), ‘The Withdrawal Agreement – A Commentary’ (OUP, 2021), at para 8.17 (See footnote 21).

²¹ NI Office, ‘UK Government Commitment to “No Diminution of Rights, Safeguards and Equality of Opportunity” in Northern Ireland: What does it Mean and How will it be Implemented?’ (NIO, 2020), at para 29.

²² NI Office, ‘UK Government Commitment to “No Diminution of Rights, Safeguards and Equality of Opportunity” in Northern Ireland: What does it Mean and How will it be Implemented?’ (NIO, 2020), at para 29.

²³ Article 4(1), UK-EU Withdrawal Agreement.

- 1.18 The UK Government has acknowledged that:
under Article 4 of the Withdrawal Agreement,
incorporated into domestic law through the EU
(Withdrawal Agreement) Act 2020, all provisions in the
Withdrawal Agreement and the provisions of Union law
that it makes applicable in the UK have the same legal
effect in the UK as in the EU and its Member States.²⁴
- 1.19 As confirmed by Humphreys J, in *Re NIHRC*, Article 4(1)
differentiates between two types of measure: the provisions of the
Withdrawal Agreement; and provision of EU Law made applicable
by the Withdrawal Agreement. Windsor Framework Article 2 falls
within the first category.²⁵
- 1.20 In its explainer on the implementation of Windsor Framework
Article 2, the UK Government recognised that Article 2 has direct
effect and that individuals can invoke their rights in UK courts.²⁶
This was confirmed by the NI Minister, Lord Duncan, in response to
a parliamentary question, “The Government also considers that
Article 2(1) of the [Windsor Framework] is capable of direct effect
and that individuals will therefore be able to rely directly on this
article before the domestic courts”.²⁷ The NI High Court has also
confirmed that “Article 2 has direct effect and legal persons ... are
able to rely on it in domestic courts”.²⁸
- 1.21 Article 4(2) of the Withdrawal Agreement states “the UK will ensure
compliance with [Article 4(1)], including as regards the required
powers of its judicial and administrative authorities to disapply
inconsistent or incompatible domestic provisions, through domestic
primary legislation”.²⁹ Moreover, any reference to EU law concepts

²⁴ NI Office, ‘UK Government Commitment to “No Diminution of Rights, Safeguards and Equality of Opportunity” in Northern Ireland: What does it Mean and How will it be Implemented?’ (NIO, 2020), at para 29. See also UK Parliament Hansard, ‘Written Answer: Belfast Agreement – NI Minister, Lord Duncan of Springbank – HL404’, 28 January 2020; Letter from Robin Walker MP, Minister of State for NI to Professor Christopher McCrudden, 26 February 2020 attached to Christopher McCrudden, ‘Parliamentary Scrutiny of the Joint Committee and the Application of the Northern Ireland Protocol – Evidence to the House of Commons European Scrutiny Committee’ (ESC, 2020).

²⁵ *Re NIHRC* [2024] NIKB 35, at paras 55-56.

²⁶ NI Office, ‘UK Government Commitment to “No Diminution of Rights, Safeguards and Equality of Opportunity” in Northern Ireland: What does it Mean and How will it be Implemented?’ (NIO, 2020), at para 29.

²⁷ UK Parliament Hansard, ‘Written Answer: Belfast Agreement – NI Minister, Lord Duncan of Springbank – HL404’, 28 January 2020.

²⁸ *Re SPUC Pro-Life Limited* [2022] NIQB 9, at para 77. Confirmed in *Re Angsom* [2023] NIKB 102.

²⁹ Article 4(2), EU-UK Withdrawal Agreement.

or provisions in the Withdrawal Agreement must be interpreted and applied in accordance with the methods and general principles of EU law.³⁰

- 1.22 The legal effects of EU law are informed by the principles of primacy, full effectiveness and direct effect.³¹ The principle of supremacy of EU law also applies to national administrative and judicial authorities, who are obliged to ensure full effectiveness to EU law, including, as required, by setting aside national rules where they conflict with EU obligations.³²
- 1.23 Both Mr Justice Colton and Mr Justice Humphreys have confirmed that Section 7A of the EU Withdrawal Act 2018 mirrors the language of the European Communities Act 1972 and is the 'conduit pipe' through which the provisions of the Withdrawal Agreement flow into UK law.³³
- 1.24 The CJEU has developed the requirement of effectiveness of EU law, which includes effective judicial protection as a general principle.³⁴ As noted in *Craig and de Búrca*, the obligation in Article 4 of the Withdrawal Agreement, as implemented by Section 7A of the EU (Withdrawal) Act 2018, "will include the remedial obligations of effectiveness and equivalence".³⁵
- 1.25 As noted by Anthony, "in terms of the courts, EU law no longer applies on its original terms in cases outside the [Windsor Framework], but it does apply with its full force in cases under it".³⁶ He further notes that this means that the courts "must apply the supremacy principle, observe the [EU Charter of Fundamental Rights], ... apply the general principles of EU law, and hear

³⁰ Article 4(3), UK-EU Withdrawal Agreement.

³¹ Pieter Van Nuffel, 'The Withdrawal Agreement, Part One – Common provisions' in Thomas Liefländer, Manuel Kellerbauer and Eugenia Dumitriu-Segnana (Eds), 'The Withdrawal Agreement – A Commentary' (OUP, 2021), at para 2.29.

³² Pieter Van Nuffel, 'The Withdrawal Agreement, Part One – Common provisions' in Thomas Liefländer, Manuel Kellerbauer and Eugenia Dumitriu-Segnana (Eds), 'The Withdrawal Agreement – A Commentary' (OUP, 2021), at para 2.30.

³³ *Re Dillon and others* [2024] NIKB 11, at paras 524-527 and *Re NIHRC* [2024] NIKB 35, at para 53 - relying on *Re Dillon and others* [2024] NIKB 11 and *R(Miller)* [2017] UKSC 5.

³⁴ Paul Craig and Gráinne de Búrca, 'EU Law – Text, Cases and Materials (7thEd)' (UK Version) (OUP, 2020), at 272.

³⁵ Paul Craig and Gráinne de Búrca, 'EU Law – Text, Cases and Materials (7thEd)' (UK Version) (OUP, 2020), at 312 and at 286-298.

³⁶ Gordon Anthony, 'The Protocol in NI Law', in Christopher McCrudden (Ed), 'The Law and Practice of the Ireland-Northern Ireland Protocol' (CUP, 2022), at 127.

Francovich claims".³⁷ McCrudden also relies on analogous case law of the European Free Trade Association Court,³⁸ to make the case that the non-diminution commitment in Windsor Framework Article 2 applies to both the substantive and procedural aspects of rights, including available remedies, such as *Francovich* damages.³⁹

1.26 Article 19 TEU requires Member States to provide sufficient remedies to ensure effective legal protection in the fields of EU law. In addition, Article 47 of the EU Charter provides for the right to an effective remedy before a tribunal. When the UK was an EU member state, the national courts were required to ensure they gave adequate effect to EU law within the domestic legal order. The CJEU has required domestic courts to ensure the availability of a range of specific remedies,⁴⁰ including repayment of charges,⁴¹ interim relief,⁴² judicial review,⁴³ civil remedies⁴⁴ and damages.⁴⁵

1.27 While the principle of effectiveness of EU law is carried over to the Windsor Framework this does not mean that Article 2 can be enforced through all the avenues available within the EU legal order. As noted above, the Windsor Framework does make provision for claims from NI to be considered by the CJEU, but this does not apply to a claim pursuant to Article 2.⁴⁶ Nevertheless, the principle of effectiveness is central to our understanding of how EU rights were upheld and vindicated prior to the UK's withdrawal from the EU. The researchers may wish to evaluate the operation of the principle of effectiveness in the post-Brexit legal landscape in the context of the range of remedies available pursuant to the UK Government's commitment in Windsor Framework Article 2.

³⁷ Gordon Anthony, 'The Protocol in NI Law', in Christopher McCrudden (Ed), 'The Law and Practice of the Ireland-Northern Ireland Protocol' (CUP, 2022), at 127.

³⁸ Case E-9/97 *Sveinsbjörndóttir* [1998] EFTA Court Reports 95, at para 48.

³⁹ Christopher McCrudden, 'Human Rights and Equality', in Christopher McCrudden (Ed), 'The Law and Practice of the Ireland-Northern Ireland Protocol' (CUP, 2022), at 127.

⁴⁰ See Chapter 9 on the Application of EU law – Remedies in National Courts in Paul Craig and Gráinne de Búrca, 'EU Law – Text, Cases and Materials (7thEd)' (UK Version) (OUP, 2020).

⁴¹ *Amministrazione delle Finanze dello Stato v SpA San Giorgio*, Case 199/82, 9 November 1983.

⁴² *R v Secretary of State for Transport, ex parte: Factortame Ltd and others*, Case C-213/89, 19 June 1990.

⁴³ *Union nationale des entraîneurs et cadres techniques professionnels du football (Unectef) v Georges Heylens*, Case 222/86, 15 October 1987.

⁴⁴ *Antonio Muñoz y Cia SA and Superior Fruiticola SA v Frumar Ltd and Redbridge Produce Marketing Ltd*, Case C-253/00, 17 September 2002.

⁴⁵ *Courage Ltd v Bernard Crehan*, Case C-453/99, 20 September 2001.

⁴⁶ See Para 2.12 above.

Access to Justice

- 1.28 As noted by Craig and de Búrca, the CJEU has consistently identified that access to courts and the right to a remedy are essential for the vindication of EU law rights. This is a fundamental right protected by the ECHR and the EU Charter of Fundamental Rights.⁴⁷ Any limitation on access to courts and available remedies in respect of Windsor Framework Article 2 would constitute a potential diminution of rights.⁴⁸
- 1.29 The EU Commission has limited mechanisms under the UK-EU Withdrawal Agreement to bring enforcement proceedings against the UK for failure to fulfil an obligation before the end of the transition period.⁴⁹ For example, in respect of Windsor Framework Article 2, there is no provision for the NI courts to issue a preliminary reference to the CJEU.⁵⁰
- 1.30 Consequently, in accordance with Section 7A of the EU (Withdrawal) Act 2018, the effectiveness of the rights and safeguards under Windsor Framework Article 2 will depend on how the NI courts and the UK Supreme Court give effect to EU law rights and remedies in the context of the non-diminution commitment. This will have to be understood in the context of the wider dispute resolution procedures in the Withdrawal Agreement.

Dispute Resolution in the Withdrawal Agreement

- 1.31 The Joint Committee is established pursuant to Article 165 of the Withdrawal Agreement. It is co-chaired by the UK and EU and responsible for the implementation and application of the Agreement. The Joint Committee supervises and facilitates the implementation and application of the Agreement and adopt

⁴⁷ Paul Craig and Gráinne de Búrca, 'EU Law – Text, Cases and Materials (7thEd)' (UK Version) (OUP, 2020), at 293 ff.

⁴⁸ See Colton J in *Re Dillon and others* [2024] NIKB 11, at para 586. As noted by Murray et al, "it is essential to ensure that the application of UK wide legislation such as the Judicial Review and Courts Act 2022 and reform of the Human Rights Act 1998 does not compromise the protection for access to justice and effective judicial protection in NI law". See Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, 'EU Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland' (ECNI, NIHRC and IHREC, 2022), at 88.

⁴⁹ Articles 86-91

⁵⁰ See Article 12(4), Windsor Framework in respect of Articles 5 and 7-10, which provides that the CJEU will have jurisdiction and the preliminary reference procedure in Article 267 of the Treaty on the Functioning of the EU shall apply in the UK in this respect. As noted by Leifländer, this displaces the arbitration mechanism established by the Withdrawal Agreement (Thomas Leifländer, 'Article 12 – Commentary', in Thomas Leifländer, Manuel Kellerbauer and Eugenia Dumitriu-Segnana (Eds), 'The Withdrawal Agreement – A Commentary' (OUP, 2021), at para 8.139).

binding decisions by mutual consent.⁵¹ Decisions of the Joint Committee have the same legal effect as the Withdrawal Agreement. As noted by Van Nuffel, Article 4(1) and (2) therefore apply and Joint Committee decisions will benefit from the principles of primacy, full effectiveness and direct effect.⁵²

1.32 Where the UK and the EU are unable to agree on the interpretation and application of the Withdrawal Agreement by mutual agreement, the arbitration procedure may be initiated by either party.⁵³ Article 174 provides that where a dispute submitted to arbitration raises a question of interpretation of an EU law concept, a provision of EU law referred to in the Withdrawal Agreement, or compliance with a CJEU judgment handed down before withdrawal, this should be referred to the CJEU to rule and its decision will be binding on the arbitration panel.⁵⁴ This obligation to refer questions of EU law to the CJEU applies both in relation to proceedings leading to an arbitration panel and also when such a question arises in the course of enforcement of an arbitration panel ruling.⁵⁵

EU Charter of Fundamental Rights

1.33 Where required by the UK-EU Withdrawal Agreement, including Windsor Framework Article 2, the EU Charter of Fundamental Rights continues to have relevance in NI.⁵⁶ This is an exception from Section 5(4) of the EU (Withdrawal) Act 2018 which provides that the EU Charter is not carried over by the general rules on the retention of EU law and is not part of UK law on or after 1 January 2021.⁵⁷ The Commission has undertaken research on the continued application of the EU Charter in the context of Windsor Framework

⁵¹ See Article 166, UK-EU Withdrawal Agreement.

⁵² Pieter Van Nuffel, 'Withdrawal Agreement, Part 6 – Institutional and Financial Provisions' in Thomas Liefländer, Manuel Kellerbauer and Eugenia Dumitriu-Segnana (Eds), 'The Withdrawal Agreement – A Commentary' (OUP, 2021), at para 7.47.

⁵³ See Article 170, UK-EU Withdrawal Agreement. A

⁵⁴ See Article 170, UK-EU Withdrawal Agreement. As noted by Van Nuffel, the first two areas correspond to Article 4(3) and 4(4) of the Withdrawal Agreement and places an obligation on the arbitration panel to refer matter to the CJEU even where the EU issue is not central to a dispute. This is to ensure the arbitration panel avoids incidental rulings on the interpretation of EU law. (See Pieter Van Nuffel, 'Withdrawal Agreement, Part 6 – Institutional and Financial Provisions' in Thomas Liefländer, Manuel Kellerbauer and Eugenia Dumitriu-Segnana (Eds), 'The Withdrawal Agreement – A Commentary' (OUP, 2021), at para 7.72.)

⁵⁵ Pieter Van Nuffel, 'Withdrawal Agreement, Part 6 – Institutional and Financial Provisions' in Thomas Liefländer, Manuel Kellerbauer and Eugenia Dumitriu-Segnana (Eds), 'The Withdrawal Agreement – A Commentary' (OUP, 2021), at para 7.72 Pieter Van Nuffel, 'Withdrawal Agreement, Part 6 – Institutional and Financial Provisions' in Thomas Liefländer, Manuel Kellerbauer and Eugenia Dumitriu-Segnana (Eds), 'The Withdrawal Agreement – A Commentary' (OUP, 2021), at para 7.75.

⁵⁶ *Re Angesom* [2023] NIKB 102; *AT v Secretary of State for Work and Pensions* [2023] ECWA Civ 1307.

⁵⁷ Section 5, EU (Withdrawal) Act 2018. See *Re SPUC Pro-Life Limited* [2022] NIQB 9, at paras 78 and 115.

Article 2.⁵⁸

Article 47 of the Charter

- 1.34 The right to an effective remedy is core to the principle of effectiveness of EU law and “the affirmation that the right to an effective remedy is sufficient in itself and does not need to be made more specific by provisions of EU or national law in order to confer on individuals a right on which they may rely as such”.⁵⁹ As noted by Craig et al, “the right to effective judicial protection is being shaped into one of the most significant elements EU human rights law, and is currently the most litigated provision of the [EU] Charter”.⁶⁰ Craig and de Búrca also note that there has been an increasing reliance by the CJEU on the ECHR and EU Charter to “underscore the principle of effective judicial protection as a fundamental right”.⁶¹
- 1.35 A string of cases in the CJEU confirm that the “real and effective judicial protection”⁶² required covers procedural matters and substantive law: admissibility and standing,⁶³ interim protection⁶⁴ as well as legal aid. Rules of evidence in Member States are also subject to review under Article 47 of the EU Charter.⁶⁵ As is the principle of equality of arms – the “obligation to offer each party a reasonable opportunity to present its case in conditions that do not place it in a clearly less advantageous position by comparison with its opponent”.⁶⁶
- 1.36 As noted by Lock et al, the remedial strength of the Charter was a key ‘added value’ recognised by the UK Supreme Court before

⁵⁸ Tobias Lock, Eleni Frantziou and Anurag Deb, ‘the Interaction between the EU Charter of Fundamental Rights and the general principles of EU law with the Windsor Framework’ (NIHRC, 2024).

⁵⁹ Herbert Hofmann ‘D. Specific Provisions’ in Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward ‘The EU Charter of Fundamental Rights, A Commentary’ (Hart, 2nd Ed, 2021) at para 47.65, citing *État luxembourgeois v B and Others*, joined cases C-245/19 and C-246/19, 6 October 2020, at para 54.

⁶⁰ Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, ‘EU Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland’ (ECNI, NIHRC and IHREC, 2022), at 87.

⁶¹ Paul Craig and Gráinne de Búrca, ‘EU Law – Text, Cases and Materials (7thEd)’ (UK Version) (2020, OUP), at 272.

⁶² *Sabine Von Coulson and Elizabeth Kamann v Land Nordrhein Westfalen*, Case C-14/83, 10 April 1984, at para 23.

⁶³ *E.On Földgaz Trade Zrt v Magyar Energetikai és Közmű-szabályozási Hivatal*, Case C-510/13, 19 March 2015, at paras 47-50.

⁶⁴ *R v Secretary of State for Transport, ex parte Factortame Ltd*, Case C-213/89, 19 June 1990 at paras 19-20.

⁶⁵ *WebMindLicenses kft v v Nemzeti Adó- és Vámhivatal Kiemelt Adó- és Vám Főigazgatóság*, Case C-419/14, 17 December 2015 at paras 86-87.

⁶⁶ *Glencore Agriculture Hungary Kft. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága*, Case C-189/18, 16 October 2019, at para 61.

Brexit and it is therefore essential that this feature be maintained within the non-diminution guarantee.⁶⁷ This research further notes that the remedies available through the Charter are stronger than those available through the ECHR within the UK and further noting, in particular, the issue of delay in respect of getting a final decision from the European Court of Human Rights.⁶⁸

Safeguards in the Belfast (Good Friday) Agreement 1998

1.37 The commitment in Windsor Framework Article 2 is to ensure no diminution of the rights and *safeguards* in the relevant chapter of the Belfast (Good Friday) Agreement. As noted by Craig et al, “the CJEU views effective judicial protection as a procedural right that is integral to European Union law, both in the field of equal treatment and in respect of other directly effective rights”.⁶⁹ The authors further note that consequently “effective judicial protection must be viewed as inherent in the concepts of ‘safeguards’ and ‘civil rights’ within this section of the 1998 Agreement”.⁷⁰

1.38 There has been little analysis as yet of the extent to which the concept of safeguards in the relevant chapter of the 1998 Agreement provides for additional mechanisms for identifying relevant remedies. Further analysis is required to explore the manner and extent to which the principles of effectiveness of EU law and effective judicial protection apply and add value in that context.

Disapplication

1.39 As noted above, Article 4(2) of the Withdrawal Agreement requires the UK to ensure that judicial and administrative authorities have the power to disapply domestic provisions which are inconsistent or incompatible with the Withdrawal Agreement or EU law made

⁶⁷ Tobias Lock, Eleni Frantziou and Anurag Deb, ‘the Interaction between the EU Charter of Fundamental Rights and the general principles of EU law with the Windsor Framework’ (NIHRC, forthcoming), at 72.

⁶⁸ See *Benkharbouche v Secretary of State for Foreign and Commonwealth Affairs* [2017] UKSC 62 and *Benkharbouche and Janah v UK* [2022] ECHR 296. Tobias Lock, Eleni Frantziou and Anurag Deb, ‘the Interaction between the EU Charter of Fundamental Rights and the general principles of EU law with the Windsor Framework’ (NIHRC, forthcoming), at 70.

⁶⁹ Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, ‘EU Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland’ (ECNI, NIHRC and IHREC, 2022), at 88.

⁷⁰ Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, ‘EU Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland’ (ECNI, NIHRC and IHREC, 2022), at 88.

applicable by it.⁷¹ This is given effect by Section 7A of the EU (Withdrawal) Act 2018. The England and Wales Court of Appeal has confirmed that these provisions, taken together, confer “direct effect on litigants and a connected power and duty on the national courts to disapply inconsistent domestic law”.⁷² Disapplication has been adopted as the appropriate remedy for a breach of Windsor Framework Article 2 in *Re Dillon and others*⁷³ and *Re NIHRC*.⁷⁴

1.40 In *Re NIHRC*, Mr Justice Humphreys further noted that:

Read together, the provisions of article 4 of the WA [Withdrawal Agreement] and section 7A of the [EU] Withdrawal Act [2018] are juridically aligned to the approach to the supremacy of EU law under the 1972 [European Communities] Act and *Factortame*. In the circumstances where domestic law is inconsistent with the provisions of the WA and laws made applicable by article 4, the latter take precedence and domestic law is disapplied. This outcome does not occur at the whim of the courts but represents the will of Parliament as articulated in the Withdrawal Act.⁷⁵

1.41 In addition, Mr Justice Humphreys found that disapplication was the appropriate relief in respect of uncommenced provisions.⁷⁶

Francovich Damages

1.42 In *Francovich*, the CJEU established the principle of state liability for breach of EU law obligations.⁷⁷ As noted by the CJEU, “the full effectiveness of Community rules would be impaired and the protection of rights which they grant would be weakened if individuals were unable to obtain redress when their rights are infringed by a breach of Community law for which a member state can be held responsible”.⁷⁸ This principle has been refined further

⁷¹ Article 4(2), EU-UK Withdrawal Agreement.

⁷² *AT v Secretary of State for Work and Pensions* [2023] ECWA Civ 1307, at para 106.

⁷³ *Re Dillon and others* [2024] NIKB 11 at para 710.

⁷⁴ *Re NIHRC* [2024] NIKB 35, at para 178.

⁷⁵ *Re NIHRC* [2024] NIKB 35, at para 175.

⁷⁶ *Re NIHRC* [2024] NIKB 35, at para 173-178; see also Colton J in *Re Dillon and others* [2024] NIKB 11 at para 527.

⁷⁷ *Andrea Francovich and Danila Bonifaci v Italy*, Case C6/90, 19 November 1991.

⁷⁸ *Andrea Francovich and Danila Bonifaci v Italy*, Case C6/90, 19 November 1991, at para 33.

by the CJEU.⁷⁹

1.43 Schedule 1, paragraph 5 of the EU (Withdrawal) Act 2018 provides that there is no right in domestic law to Francovich damages. Nevertheless, as McCrudden notes, relying on the section 7A of the 2018 Act, “overrides the prohibition of Francovich damages in the rest of the UK” on the basis that the ‘no diminution rule’ in Windsor Framework Article 2 creates a ‘lex specialis’ for NI.⁸⁰ This is reiterated in De Smith’s Judicial Review, which states that in respect of Article 2, that an “assessment of a diminution of rights also requires assessment of the enforcement mechanisms and procedures available to protect those right, which may include consideration of Francovich damages”.⁸¹

Horizontal Application

1.44 Craig et al note that some general principles, such as non-discrimination,⁸² effective judicial protection, and fair working conditions,⁸³ have been found to enjoy direct effect in vertical as well as in horizontal relations.⁸⁴ Therefore private law claims based on the general principles of EU law had relied on EU law remedies in employment and pension disputes in the UK where no comparable remedy existed in domestic law.⁸⁵ So called ‘Mangold actions’ established that the general principles of EU law can be invoked as such and generate a remedy, provided a case falls within the material scope of application of EU law.⁸⁶

1.45 As noted by Lock et al, when the UK was a Member State, where

⁷⁹ *Brasserie du Pêcheur v Germany*, Case C-46/93, 5 March 1996; *Gerhard Köbler v Republik Österreich*, Case C224/01, 30 September 2003; and *Courage Limited v Crehan*, Case C-453/99, 20 September 2001.

⁸⁰ Christopher McCrudden, ‘Human Rights and Equality’, in Christopher McCrudden (Ed), ‘The Law and Practice of the Ireland-Northern Ireland Protocol’ (CUP, 2022), at 127.

⁸¹ Ivan Hare KC, Catherine Donnelly SC, Joanna Bell (Eds), ‘De Smith’s Judicial Review’ (Sweet and Maxwell, 2023), at 14.166. See also partial quote by Colton J in *Re Dillon and others* [2024] NIKB 11 at para 586.

⁸² *Mangold v Helm*, Case C 144/04, 22 November 2005; *Kücükdeveci v Swedex*, Case C-555/07, 19 January 2010.

⁸³ *Stadt Wuppertal v Bauer and Willmeroth v BroBonn*, Cases C-569/16 and C-570/16, 6 November 2018.

⁸⁴ *Egenberger v Evangelisches Werk für Diakonie und Entwicklung*, Case C-414/16, 17 April 2018.

⁸⁵ Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, ‘EU Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland’ (ECNI, NIHRC and IHREC, 2022), at 91-92; relying on *Benkharbouche v Secretary of State for Foreign and Commonwealth Affairs* [2017] UKSC 62; and *Walker v Innospec* [2017] UKSC 47.

⁸⁶ Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, ‘EU Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland’ (ECNI, NIHRC and IHREC, 2022), at 91-92; relying on *Mangold v Helm*, Case C 144/04, 22 November 2005. See Eleni Frantziou, ‘The Horizontal Effect of Human Rights after Brexit: A Matter of Renewed Constitutional Significance’ (2021) 4 EHRLR 365.

the EU Charter was directly effective, it could be applied against a public or private body, even where no domestic legislation has been implemented or domestic law contradicts that right.⁸⁷ This research further notes that consideration of how state liability is used should extend to private actors who have been forced to pay compensation in the context of a private dispute for violation of a EU Charter right.⁸⁸

Oversight Role of the Commissions

- 1.46 As noted above, following the UK's withdrawal from the EU, the UK committed to continuing to facilitate the work of the Commissions in upholding human rights and equality standards.⁸⁹ The Commission, together with the ECNI, have powers to oversee the implementation of Windsor Framework Article 2, including powers to bring and intervene in legal proceedings in respect of an alleged breach or potential breach of Windsor Framework Article 2.⁹⁰
- 1.47 In accordance with Article 14 of the Windsor Framework, the Specialised Committee can consider any matter of relevance to Windsor Framework Article 2 brought to its attention by the Commission, by the ECNI or by the Joint Committee of NIHRC and IHREC.⁹¹
- 1.48 The oversight functions of the Commissions in respect of Windsor Framework Article 2 include own motion powers in respect of a potential future breach.⁹² The researchers may wish to explore the way in which this power is exercised and the possible remedies for 'potential future breach' in the context of the principles of primacy and effectiveness and the need to ensure an effective remedy.

⁸⁷ Tobias Lock, Eleni Frantziou and Anurag Deb, 'the Interaction between the EU Charter of Fundamental Rights and the general principles of EU law with the Windsor Framework' (NIHRC, forthcoming), at 26.

⁸⁸ Tobias Lock, Eleni Frantziou and Anurag Deb, 'the Interaction between the EU Charter of Fundamental Rights and the general principles of EU law with the Windsor Framework' (NIHRC, forthcoming), at 32.

⁸⁹ Article 2(2), Windsor Framework.

⁹⁰ See, in particular, Sections 78C and 78D, Northern Ireland Act 1998.

⁹¹ Article 165, UK-EU Withdrawal Agreement provides for establishing the Specialised Committee on the implementation of the Windsor Framework. See Section 78A(9), Northern Ireland Act 1998 in respect of the NI Human Rights Commission and Section 78B(9) in respect of the Equality Commission for NI.

⁹² See Section 78C, Northern Ireland Act 1998.

Key Research Aims

The Commission is interested in exploring the extent to which the obligation to ensure the full effectiveness of EU law informs the interpretation of the non-diminution and keep pace commitment in Windsor Framework Article 2. The purpose of this research is to understand how and to what extent EU law remedies continue to be available in NI pursuant to Windsor Framework Article 2. This research should also explore the role of the Commissions in overseeing the implementation of Article 2 and the interaction of the oversight mechanisms of the Withdrawal Agreement, and associated dispute resolution procedures, with Windsor Framework Article 2.

It is therefore expected that the research will undertake the following non-exhaustive list of tasks:

- Identify relevant procedures and remedies for enforcing EU rights in domestic law. This should include the following:
 - a high-level overview of the remedies and procedures available when the UK was a member state of the EU, including the disapplication of domestic law;
 - how, and the extent to which, these procedures for enforcement and remedies continue to be available in respect of Windsor Framework Article 2, including highlighting changes in how those procedures and remedies operate under the Withdrawal Agreement; and
 - identifying which procedures and remedies are no longer available pursuant to Windsor Framework Article 2.
- Consider and provide an analysis of the extent to which EU law remedies could be considered as:
 - “safeguards” that underpin the relevant chapter of the Belfast Good Friday Agreement; and
 - Enforceable as a corollary of EU rights.
- Consider and provide an analysis of the extent to which domestic procedures and remedies and/or the oversight mechanisms of the Withdrawal Agreement provide for effective legal protection of Windsor Framework Article 2. Consideration should be given to relevant remedies available in the following non-exhaustive list of examples:
 - where the UK changes implementing legislation in respect of a binding EU obligation which is not capable of direct effect

- and which results in a diminution of rights;
 - the principle in *Francovich*; and
 - horizontal proceedings where a finding of breach of Windsor Framework Article 2 is made, including how this interacts with the principle in *Francovich*.
- Consider and provide an analysis of the right to an effective remedy in respect of oversight powers the Commissions to bring legal proceedings including for a “potential future breach” of Windsor Framework Article 2. This should include consideration of how the principles of consistent interpretation and disapplication apply in this context.
- Consider and provide an analysis of the interaction of the oversight mechanisms of the Withdrawal Agreement and associated dispute resolution procedures with:
 - domestic remedies for a breach of Windsor Framework Article 2;
 - compliance by the UK Government and/or NI Executive with relevant remedies; and
 - the Commission’s oversight functions.
- Provide an analysis of the extent to which domestic procedures and remedies and/or oversight mechanisms of the Withdrawal Agreement provide for effective legal protection in respect of the obligation to keep pace with the Annex 1 equality directives pursuant to Article 13 of the Windsor Framework. Consideration should be given to:
 - What domestic procedures and remedies and/or oversight mechanisms of the Withdrawal Agreement are available if the UK Government or NI Executive do not take action to ensure NI law keeps pace with relevant EU developments?
 - What is the timeframe bringing action?
 - What is the appropriate sequencing for domestic enforcement action and that taken and/or oversight mechanisms of the Withdrawal Agreement?
 - Would Article 47 CFR/ *Francovich* type remedies be available?
 - What other forms of relief are available?
 - What, if any, forms of declaratory/injunctive relief, fines and/or penalties are available where a devolved authority or the UK Government fails to act?
 - This analysis should include consideration of the oversight

role of the Commission in respect of Windsor Framework Article 2.

- Consider and provide an analysis of the possible remedies which are available where EU measures were not transposed correctly on 31 December 2020. For example, where there is gap in legislation; and where provisions of domestic law are ineffective. This analysis should include consideration of
 - the oversight role of the Commission in respect of Windsor Framework Article 2; and
 - the interaction of the oversight mechanisms of the Withdrawal Agreement and associated dispute resolution procedures.

Exclusions

The Commission, jointly with ECNI, have produced their own analysis on the scope of Windsor Framework Article 2. The Commission understands that the researchers may wish to set out context and background for the research to ensure an understanding of Windsor Framework Article 2 and to take account of relevant and emerging case law. Nevertheless, the research should not seek to set out a full overview of Article 2.

The Commission has contracted for independent research on the EU Charter of Fundamental Rights, which will be published in the Autumn, and on the environment, human rights and Windsor Framework Article 2, which is at an advanced stage. In addition, Equality Commission for NI has commissioned research on behalf of the NIHRC and IHREC on the Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland, which is at an advanced stage. Any duplication of work with these projects should be avoided and the Commission will ensure that the researchers are kept apprised of related projects and will facilitate collaboration and sharing of drafts where possible.

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, academic or policy makers in this field; and

- To submit an interim report by **29 November 2024** and, having taken account of the NIHRC's comments, a final report by **28 February 2025**. These timeframes are negotiable with the NIHRC.

The NIHRC 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. The researchers will undertake their activities in good faith and seek to avoid any potential conflicts of interest in the course of academic teaching and research undertaken during the course of the project. If any of the research team intend to publish any of the research material developed under this project/agreement prior to the Commission's publication of the final project report and there is the potential for any conflicts of interest, they will consult with the Commission in advance. The Commission grants licence to the members of the research team to use the research for academic purposes, subject to appropriate acknowledgment of the Commission, where portions of the report are reproduced.

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 Director (Human Rights after 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 of no more than two pages, accompanied by appendices of relevant experience and publications of no more than one page per researcher, demonstrating the following:

- experience of each member of the research team in undertaking research in one or more of the following fields (to ensure coverage across of the range of relevant experience):
 - EU law, with a particular focus on EU human rights law;
 - UK public law;
 - the UK's withdrawal from the EU; and
 - the Windsor Framework;
- knowledge and understanding across the research team of the key issues relating to the EU law; UK public law; the UK's withdrawal from the EU; Article 2 of the Windsor Framework;
- 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, including through peer review.

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

2. Quote a fixed price of no more than **£25,000** (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.

The award of the contract will be based on:

- the applicants' 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.

Human Rights Policy

Tenderers must confirm that their organisation has a human rights policy. Those tenderers who have been selected will be asked to provide a copy of their organisational human rights policy prior to award of contract.

GDPR Policy

To the extent that the project deals with personal data, tenderers must confirm that their organisation has a GDPR policy. Those tenderers who have been selected will be asked to provide a copy of their organisational GDPR policy prior to award of contract.

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

**Please email your application to
Accounts@NIHRC.org
by 12 noon on 4 September 2024**

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