



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

NIHRC Briefing on the 'The Environment, Human Rights and the Windsor Framework' Report

June 2025

Table of Contents

Summary of Recommendations	3
1.0 Introduction.....	5
2.0 Overview of Article 2.....	7
3.0 Environment, Human Rights and the Belfast (Good Friday)Agreement	11
Human Rights and the Environment	11
Rights, Safeguards and Equality of Opportunity and the Environment.....	11
4.0 EU Environmental Law Underpinning Human Rights Connected to the Environment.....	14
Nature and Scope of EU Environmental Law	14
EU treaties	15
EU Charter of Fundamental Rights	15
General principles of EU law	16
International Agreements to which the EU is party: Aarhus Convention.....	16
Indicative EU measures.....	17
EU Environmental Law and Human Rights	18
5.0 Is there a diminution of environmental rights : case-study.....	24
Downgrading air quality laws.....	24
Rights protected	25
Underpinned by EU Law	26
Possible diminution	27

Summary of Recommendations

The NIHRC:

- 3.12 affirms the interdependent, interrelated and indivisible nature of human rights and advises that a clean and safe environment is essential for the enjoyment of human rights.**
- 3.13 in line with ECtHR jurisprudence on the connection between the environment and human rights, advises that the commitments in the Rights, Safeguard and Equality of Opportunity Chapter of the Belfast (Good Friday) Agreement should be understood as encompassing the environmental obligations and safeguards required to realise those rights.**
- 4.24 advises that EU environmental law that underpins commitments in the Rights, Safeguards and Equality of Opportunity Chapter of the Belfast (Good Friday) Agreement, is within the scope of Windsor Framework Article 2.**
- 4.25 advises that rights found in the Aarhus Convention are an integral part of the EU legal order and must therefore be interpreted in line with the rights in the EU Charter of Fundamental Rights, including the right to an effective remedy in Article 47. Any diminution of these rights may be contrary to the commitment in Windsor Framework Article 2.**
- 4.26 advises that EU minimum environmental standards include the right of individuals to challenge decisions seen to be in violation of those obligations, where such standards are capable of direct effect.**
- 4.27 recommends that the Department of Agriculture, Environment and Rural Affairs study in detail the relevant EU environmental law and relevant CJEU jurisprudence with the objective of identifying and clarifying binding minimum standards on environmental protection that underpin human rights.**
- 5.17 advises that the removal of Regulations 9 and 10 of the National Emissions Ceiling Regulations 2018, if not replaced, significantly diminishes the duty to tackle air pollution, below relevant EU minimum standards.**

- 5.18** advises that the loss of EU-derived regulatory and procedural mechanisms to achieve clean air may result in a diminution of the ability of an individual to assert their right to health, such as the right to challenge air pollution derived from EU law, such as the EU Ambient Air Directive and the EU National Emission Reduction Commitments Directive.
- 5.19** further advises that the removal of Regulations 9 and 10 of the National Emissions Ceiling Regulations 2018 may result in a diminution of procedural environmental rights to challenge the removal of key EU-derived measures to tackle air pollution that were underpinned by the EU National Emission Reduction Commitments Directive.
- 5.20** advises the Department of Agriculture, Environment and Rural Affairs, the NI Office and the Department for Environment, Food and Rural Affairs to conduct in-depth analysis on the impact the removal of Regulations 9 and 10 of the National Emissions Ceiling Regulations 2018 has had on the duty to combat air pollution in NI. The removal of the statutory framework without a domestic equivalent replacing the EU minimum standards may have resulted in a diminution of rights contrary to the commitment in Windsor Framework Article 2.

1.0 Introduction

- 1.1 A safe, clean and healthy environment is essential to the full enjoyment of human rights.¹ Recent cases on the impact of climate change have brought the relationship between human rights and the environment into sharp focus.² The European Court of Human Rights (ECtHR) has confirmed the link between human rights and environmental protections.³ In Northern Ireland (NI) human rights and the environment interact in a complex interplay of international and domestic human rights frameworks and environmental protections through international, national and devolved governance.
- 1.2 Windsor Framework Article 2 requires the United Kingdom (UK) Government to ensure that no diminution of the rights, safeguards and equality protections contained in the relevant part of the Belfast (Good Friday) Agreement 1998 occurs as a result of the UK's withdrawal from the European Union (EU).
- 1.3 The Northern Ireland Human Rights Commission (NIHRC) was established by the Northern Ireland Act 1998, further to the Belfast (Good Friday) Agreement 1998. It is a national human rights institution with 'A status' accreditation from the United Nations. The NIHRC is required by its foundational statute to review the adequacy and effectiveness of law and practice relating to the protection of human rights in NI and, by amendment to that statute, to monitor the implementation of Windsor Framework Article 2(1).⁴

¹ 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; A/HRC/RES/48/13, 'Resolution adopted by the Human Rights Council: The human right to a clean, healthy and sustainable environment', 18 October 2021. Increasingly, UN human rights treaty bodies are addressing climate change in their recommendations and guidance to State parties. See E/C.12/2002/11, 'General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)', 20 January 2003; CRC/C/GC/15, 'UN CRC Committee General comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)', 17 April 2013; CCPR/C/GC/36, 'UN Human Rights Committee General Comment No.36 on Article 6: the right to life', 3 September 2019; CEDAW/C/GC/37, 'UN CEDAW Committee General Recommendation No. 37 on Gender-related dimensions of disaster risk reduction in the context of climate change', 13 March 2018; CRC/C/GC/26, 'UN CRC Committee General comment No. 26 on children's rights and the environment with a special focus on climate change', 22 August 2023.

² *Carême v France* (2024) ECHR 7189/21; *Duarte Agostinho v Portugal and 32 others* (2024) ECHR 39371/20; and *Verein Klimasenioren v Switzerland* (2024) ECHR 304.

³ *Verein Klimasenioren v Switzerland* (2024) ECHR 304.

⁴ Section 69(1) and Section 78A(1) Northern Ireland (NI) Act 1998. The Protocol on Ireland/Northern Ireland to the UK-EU Withdrawal Agreement 2020 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.

- 1.4 Given the likely effect that the UK's withdrawal from the EU would have on the legal framework regulating the environment, the NIHRC commissioned research considering the potential interaction between Windsor Framework Article 2, human rights and the environment.
- 1.5 This briefing note accompanies the independent research report commissioned by the NIHRC and authored by Dr Ciara Brennan, Dr Mary Dobbs, Dr Orla Kelleher, Ms Alison Hough BL and Dr Lisa Claire Whitten titled 'The Environment, Human Rights and the Windsor Framework'.⁵
- 1.6 In their comprehensive report, Brennan et al begin by reflecting on the established link between human rights and the environment and proceed to identify some of the ways in which EU environmental law interacts with the Rights, Safeguards and Equality of Opportunity section of the Belfast (Good Friday) Agreement.
- 1.7 The EU has shared competency with Member States in the field of the environment and has developed extensive legislation and policy on various aspects of environmental protection.⁶ Prior to the UK's exit from the EU, the EU played a significant role in NI's environmental governance architecture and provided various oversight and accountability mechanisms that contributed very significantly to the enjoyment of a range of human rights. The research identifies the broad impact that the UK's withdrawal from the EU has had on environmental protection in NI by considering three practical studies (on air quality, on rights under the Aarhus Convention⁷ and on nature conservation), illustrating the impact of Windsor Framework Article 2 in these contexts.
- 1.8 The NIHRC considered the research and conducted its own analysis of Windsor Framework Article 2 in the context of the environment. This briefing note summarises the NIHRC's advice and recommendations informed by the research and highlights key points in the research.

⁵ Ciara Brennan, Mary Dobbs, Alison Hough, Orla Kelleher and Lisa Whitten, 'The Environment, Human Rights and the Windsor Framework' (NIHRC, 2025).

⁶ Shared competence means competence that is not exclusive to the EU and can only be exercised in conformity with the EU law principles of conferral and subsidiarity where the objective of the proposed action cannot be sufficiently achieved by Member State level action, but where the objective can be better achieved by action at EU level. See Chapter 4 (Brexit and Environmental Protection in Northern Ireland), in Ciara Brennan, Mary Dobbs, Alison Hough, Orla Kelleher and Lisa Whitten, 'The Environment, Human Rights and the Windsor Framework' (NIHRC, 2025) for detailed discussion on the EU's contribution to environmental law and policy across Europe and in NI.

⁷ UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 1998 (Aarhus Convention).

- 1.9 The following Section 2 provides an overview of Windsor Framework Article 2 in light of recent court judgments which have interpreted the nature and scope of Article 2.⁸ Section 3 summarises the main thesis of the research report, namely that the Belfast (Good Friday) Agreement includes a wide range of human rights that cannot be fully realised without effective environmental protections, enforcement mechanisms and associated procedural rights. In Section 4 the briefing note focuses on how EU law environmental protections and enforcement mechanisms underpin the human rights commitments connected to the environment. In Section 5 the briefing note contains advice and recommendations on the relevance of Windsor Framework Article 2, informed by a case-study on air quality and the Aarhus Convention which was developed in the research report.

2.0 Overview of Article 2

- 2.1 Article 2 of the Windsor Framework states:

The United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, including in the area of protection against discrimination, as enshrined in the provisions of Union law listed in Annex 1 to this Framework, and shall implement this paragraph through dedicated mechanisms.

- 2.2 By Windsor Framework Article 2, the UK Government committed to ensuring that certain rights, safeguards and equality of opportunity protections are not diminished as a result of the UK leaving the EU. Therefore, to fall within scope of Windsor Framework Article 2, the human right or equality protection being relied upon must be covered by the relevant chapter of the Belfast (Good Friday) Agreement and have been underpinned by EU law including EU treaties, directives and regulations. In most cases, the relevant EU law will be that which was binding on the UK on 31 December 2020.

⁸ *SPUC Pro- Life Limited Application for Judicial review* [2023] NICA 35; *The Northern Ireland Human Rights Commission and JR 295's Applications and In the matter of the Illegal Migration Act 2023* [2024] NIKB 44; *In the Matter of an Application by Martina Dillon and others - NI Troubles (Legacy and Reconciliation) Act 2023* [2024] NICA 59, subject to appeal.

- 2.3 In addition to the ‘no diminution’ commitment, Windsor Framework Article 2 requires the UK Government to “keep pace” with any changes made by the EU to the six EU main equality directives listed Annex 1, which improve the minimum levels of protection available. This includes adhering to relevant case law of the Court of Justice of the EU (CJEU).⁹
- 2.4 The NI Court of Appeal and High Court have handed down judgments that interpret Windsor Framework Article 2, the Belfast (Good Friday) Agreement chapter and the approach to relevant EU law,¹⁰ with further proceedings expected.¹¹ Though the Belfast (Good Friday) Agreement was neither drafted for this purpose, nor in tight legal terms, the courts have expressed no difficulty in utilising its content as a signpost to the hard legal requirements of relevant EU law.
- 2.5 In the case of *Dillon*,¹² the NI Court of Appeal considered Article 4 of the UK EU Withdrawal Agreement and section 7A of the EU (Withdrawal) Act 2018 and held that:
- Windsor Framework Article 2 has direct effect and can be relied upon in any court;¹³
 - The rights, safeguards and equality of opportunity chapter in the Belfast (Good Friday) Agreement is not to be narrowly construed or regarded through the lens of the conflict but consists of a “broad suite of rights” and extends “further than those rights specifically listed”;¹⁴
 - EU law that underpins these rights and which bound the UK prior to EU withdrawal continues to set minimum standards below which the law in NI must not fall;¹⁵

⁹ 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.

¹⁰ See, for example, *In the Matter of an Application by Martina Dillon and others - NI Troubles (Legacy and Reconciliation) Act 2023* [2024] NICA 59 and *Northern Ireland Human Rights Commission's Application and JR295's Application and In the matter of The Illegal Migration Act 2023* [2024] NIKB 35.

¹¹ Jayne McCormack, ‘Criticism of Courts’ decision to allow Legacy Act appeal’, BBC News, 10 April 2025.

¹² *In the Matter of an Application by Martina Dillon and others - NI Troubles (Legacy and Reconciliation) Act 2023* [2024] NICA 59.

¹³ *Ibid*, at paras 57, 63-72, 83-85, 89.

¹⁴ *Ibid*, at para 115.

¹⁵ *Ibid*, at paras 117 and 121. See also *Northern Ireland Human Rights Commission's Application and JR295's Application and In the matter of The Illegal Migration Act 2023* [2024] NIKB 44, at para 171.

- The EU Victims' Directive "is to be interpreted in accordance with the EU Charter and general principles of EU law";¹⁶ and
- Disapplication of offending provisions "is the correct remedy" for breach of Windsor Framework Article 2.¹⁷

2.6 Though subject to appeal, the decisions of the courts have, to date, aligned with the NIHRC's analysis set out in the working paper by the NIHRC and the Equality Commission for Northern Ireland.¹⁸ The NIHRC welcomes the recognition by the courts of the contribution made in submissions.¹⁹

2.7 A breach of Windsor Framework Article 2 is identified if the answer to each and all of the following questions is yes:

- (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 or before 31 December 2020?
 - (b) given effect in NI law, in whole or in part, on or before 31 December 2020?²⁰
- (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 had the UK remained in the EU?²¹

2.8 The NI Court of Appeal in *Dillon* used a similar six-part test set out in a previous judgment but referred to it as an "aid not a binding or rigid code".²²

2.9 The enduring relevance of the EU Charter of Fundamental Rights is important to this discussion on human rights, the environment and

¹⁶ Ibid, at para 126.

¹⁷ Ibid, at paras 57 and 151-158.

¹⁸ NI Human Rights Commission and Equality Commission for NI, 'Working Paper: Scope of Article 2(1) of the Ireland/Northern Ireland Protocol to the UK-EU Withdrawal Agreement 2020' (NIHRC and ECNI, 2022).

¹⁹ *In the Matter of an Application by Martina Dillon and others - NI Troubles (Legacy and Reconciliation) Act 2023* [2024] NICA 59, at para 112; *SPUC Pro- Life Limited Application for Judicial review* [2023] NICA 35, at para 72.

²⁰ Where UK 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 rights contrary to Windsor Framework Article 2, provided the EU obligation existed and was capable of having binding effect on that date.

²¹ For more detail, see NI Human Rights Commission and Equality Commission for NI, 'Working Paper: The Scope of Article 2(1) of the Ireland/Northern Ireland Protocol', (NIHRC and ECNI, 2022).

²² *In the Matter of an Application by Martina Dillon and others - NI Troubles (Legacy and Reconciliation) Act 2023* [2024] NICA 59, at para 96.

Windsor Framework Article 2. The Court of Appeal in England and Wales held that “the Charter is relevant to the construction and the application of substantive provisions of the [UK-EU Withdrawal] Agreement”²³ which includes the Windsor Framework. As referred to above, the NI Court of Appeal held that relevant EU law must be interpreted in line with the EU Charter of Fundamental Rights.²⁴ This is an exception from section 5 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 2021.²⁵ In a research report commissioned by the NIHRC, Lock et al further explore and explain the interaction between the EU Charter and Windsor Framework.²⁶

- 2.10 The EU Charter contains a free-standing environmental provision, Article 37, on environmental protection. The EU Charter also contains a provision on the right to an effective remedy and access to justice, Article 47. Both provisions have been relied upon to interpret provisions of EU environmental directives before the CJEU, which will be discussed further in Part 3 of this briefing note.
- 2.11 Having provided an overview of Windsor Framework Article 2, the next parts of this briefing note consider in more detail the connection between human rights and the environment in the context of the Rights, Safeguards and Equality of Opportunity chapter of the Belfast (Good Friday) Agreement, what EU law can be seen as underpinning such rights and in what cases can we argue that a diminution may have occurred.

²³ *SSWP v AT* [2023] EWCA Civ 1307, at para 92.

²⁴ *In the Matter of an Application by Martina Dillon and others - NI Troubles (Legacy and Reconciliation) Act 2023* [2024] NICA 59, at para 126.

²⁵ Section 5, EU (Withdrawal) Act 2018. See *Re SPUC Pro-Life Limited* [2022] NIQB 9, at paras 78 and 115.

²⁶ Tobias Lock, Eleni Frantziou and Anurag Deb, ‘The Interaction between the EU Charter of Fundamental Rights and general principles with the Windsor Framework’ (NIHRC, 2024), at 54. See also NI Human Rights Commission and Equality Commission for NI, ‘Working Paper: Scope of Article 2(1) of the Ireland/Northern Ireland Protocol to the UK-EU Withdrawal Agreement 2020’ (NIHRC and ECNI, 2022), at para 7.2.

3.0 Environment, Human Rights and the Belfast (Good Friday) Agreement

Human Rights and the Environment

- 3.1 In the 'Environment, Human Rights and the Windsor Framework' report, the authors provide an in-depth discussion on the relationship between human rights and the environment.²⁷ The degree to which human rights can be realised is significantly affected by access to clean water, clean air and a healthy environment. It also depends on enforcement and procedural rights (such as access to environmental information held by a public authority) and environmental protections (such as environmental standards on clean air or water). The report contends that, whilst environmental and climate change legislation and jurisprudence is developing, the importance of environmental standards and safeguards in protecting human rights, such as the right to health, are notions well developed in the jurisprudence of both the ECtHR and the CJEU.

Rights, Safeguards and Equality of Opportunity and the Environment

- 3.2 The first step in establishing the relevance of Windsor Framework Article 2 is to consider the connection between environmental standards and safeguards and the Rights, Safeguards and Equality of Opportunity chapter of the Good Friday Agreement.
- 3.3 In that chapter, the parties to 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.²⁸
- 3.4 The NI Court of Appeal in *Dillon*²⁹ reasoned that the Rights, Safeguards and Equality of Opportunity chapter was intended to extend much further than those rights specifically listed. The import of that chapter is that a

²⁷ Ciara Brennan, Mary Dobbs, Alison Hough, Orla Kelleher and Lisa Whitten, 'The Environment, Human Rights and the Windsor Framework' (NIHRC, 2025), Chapter 1.

²⁸ Belfast (Good Friday) Agreement, Part 6 on Rights, Safeguards and Equality of Opportunity – Human Rights, 10 April 1998.

²⁹ *In the Matter of an Application by Martina Dillon and others - NI Troubles (Legacy and Reconciliation) Act 2023* [2024] NICA 59, at para 115.

“broad suite of rights” which had been recognised by the participants in the talks, and which were to be given further effect in the mechanisms to be established pursuant to the Belfast (Good Friday) Agreement, would provide a baseline for individual rights-protection in the new arrangements which were to follow.³⁰

- 3.5 The Rights, Safeguards and Equality of Opportunity chapter includes the UK Government commitment to complete incorporation of the ECHR into domestic law, including direct access to the court and remedies for breach of the Convention.³¹ After the UK’s withdrawal from the EU, the UK Government confirmed that “key rights and equality provisions in the [Belfast (Good Friday)] Agreement are supported by the ECHR”.³²
- 3.6 The NIHRC believes that the non-diminution commitment in Windsor Framework 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 or before 31 December 2020. Put another way, the Commission considers that all EU law which underpins an ECHR right, and was binding on the UK before its withdrawal from the EU, falls within scope of the non-diminution commitment in Windsor Framework Article 2.³³
- 3.7 This is in line with the reasoning of the NI Court of Appeal, which confirmed that the rights of victims of crime fall within the scope of the relevant chapter in the Belfast (Good Friday) Agreement and are promoted and given effect by civil rights available to all victims of crime, including Articles 2, 3, 6 and 14 of the ECHR.³⁴ The Court went on to find that these rights are particularised to some extent and enhanced by relevant EU law, in that case the EU Victims’ Directive interpreted in line with the EU Charter, as will be discussed in the next section.³⁵

³⁰ Ibid, at para 115.

³¹ Belfast (Good Friday) Agreement, Part 6 on Rights, Safeguards and Equality of Opportunity – Human Rights, 10 April 1998. The Human Rights Act 1998 incorporated many of the ECHR rights into domestic UK law.

³² 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.

³³ NI Human Rights Commission and Equality Commission for NI, ‘Working Paper: The Scope of Article 2(1) of the Ireland/Northern Ireland Protocol’, (NIHRC and ECNI, 2022), at para 3.4.

³⁴ *In the Matter of an Application by Martina Dillon and others - NI Troubles (Legacy and Reconciliation) Act 2023* [2024] NICA 59, at paras 115-117.

³⁵ Ibid, at para 119 and 126.

- 3.8 The ECtHR has considered case-law on the environment and human rights and has confirmed that they are interrelated and interdependent.³⁶ For example, in the landmark *KlimaSeniorinnen*³⁷ case, an association of senior women argued that Switzerland's inadequate climate policies violate the women's right to life under ECHR Article 2 and the right to a family and private life under ECHR Article 8. The Court concluded that inadequate State action to combat climate change is a threat to the enjoyment of human rights that could trigger the applicability of Article 2 of the ECHR, and that Article 8 of the ECHR must be understood as encompassing a right for individuals to effective protection by the State authorities from serious adverse effects of climate change on their life, health, well-being and quality of life.³⁸ The ECtHR found violations of Article 8 and of Article 6 of the ECHR (right to a fair trial).
- 3.9 This judgment illustrates the ECtHR's recognition that certain ECHR rights are undermined by the existence of harm to the environment and exposure to environmental risks.³⁹ In other cases, Article 2 (right to life)⁴⁰ and Article 8 (right to private, family life and home)⁴¹ have been invoked when considering States' positive obligation to protect against harms to life and limb. States have also been found in violation of Article 6 (right to a fair trial)⁴² and Article 13 (right to an effective remedy)⁴³ in relation to environmental issues.
- 3.10 Brennan et al provide a useful mapping of this and other key ECtHR case-law that confirms increasing recognition of the connection between human rights and the environment.⁴⁴
- 3.11 The 'Environment, Human Rights and the Windsor Framework' independent report makes a compelling argument that the Rights, Safeguards and Equality of Opportunity chapter of the Belfast (Good Friday) Agreement

³⁶ The ECtHR has developed an extensive case-law on human rights and the environment and on human rights and climate change. See European Court of Human Rights, 'Fact sheet- environment and the European Convention on Human Rights'. Available at: https://www.echr.coe.int/documents/d/echr/FS_Environment_ENG See European Court of Human Rights, 'Fact sheet- climate change'. Available at https://www.echr.coe.int/documents/d/echr/FS_Climate_change_ENG See also Ciara Brennan, Mary Dobbs, Alison Hough, Orla Kelleher and Lisa Whitten, 'The Environment, Human Rights and the Windsor Framework' (NIHRC, 2025), Chapter 2.

³⁷ *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* (2024) ECHR 304.

³⁸ *Ibid*, at para 513 and para 519.

³⁹ 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), at 7.

⁴⁰ *Öneryıldız v. Turkey* (2004) 48939/99.

⁴¹ *López Ostra v. Spain* (1994) 16798/90.

⁴² *L'Erablière A.S.B.L. v. Belgium* (2009) 49230/07.

⁴³ *Cordella and Others v. Italy* (2019), 54414/13 and 54264/15.

⁴⁴ Ciara Brennan, Mary Dobbs, Alison Hough, Orla Kelleher and Lisa Whitten, 'The Environment, Human Rights and the Windsor Framework' (NIHRC, 2025), at 39.

should be understood as dependent on a range of environmental protections and safeguards required to realise the commitments set out.⁴⁵

3.12 The NIHRC affirms the interdependent, interrelated and indivisible nature of human rights and advises that a clean and safe environment is essential for the enjoyment of human rights.

3.13 In line with ECtHR jurisprudence on the connection between the environment and human rights, the NIHRC advises that the commitments in the Rights, Safeguard and Equality of Opportunity Chapter of the Belfast (Good Friday) Agreement should be understood as encompassing the environmental obligations and safeguards required to realise those rights.

3.14 The next section considers the extent to which such rights were underpinned by EU law binding on the UK before its withdrawal from EU.

4.0 EU Environmental Law Underpinning Human Rights Connected to the Environment

4.1 Having found that environmental aspects of human rights fall within the “broad suite of rights” in the relevant chapter of the Belfast (Good Friday) Agreement, the next step in connecting such rights to Windsor Framework Article 2, is to consider the degree to which such rights are underpinned by EU law binding on the UK before Brexit. This section looks first at the nature and scope of EU environmental law before exploring the connections with human rights.

Nature and Scope of EU Environmental Law

4.2 The EU has shared competency in the field of the environment and has legislated extensively in many areas of environmental protection.⁴⁶ To begin discussing how EU environmental law underpins human rights within scope of the Rights, Safeguards and Equality of Opportunity chapter, we need to situate the discussion in the relevant EU legal framework.

⁴⁵ Ibid, at 34.

⁴⁶ See Ibid, Chapter 3 for a discussion on the EU shared competency in the area of the environment.

- 4.3 First, for the purposes of the Withdrawal Agreement, any reference to EU law includes:
- the foundational treaties and the EU Charter of Fundamental Rights;
 - the General Principles of EU law;
 - legislative acts adopted by the EU institutions, including directives, regulations and decisions; and
 - international agreements to which the EU is party.⁴⁷

EU treaties

- 4.4 Articles 191-193 of the Treaty on the Functioning of the EU set out the core EU competencies to legislate in the area of Environment. EU policy should align with four key objectives, including preserving, protecting and improving the quality of the environment and protecting human health.
- 4.5 EU policy should aim for a high level of protection and be “based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay”. The EU shares competence with EU member states in the area of the environment (Article 4, TFEU) and environmental protection requirements must be integrated into the definition and implementation of the EU policies and activities (Article 11, TFEU).

EU Charter of Fundamental Rights

- 4.6 The EU Charter has the same status in EU law as the founding treaties. Article 35 contains a commitment to “a high level of human health protection” to be ensured “in the definition and implementation of all the Union’s policies and activities”. Article 37 protects “a high level of environmental protection” and requires EU policies to integrate “the improvement of the quality of the environment ... in accordance with the principle of sustainable development”. The field of application of the EU Charter is limited to where states are acting within the scope of EU law.⁴⁸ In addition, in so far as the EU Charter contains rights which correspond to those in guaranteed by ECHR, “the meaning and scope of those rights shall be the same as those laid down by the said Convention” (Article 52(3)). Therefore the right to life, right to respect for private life, the prohibition of

⁴⁷ Article 2, UK-EU Withdrawal Agreement 2020.

⁴⁸ Article 51, EU Charter of Fundamental Rights. For further discussion of what this means in practice see Tobias Lock, Eleni Frantziou and Anurag Deb, ‘The Interaction between the EU Charter of Fundamental Rights and general principles with the Windsor Framework’ (NIHRC, 2024).

discrimination, and other relevant provisions must be interpreted in line with ECtHR jurisprudence which elaborates on environmental protections.

General principles of EU law

4.7 The CJEU has recognised a range of general principles of EU law including fundamental rights,⁴⁹ proportionality,⁵⁰ legal certainty,⁵¹ legitimate expectations,⁵² equality and non-discrimination,⁵³ transparency⁵⁴ and the precautionary principle.⁵⁵ The CJEU has developed the requirement of effectiveness of EU law, which includes effective judicial protection as a general principle.⁵⁶ 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”.⁵⁷

International Agreements to which the EU is party: Aarhus Convention

4.8 The EU is party to the UN Economic Commission for Europe (UNECE) Convention on access to information, public participation in decision-making and access to justice in environmental matters (Aarhus Convention). The Aarhus Convention protects every person’s right to live in a healthy environment. It guarantees three key rights on environmental issues:

- **access to information** held by public authorities on the state of the environment, policies or measures affecting the environment and public health and safety where these are affected by the state of the environment;
- **public participation** in environmental decision-making, including allowing members of the public and environmental NGOs to

⁴⁹ *Internationale Handelsgesellschaft mbH v Einfuhr und Vorratsstelle für Getreide und Futtermittel*, Case 11/70, 17 December 1970, at para 4.

⁵⁰ *R v Secretary of State for Health (British American Tobacco (Investments) Ltd and Imperial Tobacco Ltd)*, Case 491/01, 10 December 2002.

⁵¹ *R v Kent Kirk*, Case 63/83, 10 July 1984.

⁵² *Dineke Algera, Giacomo Cicconardi, Simone Couturaud, Ignazio Genuardi, Félicie Steichen v Common Assembly of the European Coal and Steel Community*, Cases 7/56, 3/57-7/57, 12 July 1957

⁵³ *Albert Ruckdeschel & Co and Hansa-Lagerhaus Ströh & Co v Hauptzollamt Hamburg-St. Annen; Diamalt AG v Hauptzollamt Itzehoe*, Cases 117/76 and 16/77, 19 October 1977.

⁵⁴ *R (Alliance for Natural Health and Nutri-Link Ltd) v Secretary of State for Health; R (National Association of Health Stores and Health Food Manufacturers Ltd) v Secretary of State for Health and the National Assembly of Wales*, Cases C-154/04 and 155/04, 12 July 2005.

⁵⁵ *UK v Commission*, Case-180/96, 5 May 1998.

⁵⁶ Paul Craig and Gráinne de Búrca, ‘EU Law – Text, Cases and Materials (7thEd)’ (UK Version) (OUP, 2020), at 272.

⁵⁷ *Ibid*, at 312 and at 286-298.

- meaningfully participate in decision-making on projects, plans and programmes relating to the environment;
- **access to justice** or the right to seek a review by a court or other body to ensure that public authorities respect the rights to access to information and public participation, and environmental law in general.

Indicative EU measures

4.9 Below are some of the key EU measures in various areas of environmental protection establishing minimal standards and procedures:⁵⁸

- **EU Habitats Directive (92/43/EEC)** aims to ensure bio-diversity through the conservation of natural habitats and of wild fauna and flora, including the maintenance or restoration of natural habitats and species of wild fauna and flora. It requires all Member States to establish a strict protection regime for species listed in the annexes. **See also EU Birds Directive (2009/147/EC)**, which aims to protect, manage and regulate all bird species naturally living in the wild, their nests and their habitats.
- **EU Water Framework Directive (2000/60/EC)** aims to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater, including the restoration of ecosystems in and around these bodies of water; the reduction of pollution in water bodies; and to guarantee sustainable water usage by individuals and businesses.
- **EU Access to Environmental Information Directive (2003/4/EC)** aims to guarantee the right of access to environmental information held by or for public authorities and to ensure that environmental information is systematically made available and disseminated to members of the public.
- **EU Public Participation Directive (2003/35/EC)** provides for public participation with respect to formulating certain plans and programmes relating to the environment.

⁵⁸ See Chapter 8, Ciara Brennan, Mary Dobbs, Alison Hough, Orla Kelleher and Lisa Whitten, 'The Environment, Human Rights and the Windsor Framework' (NIHRC, 2025) for a table of environmental measures the authors of the independent report consider to fall within the scope of Windsor Framework Article 2.

- **EU Ambient Air Quality Directive (2008/50/EC)** aims to define and establish objectives for ambient air quality designed to avoid, prevent or reduce harmful effects on human health and the environment as a whole; obtain information on ambient air quality to help combat air pollution and nuisance and to monitor long-term trends; and ensure that such information on ambient air quality is made available to members of the public.
- **EU Industrial Emissions Directive (2010/75/EU)** lays down rules for the prevention and control of pollution arising from industrial activities; and aims to prevent or reduce emissions into air, water and land and to prevent the generation of waste.
- **Environmental Impact Assessment Directive (2011/92/EU)** aims to ensure a high level of environmental protection and that environmental considerations are integrated into the preparation and authorisation of projects. It does this through environmental impact assessments. Effective consultation and participation are essential to a proper environmental impact assessment.
- **EU National Emissions Ceilings Directive (2016/2284/EU)** aims to protect human health and the environment through national emission reduction commitments and the adoption and implementation of national air pollution control programmes.

EU Environmental Law and Human Rights

- 4.10 This section of the briefing note focuses on how EU environmental law binding on the UK prior to UK's exit from the EU underpins human rights. A key point is that the CJEU's jurisprudence aligns with the ECtHR's case-law on locating environmental rights, particularly procedural environmental rights, within the fundamental rights framework of the EU.
- 4.11 Procedural rights have been recognised as an integral part of the protection of the environment and in turn essential for the enjoyment of all human rights. Examples of procedural environmental rights are the rights found in the Aarhus Convention, which grants members of the public procedural environmental rights such as the right to access information, the right to participate in decision-making and the right to access justice.

- 4.12 The EU is a signatory to the Aarhus Convention,⁵⁹ as is the UK. A range of EU measures have further implemented the Aarhus Convention rights in EU law.⁶⁰ EU law, as defined in the UK-EU Withdrawal Agreement, includes those international agreements to which the EU is party.⁶¹ The CJEU has held that the Aarhus Convention is part of the body of EU law and that those provisions of the Aarhus Convention that meet the criteria for direct effect can be relied upon by individuals.⁶² Some Aarhus Convention provisions, such as Article 9(3) granting members of the public the right to judicial challenge of acts that contravene national environmental law, may not meet the EU law direct effect criteria. However, EU law has binding effect even if it is not sufficiently detailed to be directly effective.⁶³ The CJEU's case-law on the interplay between environmental law and procedural rights suggests a "dominance of procedural fundamental rights, in the environment case law of the CJEU, most notably Article 47 of the EU Charter [access to justice]".⁶⁴
- 4.13 The *Brown Bears II*⁶⁵ case illustrates how the CJEU links together procedural environmental rights derived from the Aarhus Convention with human rights under the EU Charter of Fundamental Rights and EU environmental protection standards. The *Brown Bears II* case revolves around an area in Slovakia designated as a Natura 2000 site under the EU Habitats Directive.⁶⁶ Public authorities in Trenčín, Slovakia authorised the construction of an enclosure within the designated area to facilitate deer hunting. LZ, which is a forest protection association whose purpose is the

⁵⁹ UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 1998 (Aarhus Convention). Council Decision 2005/370/EC, 'Council Decision on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters', 17 February 2005.

⁶⁰ Directive 2003/35/EC, 'Directive of the EU Parliament and Council Directive providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC', 26 May 2003; Directive 2003/4/EC, 'Directive of the EU Parliament and Council Directive on public access to environmental information and repealing Council Directive 30/313/EEC', 28 January 2003; Directive 2001/42/EC, 'Directive of the EU Parliament and Council Directive on the assessment of the effects of certain plans and programmes on the environment', 27 June 2001; Directive 2011/92/EU, 'Directive of the EU Parliament and Council Directive on the assessment of the effects of certain public and private projects on the environment (codification)', 13 December 2011 (as amended by Directive 2014/52/EU, 'Directive of the EU Parliament and Council Directive amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment' 16 April 2014)).

⁶¹ Article 2, UK-EU Withdrawal Agreement.

⁶² *Lesoochránarske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky (Brown Bears I)*, Case C-240/09, 8 March 2011, at para 28.

⁶³ For example when the objectives of the Convention to achieve a high level environmental protection align with the objectives of EU primary law, such as Article 19 (1) TEU and Article 191 TFEU. See Alison Hough, 'EJNI Consultation response: Access to Environmental justice in Northern Ireland 2025' (EJNI, 2025), at para 2.3.

⁶⁴ Jasper Krommendijk and Dirk Sanderink, 'The role of fundamental rights in the environmental case law of the CJEU' (2023) *European Law Open* 2(3), 616-636, at 617.

⁶⁵ *Lesoochránarske zoskupenie VLK v Obvodný úrad Trenčín (Brown Bears II)*, Case C-243/15, 8 November 2016.

⁶⁶ Council Directive 92/43/EEC, 'Council Directive of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora', 21 May 1992.

protection of the environment, was prevented from participating in the authorisation decision.

- 4.14 Whilst LZ objected to their exclusion, the Trenčin public authority authorised the project, essentially preventing LZ from exercising their procedural environmental right to participate in the decision. At this point the Slovakian Supreme Court referred the case to the CJEU for an interpretation of the effect of Article 47 of the EU Charter of Fundamental Rights (right to access to justice), read together with the relevant provisions in the Aarhus Convention (Article 6(1) on public participation in decisions), as well as with the relevant procedures in EU Habitats Directive (Article 6(3) which requires authorities to agree a plan only after obtaining the opinion of members of the public).
- 4.15 The CJEU judgment included several important conclusions. First, the Court affirmed that the procedural right in the EU Habitats Directive in question, Article 6(3) of the EU Habitats Directive, plays a part in fulfilling the overall purpose of the Directive, which is to ensure a high level of environmental protection.⁶⁷ The CJEU stated that this provision must be read in conjunction with Article 6(1)(b) of the Aarhus Convention, which “forms an integral part of the EU legal order”.⁶⁸ The Court recalled previous case-law on the principle of “sincere cooperation” under Article 4(3) TEU which laid down that it is for domestic courts to ensure judicial protection of a person’s rights under EU law, including the provision of sufficient remedies.⁶⁹ Crucially, the CJEU reiterated that the scope of Article 47 of the EU Charter of Fundamental Rights is such that the fundamental rights guaranteed in the EU legal order are applicable in all areas governed by EU law.⁷⁰ The Court concluded that:

Where a Member State lays down rules of procedural law applicable to actions concerning exercise of the rights which an environmental organisation derives from Article 6(3) of [the EU Habitats] Directive 92/43, read in conjunction with Article 6(1)(b) of the Aarhus Convention, in order for decisions of the competent national authorities to be reviewed in the light of their obligations under those provisions, that

⁶⁷ *Lesoochrannárske zoskupenie VLK v Obvodný úrad Trenčín (Brown Bears II)*, Case C-243/15, 8 November 2016, at para 43.

⁶⁸ *Ibid.*, at para 45.

⁶⁹ *Ibid.*, at para 50.

⁷⁰ *Ibid.*, at para 51.

Member State is implementing obligations stemming from those provisions and must therefore be regarded as implementing EU law, for the purposes of Article 51(1) of the EU Charter. Accordingly, the Court has jurisdiction to answer the request for a preliminary ruling inasmuch as it relates to Article 47 of the EU Charter.⁷¹

- 4.16 The Court elaborated that the right to an effective remedy set out in Article 47 of the EU Charter must be read alongside those provisions of the EU Habitats Directive that list the types of decisions that environmental organisations can challenge,⁷² and that the rights granted by Article 47 of the EU Charter must be understood in light of Article 9(2) of the Aarhus convention and the objective of granting a 'wide access to justice' to environmental organisations.⁷³
- 4.17 The CJEU considered both procedural and substantive rights in *Craeynest*⁷⁴, a case centred around air pollution concerns in Brussels, making an explicit connection between the requirement to maintain certain levels of air purity with the sampling points used to measure air pollution, the protection of the environment and the right to health.⁷⁵
- 4.18 The EU Ambient Air Directive⁷⁶ includes the protection of human health among its objectives⁷⁷ and lays down rules for the assessment of air quality that should be followed according to common assessment criteria. Articles 7-10 lay down rules for sampling points to be used to measure air quality and Article 23 requires Member States to develop air quality plans when levels of air pollution exceed the limits set by the directive.
- 4.19 The Applicants in that case contended that requirements of the Directive were not complied with by the relevant local authorities in Brussels and challenged the location of the sampling points used to measure the quality of the air. The CJEU concluded that, in stemming from EU treaty provisions:

⁷¹ Ibid, at para 52-53.

⁷² Ibid, at para 56.

⁷³ Ibid at para 58.

⁷⁴ *Lies Craeynest and others v Brussels Hoofdstedelijk Gewest*, Case C-723/17, 26 June 2019.

⁷⁵ Ibid, at para 32-33.

⁷⁶ Directive 2008/50/EC, 'Directive of the European Parliament and of the Council on ambient air quality and cleaner air for Europe', 21 May 2008.

⁷⁷ Article 1, Directive 2008/50/EC, 'Directive of the European Parliament and of the Council on ambient air quality and cleaner air for Europe', 21 May 2008.

the rules laid down in Directive 2008/50 on ambient air quality put into concrete terms the EU's obligations concerning environmental protection and the protection of public health.⁷⁸

- 4.20 The Court concluded that some of the provisions of the Ambient Air Directive met the criteria for direct effect and as such individuals can invoke them before a court.⁷⁹ In particular, the Court acknowledged the location of sampling points as central to the air quality assessment and improvement system.⁸⁰ Although Member States enjoy some discretionary powers regarding the locations, the discretion is limited by the purpose and objectives pursued by the relevant rules.⁸¹ The court referenced the right to an effective remedy under Article 47 of the EU Charter and the role of national courts and tribunals in "safeguarding rights which individuals derive from EU law such as Directive 2008/50."⁸²
- 4.21 The CJEU held that individuals must be able to rely on the provisions in EU directives directly before national Courts in *Janecek*⁸³ and *ClientEarth*⁸⁴ where those provisions meet the criteria for direct effect (sufficiently clear, precise and unconditional).
- 4.22 These cases are significant because they demonstrate how the CJEU positions environmental rights, such as the Aarhus rights, but also those procedural rights found in the EU environmental directives, not outside of or separate from the EU fundamental rights framework but within the rights framework and the overall EU legal order. In other cases, such as *Craynest*,⁸⁵ *Wasserleitungsverband*,⁸⁶ *Kraaijeveld*,⁸⁷ *Janecek*⁸⁸ and others, the CJEU held that some of the provisions of EU directives like the EU Habitats Directive, the EU Water Framework Directive⁸⁹, the EU Nitrates Directive,⁹⁰ and other environmental directives, are directly effective and therefore can be relied upon by individuals and NGOs when pursuing their

⁷⁸ *Lies Craeynest and others v Brussels Hoofdstedelijk Gewest*, Case C-723/17, 26 June 2019, at para 32.

⁷⁹ *Ibid*, at para 42.

⁸⁰ *Ibid*, at para 46.

⁸¹ *Ibid*, at para 52.

⁸² *Ibid*, at para 54.

⁸³ *Janecek*, Case C-237/07, 25 July 2008.

⁸⁴ *ClientEarth*, Case C-404/13, 19 November 2014.

⁸⁵ *Lies Craeynest and Others v Brussels Hoofdstedelijk Gewest*, Case C-723/14, 26 June 2019.

⁸⁶ *Wasserleitungsverband Nördliches Burgenland and Others*, Case C-197/18, 3 October 2019.

⁸⁷ *Kraaijeveld and Others*, Case C-72/95, 24 October 1996.

⁸⁸ *Janecek*, Case C-237/07, 25 July 2008.

⁸⁹ Directive 2000/60/EC, 'Directive of the European Parliament and of the Council of establishing a framework for Community action in the field of water policy', 23 October 2000.

⁹⁰ Council Directive 91/676/EEC, 'Council Directive concerning the protection of waters against pollution caused by nitrates from agricultural sources', 12 December 1991.

procedural environmental rights. Cases like *Protect Natur*⁹¹ further demonstrate the link with Article 47 of the EU Charter of Fundamental Rights, strengthening the ability of NGOs to challenge projects seen to be damaging the environment. Cases like *North East Pylon*⁹² further protect the procedural environmental right to seeking judicial review from prohibitive legal costs.

4.23 In summary, the above informs our analysis that EU environmental law forms part of the EU's fundamental rights framework and therefore the standards and procedures laid in the relevant EU directives engage the non-diminution commitment in Windsor Framework Article 2.

4.24 The NIHRC advises that EU environmental law that underpins commitments in the Rights, Safeguards and Equality of Opportunity Chapter of the Belfast (Good Friday) Agreement, is within the scope of Windsor Framework Article 2.

4.25 The NIHRC advises that rights found in the Aarhus Convention are an integral part of the EU legal order and must therefore be interpreted in line with the rights in the EU Charter of Fundamental Rights, including the right to an effective remedy in Article 47. Any diminution of these rights may be contrary to the commitment in Windsor Framework Article 2.

4.26 The NIHRC advises that EU minimum environmental standards include the right of individuals to challenge decisions seen to be in violation of those obligations, where such standards are capable of direct effect.

4.27 The NIHRC recommends that the Department of Agriculture, Environment and Rural Affairs study in detail the relevant EU environmental law and relevant CJEU jurisprudence with the objective of identifying and clarifying binding minimum standards on environmental protection that underpin human rights.

⁹¹ *Protect Natur*-, Arten- und Landschaftsschutz Umweltorganisation, Case C-664/15, 20 December 2017.

⁹² *North East Pylon Pressure Campaign and Sheehy*, Case C-470/16, 15 March 2018.

5.0 Is there a diminution of environmental rights : case-study.

- 5.1 The authors of the independent report include three case-studies on the potential for diminution of environmental rights, in the areas of air quality, Aarhus convention rights and nature preservation,⁹³ which illustrate in practice how the minimum EU standards on environmental law that are binding in NI might be affected by law and policy following the UK's departure from the EU.
- 5.2 In this section we refer to the case-studies that form part of our own assessment and that provide a basis for advice and recommendations on the relevance of the non-diminution commitment in Windsor Framework Article 2 for the protection of environmental rights. To recap, we consider whether the rights in question are located in the relevant chapter of the Belfast (Good Friday) Agreement, secondly, we consider the degree to which such rights are underpinned by EU law and thirdly, we assess whether there is a diminution of rights. We conclude by making recommendations to protect rights and ensure compliance with WFA2.

Downgrading air quality laws

- 5.3 In 2023, the UK Government placed two environmental regulations on a list of retained EU law to be revoked unless retained by ministers.⁹⁴ Regulation 9 and Regulation 10 were part of the National Emissions Ceiling Regulations 2018, which are the UK's statutory instrument implementing the EU National Emission Reduction Commitments Directive⁹⁵ and a related EU Commission Implementing Decision.⁹⁶ The Regulations were revoked.

⁹³ Chapters 5, 6 and 7, Ciara Brennan, Mary Dobbs, Alison Hough, Orla Kelleher and Lisa Whitten, 'The Environment, Human Rights and the Windsor Framework' (NIHRC, 2025).

⁹⁴ Schedule 1 of the Retained EU Law Act 2023. See also ClientEarth, 'The importance of retaining the National Emission Ceilings Regulations 2018: REUL Act briefing' (ClientEarth, 2023). For an overall summary of the NIHRC's concerns around retained EU Law, see NI Human Rights Commission and Equality Commission for NI, 'Joint NIHRC & ECNI Submission to the European Scrutiny Committee inquiry into 'Retained EU law: the progress and mechanics of reform'' (NIHRC and ECNI, 2024).

⁹⁵ Directive (EU) 2016/2284, 'Directive of the European Parliament and of the Council of on the reduction of national emissions of certain atmospheric pollutants (The National Emission Reduction Commitments Directive)', 14 December 2016.

⁹⁶ Commission Implementing Decision (EU) 2018/1522, Commission Implementing Decision laying down a common format for national air pollution control programmes under Directive (EU) 2016/2284 of the European Parliament and of the Council on the reduction of national emissions of certain atmospheric pollutants (notified under document C(2018) 6549), 11 October 2018. Implementing decisions aim to achieve a uniform implementation of EU law across Member States. See European Union, 'How EU policy is decided'. Available at https://european-union.europa.eu/institutions-law-budget/law/how-eu-policy-decided_en

- 5.4 The National Emissions Ceiling Regulations 2018 transpose the legally binding emission reduction commitments derived from the EU National Emission Reduction Commitments Directive. The emission reduction commitments cover five major air pollutants that can damage human health, crops, wildlife and the environment. The EU National Emission Reduction Commitments Directive contains two legally binding targets for each pollutant, one applying for the period of 2020 to 2029, and another for the period of 2030 onwards.⁹⁷ Furthermore, the Commission Implementing Decision sets out a common format for the provision of a minimum level of information in domestic measures implementing the Directive's targets.⁹⁸
- 5.5 The now revoked Regulation 9 required the UK Government to prepare and implement a National Air Pollution Control Programme detailing how the targets established by the EU National Emission Reduction Commitments Directive would have been met, as well as an obligation to review the National Air Pollution Programme if the level of air pollution exceeds or is projected to exceed the reduction commitment.
- 5.6 The now revoked Regulation 10 required a public consultation in advance of preparation or amendment to the National Air Pollution Control Programme. Since revocation, Regulations 9 and 10 have not been replaced by equivalent UK measures to address air pollution. The UK Office of Environment Protection has repeatedly raised concerns that the removal of these laws would significantly weaken legal air quality protections in the UK.⁹⁹ This weakening of UK air quality laws raises the question of a potential diminution of environmental rights contrary to the commitment in Windsor Framework Article 2.

Rights protected

- 5.7 Having air free from levels of pollution which are dangerous to human health is an important prerequisite to being able to enjoy all of one's

⁹⁷ Article 4, Directive (EU) 2016/2284, 'Directive of the European Parliament and of the Council of on the reduction of national emissions of certain atmospheric pollutants (The National Emission Reduction Commitments Directive)', 14 December 2016.

⁹⁸ Commission Implementing Decision (EU) 2018/1522, Commission Implementing Decision laying down a common format for national air pollution control programmes under Directive (EU) 2016/2284 of the European Parliament and of the Council on the reduction of national emissions of certain atmospheric pollutants (notified under document C(2018) 6549), 11 October 2018.

⁹⁹ Letter from Dame Glenys Stacey, Chair of the Office for Environmental Protection to Secretary of State for the Environment, 30 August 2023.

human rights. ECHR rights contain positive obligations on States to take measures to combat threats to life that stem from air pollution. The jurisprudence of the ECtHR outlines the Court's approach: reading an obligation to effectively protect the right to life (Article 2 ECHR) and the right to private and family life (Article 8 ECHR) as requiring protection from the effects of environmental degradation.¹⁰⁰

- 5.8 The rights protected by the ECHR are within the scope of the Rights, Safeguards and Equality of Opportunity Chapter of the Belfast (Good Friday) Agreement, as outlined in Part 2 of this briefing note, therefore the environmental dimension of Article 2 ECHR and Article 8 ECHR fall within the scope of the non-diminution commitment in Windsor Framework Article 2. This environmental dimension also covers procedural obligations, such as sufficient involvement in environmental decision-making and access to review procedures to challenge environmental decisions.¹⁰¹

Underpinned by EU Law

- 5.9 The environmental dimension of the right to life and the right to private and family life has been underpinned by EU law in several ways. First, as mentioned in section 4, Article 3 TEU sets out the high-level objectives of the Union including "a high level of protection and improvement of the quality of the environment." Article 191 TFEU lists the objectives of EU policy on the environment including "protecting human health" as well as "a high level of protection of the environment," based on the precautionary principle and preventive action. As discussed above in section 3 of the briefing note, all EU law must be read and interpreted in light of EU legal principles and treaty commitments.
- 5.10 Second, Article 4 of the EU National Emission Reduction Commitments Directive, read in conjunction with Article 6 of the Directive (National Air Pollution Control Programmes), requires Member States to draw up, adopt and implement their respective national air pollution control programmes in order to meet their commitments. Furthermore, Article 14 of the Directive mandates Member States to ensure active and systematic dissemination of information on the national air pollution control programmes.

¹⁰⁰ See *Öneryıldız v Turkey*, Application No 48939/99 Judgment of 30 November 2004; *Tătar v Romania*, Application No 67021/01, Judgment of 27 January 2009.

¹⁰¹ See *Hatton and Others v the UK* (2000) ECHR 709; *Taşkin et al v Turkey* (2004) ECHR 621.

- 5.11 Third, as discussed in Part 4 of the briefing note, and based on the discussion on the *Craeynest* case, the provisions of the EU National Emission Reduction Commitments Directive should be read in conjunction with the environmental rights granted by the Aarhus Convention, which guarantee members of the public important procedural aspects of their environmental rights, such as the right to participate in decision-making and the right to challenge environmental decisions (Article 6 of the Aarhus Convention).
- 5.12 Fourth, as outlined in section 4 of this briefing note, and based on the *Brown Bears II* case discussion, the EU law principle of consistent interpretation allows for the provisions of the EU National Emission Reduction Commitments Directive and the rights derived from the Aarhus Convention to be read in light of the EU Charter of Fundamental Rights, in particular Article 37 (protection for the environment) and Article 47 (access to justice).
- 5.13 In summary, there is a clear EU law underpinning of the right to environmental protection in the context of the right to life and the right to private and family life which includes the obligation on Member States to take concrete measures to tackle environmental threats, such as air pollution, by adopting national programmes, as well as the procedural rights to participation, information and legal challenge.

Possible diminution

- 5.14 The revoked Regulations 9 and 10 of the National Emissions Ceiling Regulations 2018 provided domestic underpinning for the requirement to publish a National Air Pollution Control Programme, to monitor this programme against agreed targets for air pollution reduction, and to ensure there is public consultation on the programme.
- 5.15 The absence of the Regulations, or alternative domestic legislation, raises serious concern that there has been a diminution of the rights derived from Article 6 of the EU National Emission Reduction Commitments Directive and Article 6 of the Aarhus Convention when read in conjunction with relevant provisions of the EU Charter of Fundamental Rights.
- 5.16 The authors of the independent research provide two other case-studies on the potential diminution of human rights connected to the environment.

These case-studies focus further on the rights derived from the Aarhus Convention¹⁰² and on environmental safeguards around nature conservation.¹⁰³

- 5.17 The NIHRC advises that the removal of Regulations 9 and 10 of the National Emissions Ceiling Regulations 2018, if not replaced, significantly diminishes the duty to tackle air pollution, below relevant EU minimum standards.**
- 5.18 The NIHRC advises that the loss of EU-derived regulatory and procedural mechanisms to achieve clean air may result in a diminution of the ability of an individual to assert their right to health, such as the right to challenge air pollution derived from EU law, such as the EU Ambient Air Directive and the EU National Emission Reduction Commitments Directive.**
- 5.19 The NIHRC further advises that the removal of Regulations 9 and 10 of the National Emissions Ceiling Regulations 2018 may result in a diminution of procedural environmental rights to challenge the removal of key EU-derived measures to tackle air pollution that were underpinned by the EU National Emission Reduction Commitments Directive.**
- 5.20 The NIHRC advises the Department of Agriculture, Environment and Rural Affairs, the NI Office and the Department for Environment, Food and Rural Affairs to conduct in-depth analysis on the impact the removal of Regulations 9 and 10 of the National Emissions Ceiling Regulations 2018 has had on the duty to combat air pollution in NI. The removal of the statutory framework without a domestic equivalent replacing the EU minimum standards may have resulted in a diminution of rights contrary to the commitment in Windsor Framework Article 2.**

¹⁰² Chapter 6, Ciara Brennan, Mary Dobbs, Alison Hough, Orla Kelleher and Lisa Whitten, 'The Environment, Human Rights and the Windsor Framework' (NIHRC, 2025).

¹⁰³ Chapter 7, Ibid.

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