



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

**Calls for Expressions of Interest on the impact  
of the UK's withdrawal from the EU on human  
rights and the environment in NI**

**December 2022**

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

**The deadline for submitting a quotation is 12 noon on Tuesday 17 January 2023.**

## Background

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 Protocol on Ireland/NI of the UK-EU Withdrawal Agreement (Protocol Article 2) 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 of Northern Ireland (ECNI), as part of the 'dedicated mechanism' framework.

Pursuant to Section 78A(7), the Commission is seeking to conduct research which examines the impact of the UK's withdrawal from the EU on human rights and the environment, and in particular how, and to what extent, human rights relating to the environment may fall within scope of Protocol Article 2.

It is well established that a safe, clean and healthy environment is essential to the full enjoyment of human rights.<sup>1</sup> In July 2022, the UN Human Rights Committee voted to recognise the right to a clean and healthy environment, and while the vote was non-binding, it demonstrates the drive towards 'greening' international human rights law in response to climate change.<sup>2</sup>

Human rights and the environment in NI consist of a complex interplay of the international and domestic human rights framework and environmental protections through international, national and devolved governance. The Belfast (Good Friday) Agreement 1998 highlighted the importance of co-operation on environmental issues.<sup>3</sup> Before the UK's withdrawal from the EU, EU environmental law and governance mechanisms were "deeply embedded" in NI.<sup>4</sup> Retained EU law set out in the Withdrawal Agreement and Article 5(4) of the Ireland/NI Protocol have preserved some of these protections.<sup>5</sup>

In addition, relevant EU environmental law in Annex 2 of the Ireland/NI Protocol is typically linked to trade however largely omits other key human rights

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<sup>1</sup> A/73/188, 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment' (19 July 2018).

<sup>2</sup> A/76/L.75, 'UN General Assembly: 67<sup>th</sup> session - The human right to a clean, healthy and sustainable environment', 26 July 2022.

<sup>3</sup> Alison Hough, 'Brexit, the Good Friday/Belfast Agreement and the Environment: Issues arising and possible solutions.' (*Northern Ireland Environment Link*, 2019).

<sup>4</sup> Mary Dobbs and Viviane Gravey, 'Environment and Trade' in McCrudden (Ed.), *The Law and Practice of the Ireland-Northern Ireland Protocol* (Cambridge University Press, 2020).

<sup>5</sup> Protocol Article 5(4) provides for the continued application of EU law and governance mechanisms (EU Commission and CJEU) listed in Annex 2 of the Protocol. See: Viviane Gravey and Lisa Whitten, 'The NI Protocol & the environment: the implications for Northern Ireland, Ireland and the UK.' (Brexit & Environment, 2021).

concerns issues such as the impact of water quality and air pollution.<sup>6</sup> The Trade and Cooperation Agreement between the EU and UK also commits both to a level playing field on labour, social standards and climate change and environmental issues.<sup>7</sup>

Following UK withdrawal from the EU, Protocol Article 2 provides an additional layer of human rights and equality protections in NI which may add a further dimension to how human rights interact with climate change and environmental regulation.

### **Protocol Article 2 and the Belfast (Good Friday) Agreement**

During the negotiations leading to the UK's withdrawal from the EU, both the UK and EU recognised that human rights and the 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.<sup>8</sup> Furthermore, the Ireland/Northern Ireland Protocol recognises that EU law has provided a "supporting framework" for the rights, safeguards and equality of opportunity protections in the Belfast (Good Friday) Agreement.<sup>9</sup>

In Protocol Article 2, the UK Government commits to ensuring 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 Protocol 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.<sup>10</sup> The UK Government is also mandated to ensure if EU Equality Directives listed in Annex 1 of the Protocol<sup>11</sup> are changed after 1 January 2021 to

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<sup>6</sup> Mary Dobbs and Viviane Gravey, 'Environment and Trade', in McCrudden, C. (Ed.), *The Law and Practice of the Ireland-Northern Ireland Protocol* (Cambridge University Press, 2020), at 247. Protocol Article 13(3) contains a further keep pace element for Protocol provisions and where an EU measure referred to the Protocol is amended or replaced; NI law must be amended to reflect that change. Where future CJEU caselaw evolves general principles of EU law, the EU Charter of Fundamental Rights and relevant EU Treaty provisions, these rulings will continue to have relevance in NI law.

<sup>7</sup> UK/EU Trade and Cooperation Agreement, 2021.

<sup>8</sup> 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.

<sup>9</sup> Preamble to the Ireland/Northern Ireland Protocol. The underpinning EU law for the rights, safeguards and equality of opportunity protections within scope of Protocol Article 2 include all the obligations the UK EU membership.

<sup>10</sup> NI Human Rights Commission and Equality Commission for NI, 'NIHRC and ECNI Working Paper: The Scope of Article 2(1) of the Ireland/Northern Ireland Protocol' (NIHRC/ECNI, 2022).

<sup>11</sup> 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 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 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.

improve the protection of human rights, then NI law will keep pace with those changes.<sup>12</sup>

The Commission is taking the following approach when assessing whether the non-diminution protection of Protocol Article 2 is engaged, and establishing a potential breach:

- (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?<sup>13</sup>
- (iii) Has there been a diminution in the right, safeguard or equality of opportunity protection on or after 1 January 2021?
- (iv) Did this diminution occur as a result of the UK's withdrawal from the EU?

### **Locating human rights and the environment in the Belfast (Good Friday) Agreement**

When considering part (i) and (ii) of the above approach, it is necessary to understand the context and scope of rights embedded in the Belfast (Good Friday) Agreement, and relevant underpinning EU obligations.

#### *European Convention on Human Rights*

The signatories of the Belfast (Good Friday) Agreement committed to “the civil rights and the religious liberties of everyone in the community” and also “affirmed in particular” a range of rights referenced within the relevant chapter of the Agreement.<sup>14</sup> The UK Government further committed to incorporating the ECHR into domestic law, including direct access to the court and remedies for breach of the Convention.<sup>15</sup> After the UK's withdrawal from the EU, the UK

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<sup>12</sup> Protocol Article 13 contains a further keep pace element for Protocol provisions. Where an EU measure referred to the Protocol is amended or replaced; NI law must be amended to reflect that change. Where future CJEU caselaw evolves general principles of EU law, the EU Charter of Fundamental Rights and relevant EU Treaty provisions, these rulings will continue to have relevance in NI law.

<sup>13</sup> 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 capable of having direct effect 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.

<sup>14</sup> Belfast (Good Friday) Agreement, Part 6 on Rights, Safeguards and Equality of Opportunity – Human Rights, 10 April 1998.

<sup>15</sup> Belfast (Good Friday) Agreement, Part 6 on Rights, Safeguards and Equality of Opportunity – Human Rights, 10 April 1998.

Government confirmed that “key rights and equality provisions in the [Belfast (Good Friday)] Agreement are supported by the ECHR”.<sup>16</sup>

Both substantive rights and procedural rights of the ECHR have been relied upon in relation to environmental issues.<sup>17</sup> Though ECHR does not enshrine an explicit right to a healthy environment, ECtHR jurisprudence recognises that the exercise of certain Convention rights can be undermined by the existence of harm to the environment and exposure to environmental risks.<sup>18</sup>

Article 2 (right to life),<sup>19</sup> Article 8 (right to private, family life and home)<sup>20</sup> of the ECHR are frequently invoked when applying states’ obligations to protect against harms to life and limb in an environmental context. States have also been found in violation of Article 6 (right to a fair trial)<sup>21</sup> and Article 13 (right to an effective remedy)<sup>22</sup> in relation to environmental issues.

The ECtHR is also set to hear cases specifically on the human rights impacts of anthropogenic climate change. Five climate cases are currently pending before the Court, with three of these cases on States’ obligations to prevent climate change referred to the Grand Chamber.<sup>23</sup>

It is the Commission’s view that the non-diminution commitment in Protocol Article 2 encompasses the full range of rights set out in the ECHR, to the extent that they are underpinned by EU legal obligations in force on 31 December 2020. In other words, all EU law in force by that date, which gives effect to ECHR rights, falls within the scope of Protocol Article 2.

This research will therefore examine the extent to which the relevant ECHR rights are underpinned by the EU regulatory framework prior to the UK’s withdrawal from the EU.

### *International standards*

When interpreting human rights in the context of the Belfast (Good Friday) Agreement and general opening commitment to the civil rights and religious liberties of everyone in the community, it is arguable that this incorporates the spectrum of rights contained within international human rights treaties. The Rights, Safeguards and Equality of Opportunity chapter of the Belfast (Good

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<sup>16</sup> 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 3.

<sup>17</sup> Corina Heri, ‘Climate Change before the European Court of Human rights: Capturing Risk, Ill-Treatment and Vulnerability’ (2022) *European Journal of International Law*.

<sup>18</sup> Annalisa Savaresi and Joana Setzer, ‘Rights-based Litigation in the Climate Emergency: Mapping the Landscape and New Knowledge Frontiers’, (2022) 13(1) *Journal of Human Rights and the Environment* (2022), 7.

<sup>19</sup> *Öneryıldız v. Turkey*, Application No. 48939/99, Judgment of 30 November 2004.

<sup>20</sup> *López Ostra v. Spain*, Application No. 16798/90, Judgment of 9 December 1994.

<sup>21</sup> *L’Erablière A.S.B.L. v. Belgium*, Application No. 49230/07, 24 February 2009.

<sup>22</sup> *Cordella and Others v. Italy*, Appl. nos 54414/13 and 54264/15, Judgment of 24 January 2019.

<sup>23</sup> *Duarte Agostinho and Others v. Portugal and 33 other States*, Application No. 39371/20; *Verein KlimaSeniorinnen Schweiz and others v. Switzerland*, (2021), Application No.53600/20; *Carême v. France*, Application No. 7189/21.

Friday) Agreement also requires that advice on the anticipated Bill of Rights should draw on “international instruments and experience.”

This focus on international standards and how they interact with the commitment to civil rights in the Belfast (Good Friday) Agreement can be read alongside the Vienna Declaration, which reaffirmed that “all human rights are universal, indivisible and interdependent and interrelated”.<sup>24</sup> The preambles of both the UN ICCPR and UN ICESCR further recognise that the full enjoyment of human rights can only be achieved if conditions are created whereby everyone can enjoy the full range of rights in both Covenants.<sup>25</sup> The UN Committee on ICESCR has recognised that the realisation of rights can only be achieved where the interdependence and indivisibility of the two sets of human rights is recognized and reflected.<sup>26</sup>

Previous research undertaken by the Commission has highlighted the interconnectedness of all human rights and emphasised that the right to health is of fundamental importance in a democratic society. Moreover, the Belfast (Good Friday) Agreement reflected this understanding of the indivisibility of human rights in its protection of the right to equal participation in society.<sup>27</sup>

As the commitments in Belfast (Good Friday) Agreement are capable of interpretation as ambulatory or living references, the Commission is interested in exploring the extent to which the general commitment to civil rights by signatories of the Belfast (Good Friday) Agreement was made with reference to the full range of international human rights standards ratified by the UK. To the extent that courts accept this interpretation, this could potentially allow for greater scope of environmental protection, provided that the rights are underpinned by EU legal obligations in force on 31 December 2020.

Treaty bodies have interpreted certain human rights as placing environmental obligations on states. There is no universal right to a clean and safe environment in international treaties. However, a safe and healthy environment is linked to the enjoyment of human rights in a range of ways.

In relation to Article 6 (right to life) of the UN ICCPR, the UN Human Rights Committee highlighted that the State’s duty to protect life should include “appropriate measures against...direct threats to life or prevent individuals

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<sup>24</sup> Vienna Declaration and Programme of Action 1993, adopted by the World Conference on Human Rights in Vienna, 25 June 1993.

<sup>25</sup> Preamble to the UN International Covenant on Civil and Political Rights 1966; UN International Covenant on Economic, Social and Cultural Rights 1966.

<sup>26</sup> ‘UN ICESCR Committee General Comment 3: The Nature of States Parties’ Obligations (Art 2, Para 1, of the Covenant)’, 14 December 1990.

<sup>27</sup> Tamara Hervey, ‘Brexit, Health and its potential impact on Article 2 of the Ireland/Northern Ireland Protocol’ (NIHRC, 2022).

enjoying their right to life with dignity ... including degradation of the environment”,<sup>28</sup> and that State obligations under environmental law should inform their approach to Article 6.<sup>29</sup> In addition, in 2022, the UN Human Rights Committee found that Australia had failed to protect indigenous Torres Strait Islanders against adverse impacts of climate, thus violating their rights to enjoy their culture and private life, family and home under Articles 17 and 27 UN ICCPR.<sup>30</sup>

The UN ICESCR Committee have interpreted the right to an adequate standard of living (Article 11) and highest attainable standard of health (Article 12) in UN ICESCR to include a right to food and water, which requires States to implement appropriate environmental hygiene.<sup>31</sup>

On the right to the highest attainable standard of health (Article 24) of the UN CRC, the UN CRC Committee stated that States should take measures to address the dangers and risks that local environmental pollution poses to children’s health in all settings,<sup>32</sup> and specifically referenced climate change as one of the biggest threats to children’s health.<sup>33</sup> The UN CRC Committee have also recently published Draft General Comment No 26 on children’s rights and the environment with a special focus on climate change.<sup>34</sup>

The UN CEDAW Committee have also recommended that the State has an obligation to take effective steps towards equitably managing shared natural resources and limiting environmental risks that contribute to climate change.<sup>35</sup>

In addition, in 2020, the UN Committees on CEDAW, ICESCR, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, CRC and CRPD published a joint statement welcoming the report by the Inter-Governmental Panel on Climate Change on global warming of 1.5°C above pre-industrial levels.<sup>36</sup> The Committees highlighted that in order for States to “comply with their human rights obligations and to realize the

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<sup>28</sup> CCPR/C/GC/36, ‘Human Rights Committee: General Comment No. 36 – Article 6, Right to Life’ 3 September 2019, para 26.

<sup>29</sup> Ibid, para 62.

<sup>30</sup> CCPR/C/135/D/3624/2019, ‘Human Rights Committee: Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No 3624/2019’, 22 September 2022.

<sup>31</sup> E/C.12/1999.5, ‘General Comment No 12 (1999) the right to adequate food (art 11 of the International Covenant on Economic, Social and Cultural Rights), 12 May 1999; E/C.12/2002/11, ‘General Comment No 15 (2002) the right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)’; 20 January 2003.

<sup>32</sup> CRC/C/GC/15, ‘General comment No 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)’, 17 April 2013, para 49.

<sup>33</sup> Ibid, para 50.

<sup>34</sup> UN Committee on the Rights of the Child, ‘Draft General Comment No 26 (202x) – Children’s rights and the environment with a special focus on climate change’ (UN CRC, 2022).

<sup>35</sup> CEDAW/C/GC/37, ‘General Recommendation No 37 on gender-related dimensions of disaster risk reduction in the context of climate change’, 7 February 2018.

<sup>36</sup> HRI/2019/1, ‘Statement on human rights and climate change – Joint statement by the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities’, 14 May 2020.

objectives of the Paris Agreement, they must adopt and implement policies aimed at reducing emissions".<sup>37</sup>

This research will therefore have to examine the relevant human rights and environmental protection and review the extent to which the enjoyment of the international framework of human rights falls within the relevant chapter of the Belfast (Good Friday) Agreement and is underpinned by the EU regulatory framework prior to the UK's withdrawal from the EU.

### *EU environmental regulation and human rights*

EU law and obligations governing the environment are largely regulatory in nature, nevertheless, they do overlap with human rights. EU environmental regulation covers a vast range of areas, with legislation developed over decades.<sup>38</sup> It focuses on preserving, protecting and improving the quality of the environment, protecting human health, and prudent and rational utilisation of natural resources, in addition to combating climate change.<sup>39</sup> The general principles of EU law involve fundamental rights and environmental policy including precaution, prevention, rectifying pollution at source, and the 'polluter pays' principle.<sup>40</sup> In addition, the EU is a contracting party to key international environmental agreements such as the Aarhus Convention on access to information, participation and justice,<sup>41</sup> and the Espoo Convention on environmental impact assessments.<sup>42</sup> Key aspects of these agreements have been incorporated into EU law.<sup>43</sup>

Further relevant interaction between rights and EU environmental policy can be found in Article 37 of the EU Charter on Fundamental Rights, which requires:

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Where required by the UK-EU Withdrawal Agreement, the EU Charter of Fundamental Rights continues to have relevance in NI including for the

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<sup>37</sup> Ibid, at para 11.

<sup>38</sup> European Union, 'Summary of EU law – Environment and climate change'. Available at: <https://eur-lex.europa.eu/content/summaries/summary-20-expanded-content.html#:~:text=EU%20environmental%20policies%20and%20legislation,move%20toward%20a%20sustainable%20economy.>

<sup>39</sup> Article 11 and Article 191, Treaty on the Functioning of the EU 2012.

<sup>40</sup> Article 191(2), Treaty on the Functioning of the EU 2012.

<sup>41</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice on Environmental Matters (Aarhus, 25 June 1998). Available at: <https://unece.org/DAM/env/pp/documents/cep43e.pdf>.

<sup>42</sup> Convention on Environmental Impact Assessment in A Transboundary Context (Espoo, 25 February 1991). Available at: [https://unece.org/DAM/env/eia/documents/legaltexts/Espoo\\_Convention\\_authentic\\_ENG.pdf](https://unece.org/DAM/env/eia/documents/legaltexts/Espoo_Convention_authentic_ENG.pdf)

<sup>43</sup> See, for example: Directive 2003/4/EC, EU Parliament and Council Directive on public access to environmental information and repealing Council Directive 90/313/EEC', 28 January 2003.



interpretation of the Protocol and Article 2. This is an exception from the general provision 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.<sup>44</sup>

When EU Member States are implementing EU law, they are required to “respect the rights, observe the principles and promote the application” of the EU Charter.<sup>45</sup> Therefore the EU Charter will continue to apply in the application and interpretation of any EU law and concepts referred to in the Withdrawal Agreement.<sup>46</sup> Pursuant to Article 4(1), the Withdrawal Agreement produces ‘the same legal effects’ on the UK as EU law on EU Member States, including compliance with the EU Charter on Fundamental Rights and the general principles of EU law.<sup>47</sup>

Furthermore, Article 13 of the Protocol provides that future caselaw of the CJEU will continue to inform the Protocol Annex 1 equality directives. To the extent to which such rulings evolve general principles of EU law, the EU Charter of Fundamental Rights and the relevant EU Treaty provisions, will continue to have relevance in NI.<sup>48</sup> In the NI High Court, Colton J noted that there is no temporal limitation on Article 13(2) of the Protocol.<sup>49</sup>

The Commission is interested in understanding the overlap between rights protections and EU legal framework by mapping EU environmental regulation within the scope of Protocol Article 2. To fall into scope of Protocol Article 2, the measure must facilitate the application of relevant rights set out in the Belfast (Good Friday) Agreement (which, as discussed above, may be understood to encompass the ECHR and international standards), and binding on the UK on (or before) 31 December 2020, as a result of EU law?

## Trade and Cooperation Agreement

The Trade and Cooperation Agreement (TCA) non-regression provisions on the level playing field between the UK and EU, including the environment and

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<sup>44</sup> Section 5, EU (Withdrawal) Act 2018. See *Re SPUC Pro-Life Limited* [2022] NIQB 9, at paras 78 and 115.

<sup>45</sup> Article 51(1) of the EU Charter of Fundamental Rights; *Åklagaren v Hans Åkerberg Fransson*, Case C-617/10, 26 February 2013; *Vera Egenberger v Evangelisches Werk für Diakonie und Entwicklung eV*, Case C-414/16, 17 April 2018, para 76.

<sup>46</sup> Article 4(3) provides that where the Withdrawal agreement refers to EU law or concepts, it should be interpreted and applied in accordance with the methods and general principles of EU law. As noted in Kellerbauer et al, “The obligation to apply these provisions in accordance with the general principles of [EU] law means for the UK that it is bound to observe the EU fundamental rights when implementing those provisions of the Agreement. Hence in substance, Article 4(3) has the same effect as article 51(1) if the EU Charter of Fundamental Rights.” Kellerbauer, Dumitriu-Segnana, Thomas Liefländer, ‘The UK-EU Withdrawal Agreement – A Commentary’ (OUP, 2021), at 39.

<sup>47</sup> For further discussion on the EU Charter and Protocol Article 2 see Bernard McCloskey, ‘Charter of Fundamental Rights’ in McCrudden (ed), ‘The Law and Practice of the Ireland-Northern Ireland Protocol’ (OUP, 2021), at 164-166.

<sup>48</sup> Article 13(2) and 13(3), Ireland/Northern Ireland Protocol to the UK-EU Withdrawal Agreement. See also *Re SPUC Pro-Life Limited* [2022] NIQB 9, at para 93.

<sup>49</sup> *Re Allister* [2021] NIQB 64, at para 234.

climate change, are relevant to Protocol Article 2. The TCA defines environmental levels of protection as “protecting the environment, including the prevention of a danger to human life or health from environmental impacts”.<sup>50</sup>

Article 391(2) of the TCA states that parties to the Agreement,

Shall not weaken or reduce, in a manner affecting trade or investment between the Parties, its environmental levels of protection or its climate level of protection below the levels that are in place at the end of the transition period.

The level playing field commitment in the TCA is therefore qualified to the effect that any diminution should not affect trade or investment.<sup>51</sup> Changes to UK environmental regulation could therefore be compatible with the Trade and Cooperation Agreement but could breach rights protected under Protocol Article 2.

The Commission is therefore interested in understanding the interaction between the Trade and Cooperation Agreement and Protocol Article 2 in relation to human rights and the environment.

## **Key research aims**

Conscious that extensive research has already explored the link between human rights and the environment, the interface between the EU Charter and General Principles and environment protection, the effect of UK withdrawal from the EU in relation to some environmental issues and biodiversity on the island of Ireland, in addition to work on the Ireland/NI Protocol, the Commission is specifically interested in exploring the degree to which Protocol Article 2 may offer protection in relation to environmental rights.<sup>52</sup>

The Commission also wishes to make recommendations on how the NI Assembly and the UK Government could address any potential legal and/or policy gaps which arise with a view to protecting human rights in the context of environmental regulation. In addition, to the extent that such recommendations may impact on the protection of human rights in NI, the Commission wishes to make equivalent recommendations to the Government of Ireland. Those areas of north-south cooperation identified in Strand Two of the Belfast (Good Friday) Agreement are of particular interest as well as internal NI law and policy. Article 11 of the Ireland /NI Protocol is relevant in this regard, in stating that the Protocol ‘shall be implemented and applied so as to maintain the necessary

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<sup>50</sup> Article 390, Trade and Cooperation Agreement 2021.

<sup>51</sup> Article 391(2), Trade and Cooperation Agreement 2021.

<sup>52</sup> Relevant work includes Mary Dobbs and Viviane Gravey, ‘Environment and Trade’ in McCrudden (Ed.), *The Law and Practice of the Ireland-Northern Ireland Protocol* (Cambridge University Press, 2020); Viviane Gravey and Lisa Whitten, ‘The NI Protocol & the Environment: The implications for Northern Ireland, Ireland and the UK.’ (*Brexit & Environment*, 2021).

conditions for continued North-South cooperation, including in the areas of environment...’.

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

- Map the ECHR rights relating to environmental rights protection that are within scope of the Belfast (Good Friday) Agreement;
- Map the extent to which international standards relating to environmental rights protection that are within scope of the Belfast (Good Friday) Agreement;
- Identify and analyse relevant EU law (as defined by Article 2(a) of the UK-EU Withdrawal Agreement) and the degree to which it gives effect to environmental rights protection set out above;
- Scope any current or potential diminution of rights, safeguards and opportunities in relation to environmental rights protection;
- If any diminution is found, determining whether it was a result of the UK’s withdrawal from the EU, i.e. whether the diminution is incompatible with relevant EU law identified;
- Examine the interaction between Protocol Article 2, and other relevant Protocol provisions, and the Trade and Cooperation Agreement on environmental and climate change issues;
- Set out the rationale for interpretation on any positions that have been adopted; and
- Identify any other relevant issues not covered by the above which should be brought to the attention of the Commission.

Mindful that this is an extensive area of research, illustrative cases studies of how Protocol Article 2 may offer protection in relation to environmental rights, is acceptable.

## **Exclusions**

This research builds on existing work, and as such is not concerned with re-stating the link between human rights and the environment. It should also exclude analysis of other parts of the Ireland/Ni Protocol unless they are affected Protocol Article 2. Parallel research is currently being carried out on the interface between the EU Charter and General Principles and Protocol Article 2 and therefore extensive consideration does not have to be given to rights afforded by the Charter or General Principles, apart from the extent to which

they directly relate to human rights, the environment and Protocol Article 2. We will ensure that the researchers are kept apprised of related projects and will facilitate collaboration 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 31 March 2023 and, having taken account of the NIHRC's comments, a final report by 31 May 2023. 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.

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, 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 one or more of the following fields (to ensure coverage across of the range of relevant experience):
    - ECHR and the environment;
    - International human rights law and the environment;
    - EU environmental law;
    - the UK's withdrawal from the EU; and

- NI environmental protections;
- knowledge and understanding across the research team of the key issues relating to the ECHR and international human rights law and the environment; EU environmental law; the UK's withdrawal from the EU; NI environmental protections;
- 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 **£20,000** (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 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**

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](mailto:Eilis.Haughey@NIHRC.org) who will arrange a prompt response.**

**Please email your application to [Accounts@NIHRC.org](mailto:Accounts@NIHRC.org) by 12 noon (UK Time) on Tuesday 17 January 2023**

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