



NORTHERN IRELAND
HUMAN RIGHTS
COMMISSION

Equality Commission

FOR NORTHERN IRELAND



ANNUAL REPORT

on the Implementation of Article 2
of the Windsor Framework

2023–2024



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June 2024

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Foreword

In this report the Commissions highlight our key policy recommendations and advice on the implementation of Windsor Framework Article 2 that we have provided to the UK Government and NI Executive over the last year.

We continue to be concerned about the ‘roll-back’ of rights across a range of areas, including the rights of victims under the Legacy Act; data protection; and the rights of asylum seekers and refugees. While we recognise that since the restoration of the institutions in February 2024 there has been limited time for a response from the Executive Office to our last Annual Report, we are disappointed that we did not receive a formal response from either the Secretary of State for NI or the Executive Office within the reporting period for this year.

Over the last year, the distinctive place of Windsor Framework Article 2 in the framework of equality and human rights protections in NI has been further clarified. Three major court judgments have confirmed the scope and operation of the UK Government’s commitment to non-diminution of certain rights in Windsor Framework Article 2 and since March this year, a further judgment has been delivered.

Importantly, in May 2023, the NI Court of Appeal set out, for the first time, a test for when Article 2 is engaged. Further, in a series of key judgments, the NI High Court found that fundamental rights are central to the Belfast (Good Friday) Agreement; that the rights protected under Article 2 are broad in scope and cannot be limited to the political context of 1998; and that asylum seekers are part of the community in NI and have protections under Article 2. Crucially, in two cases the High Court also disapplied provisions of Westminster legislation that conflicted with Article 2. These legal developments are subject to appeal.

We are pleased that the judgments so far have confirmed our analysis set out in our working paper on the scope of Article 2 and vindicated our approach to strategic litigation. There is more to be determined by the courts. Our research programme and policy work therefore remain essential to informing consideration of those, and other, issues.

There have also been important EU developments on pay transparency and standards for equality bodies which engage the ‘keeping pace’ obligation under Article 2. Our comprehensive analysis of the Pay Transparency Directive, which we carried out this year, has concluded that the majority of its provisions enhance rights and safeguards and will amend or replace provisions of the directive on gender equality in employment in Annex 1 of the Windsor Framework. Similarly, new EU

measures designed to strengthen equality bodies will, in our view, also amend and/or replace provisions of the Annex 1 Directives. Crucially, we consider that NI law must therefore be amended to reflect these EU developments. We are calling on relevant NI departments, and the UK Government, to take urgent action to bring forward legislative changes, as required, to ensure NI law is amended to reflect these developments.

Public support in NI for the Windsor Framework Article 2 commitment remains strong. According to a recent survey commissioned by us, a substantial proportion of respondents (74%) once again indicated that the inclusion of the equality and human rights protections in the Windsor Framework was important to them.

Ensuring that Windsor Framework Article 2 is considered in a comprehensive and timely manner requires leadership at a senior level and sustained oversight. We welcome the initial steps being taken by the NI departments to start this process. However, at a UK level progress appears to be more limited. We urge the UK Government and NI Executive to prioritise cross-departmental work to develop and roll out comprehensive guidance, accompanied by a systematic training programme, to build consideration of Article 2 into the development of policy and legislation from the outset and throughout.

We will continue to exercise our mandate constructively and to work in close partnership. We are committed to protecting the rights of everyone in Northern Ireland and will exercise the full range of our powers to oversee the effective implementation of Windsor Framework Article 2.



Alyson Kilpatrick
Chief Commissioner
NI Human Rights Commission



Geraldine McGahey
Chief Commissioner
Equality Commission for NI

Abbreviations

CJEU	Court of Justice of the European Union
COE	Council of Europe
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
ECNI	Equality Commission for Northern Ireland
EEA	European Economic Area
EU	European Union
EU GDPR	European Union General Data Protection Regulation
ICRIR	Independent Commission on Reconciliation and Information Recovery
NI	Northern Ireland
NIHRC	Northern Ireland Human Rights Commission
PSNI	Police Service of Northern Ireland
UK	United Kingdom
UK GDPR	United Kingdom incorporation of EU Data Protection Regulation
UN	United Nations
UN CAT	UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UN CEDAW	UN Convention on the Elimination of All Forms of Discrimination Against Women
UN CERD	UN Convention on the Elimination of All Forms of Racial Discrimination
UN CRC	UN Convention on the Rights of the Child
UN CRPD	UN Convention on the Rights of Persons with Disabilities
UN ICCPR	International Covenant on Civil and Political Rights
UN ICESCR	International Covenant on Economic, Social and Cultural Rights

1.0 Introduction

- 1.1 Both the Northern Ireland Human Rights Commission (NIHRC) and the Equality Commission for Northern Ireland (ECNI) (the Commissions) were established following the Belfast (Good Friday) Agreement and pursuant to the Northern Ireland Act 1998. The Commissions are non-departmental public bodies. The NIHRC is a National Human Rights Institution with ‘A status’ accreditation from the United Nations.
- 1.2 The Commissions are mandated in accordance with Article 2(1) of the Windsor Framework,¹ formerly known as the Protocol on Ireland/Northern Ireland of the UK-EU Withdrawal Agreement² to oversee the UK Government’s commitment to rights and equality in Northern Ireland (NI) after UK Withdrawal from the EU. The Commissions can exercise these functions separately or jointly.³
- 1.3 The Commissions jointly publish this annual report, based on their respective mandates to:
- monitor the implementation of Windsor Framework Article 2;
 - report to the Secretary of State for NI and the NI Executive Office on the implementation of Windsor Framework Article 2; and
 - advise the Secretary of State for NI and the NI Executive of legislative and other measures which ought to be taken to implement Windsor Framework Article 2.⁴
- 1.4 In addition, the Commissions exercise part of this mandate in partnership with the Irish Human Rights and Equality Commission in relation to those aspects of oversight of, and reporting on, rights and equalities issues falling within the scope of Windsor Framework Article 2 which have an island of Ireland dimension.⁵ Further information on the work of the three Commissions can

1 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.

2 Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, 24 January 2020.

3 Section 78E, Northern Ireland Act 1998. The EU (Withdrawal Agreement) Act 2020 amended the Northern Ireland Act 1998 to empower the NIHRC and ECNI with functions to monitor, advise, report on, promote, and enforce the implementation of Windsor Framework Article 2 (Sections 78A-78E, Northern Ireland Act 1998). These new powers took effect from 1 January 2021. In July 2020, the Commissions were provided with additional funds to undertake their respective roles as part of the dedicated mechanism.

4 Section 78A(1)-(2) and 78A(5), Northern Ireland Act 1998 in respect of the NIHRC and Section 78B(1)-(2) and 78B(5) Northern Ireland Act 1998 in respect of the ECNI.

5 Article 2(2) and Article 14(c), Windsor Framework; 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 5. Equality Commission for NI, Irish Human Rights and Equality Commission and NI Human Rights Commission,

be found in their annual report detailing joint activities undertaken in 2022-2023.⁶

- 1.5 Further, the Specialised Committee on the implementation of the Protocol⁷ can consider any matter of relevance to the UK-EU Withdrawal Agreement brought to its attention by the NIHRC, ECNI or the Joint Committee of representatives of the NIHRC and Irish Human Rights and Equality Commission. Sections 78A(9) and 78B(9) of the NI Act 1998 empower the NIHRC and the ECNI respectively to bring matters of relevance to Windsor Framework Article 2 to the attention of the Specialised Committee.
- 1.6 In March 2023, the UK and the EU agreed that the Ireland/Ni Protocol is to be known as the Windsor Framework.⁸ For historic reasons some of the references in the report still mention the Protocol. Where references to the Protocol occur, these should be understood as relating to the Windsor Framework.
- 1.7 Further information on the powers and duties of the Commissions is set out in Appendix 2.

Focus of the Report

- 1.8 This report sets out the Commissions' work on monitoring and scrutinising the UK Government's implementation of Windsor Framework Article 2 in 2023-2024. Having reviewed progress on the delivery of the recommendations from our 2022-2023 Annual Report, the Commissions note that a small number had been progressed by the UK Government and NI Executive, however the vast majority have only been partially progressed or not progressed. The Commissions welcome the restoration of devolved institutions in February 2024 and note that the preceding suspension impacted on progress by NI departments across a range of areas.

⁶ 'Ireland/Northern Ireland Protocol of the European Union (EU) Withdrawal Agreement, Article 2: island of Ireland dimension Memorandum of Understanding', March 2021.

⁶ Irish Human Rights and Equality Commission, NI Human Rights Commission and Equality Commission for NI, 'Equality and Human Rights on the Island of Ireland after Brexit: Annual joint report of IHREC, ECNI and NIHRC on the implementation of Article 2 of the Ireland/Northern Ireland Protocol October 2022-September 2023' (IHREC, ECNI and NIHRC, 2023).

⁷ The Specialised Committee is co-chaired by the UK and EU and can draw up draft decisions and recommendations and refer them for adoption by the UK-EU Withdrawal Agreement Joint Committee. The Joint Committee is empowered to make decisions in respect of the Withdrawal Agreement which are binding on the EU and UK and have the same legal effect as the Withdrawal Agreement. The Joint Committee can also make appropriate recommendations to the UK and EU. The Specialised Committee can make recommendations to the Joint Committee in respect of the functioning of the Windsor Framework.

⁸ 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; Joint Declaration No 1/2023 of the European Union and the United Kingdom in 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.

- 1.9 In this report, the Commissions have highlighted those obligations under Windsor Framework Article 2 which reflect the focus of their work in 2023-2024. This report highlights the key changes to the human rights and equality landscape over the reporting period and sets out the Commissions' recommendations relating to Windsor Framework Article 2 as of 31 March 2024.
- 1.10 The Commissions work closely in the exercise of their mandate to oversee the implementation of, and compliance with, Windsor Framework Article 2 and this is reflected in the many joint recommendations. Some recommendations, however, are made by one or other Commission in keeping with its core remit and consistent with the option under Section 78E of the NI Act 1998, to exercise this mandate jointly or separately. It should be noted that each organisation may have additional recommendations both in relation to Windsor Framework Article 2 and on matters within our core competences, which are not included here. These can be found in the related submissions and policy positions referenced. The Commissions' points of advice are aimed primarily at ensuring compliance with Windsor Framework Article 2 obligations.
- 1.11 Chapter 2 of this report sets out a brief overview of the international and domestic framework and explores issues relating to the implementation and scrutiny of Windsor Framework Article 2. Advice on compliance with Article 2 and key recommendations are included at the end of each section. Chapter 3 is structured under key rights and equality issues and developments with advice on compliance and recommendations at the end of each subsection. In order to provide clarity on how Windsor Framework Article 2 applies in the different areas, some narrative is necessarily restated to provide the minimum context necessary to understand the recommendations and advice and to reduce the need to cross reference across chapters.
- 1.12 The report also highlights the wider impact of Brexit on the enjoyment of human rights and equality, aspects of which may fall outside the protection of Windsor Framework Article 2 and/or have a particular impact on border communities or North-South co-operation. Chapter 4 addresses issues, including the Common Travel Area; EU Settlement Scheme; frontier and migrant workers; cross border justice arrangements; the right to health; and EU loss of funding, among others.
- 1.13 Section 78A(3) in respect of the NIHRC and Section 78B(3) in respect of the ECNI of the NI Act 1998, state that a report under subsection 2 Section 78A and 78B "may require the Secretary of State or the Executive Office in NI to reply in writing to any recommendations contained in the report,

explaining what steps have been taken or are planned in response to the recommendations”. **The Commissions will therefore be writing to the Secretary of State for NI and the NI Executive Office to request a response to the recommendations in this report.**

- 1.14 The Commissions note that, since restoration of the institutions in February 2024, there has been limited time for a response from the Executive Office to receive Ministerial approval prior to 31 March 2024. Nevertheless, the Commissions are disappointed that they have not received a formal response pursuant to Sections 78A(3) and 78B(3) from either the Secretary of State for NI or the NI Executive Office in respect of their Annual Report 2022-2023 within the reporting period for this year.
- 1.15 For ease of reference the Commissions have carried over recommendations and advice from previous Annual Reports that have not been fully addressed. This Annual Report constitutes an up-to-date overview of the Commissions’ current recommendations.

2.0 Implementation and Scrutiny of Windsor Framework Article 2

2.1 In 2023-24, the Commissions continued to engage with the UK Government, NI departments, the UK Parliament and NI Assembly with a view to securing the effective implementation of Windsor Framework Article 2. This engagement has been informed by the Commissions' research, including research on the impact of UK withdrawal from the EU on the divergence of rights and best practice on the island of Ireland, and parliamentary scrutiny.⁹

Legal Framework

2.2 The NIHRC and the ECNI are required in accordance with Windsor Framework Article 2 of the UK-EU Withdrawal Agreement to oversee the UK Government's commitment on rights and equality in NI after EU withdrawal.

2.3 The UK signed the UK-EU Withdrawal Agreement in January 2020 and the Protocol (now referred to as the Windsor Framework), which is part of the treaty, took effect from 1 January 2021.¹⁰

2.4 Windsor Framework Article 2 states:

1. 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 Protocol, and shall implement this paragraph through dedicated mechanisms.

9 Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, 'European Union Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland' (ECNI, NIHRC, IHREC, 2022); Equality Commission for NI, NI Human Rights Commission and Irish Human Rights and Equality Commission, 'Policy Recommendations: European Union Developments in Equality and Human Rights – The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland' (ECNI, NIHRC and IHREC, 2023); Paul Evans, Alexander Horne, Tasneem Ghazi, 'Legislative Scrutiny and the Dedicated Mechanism for monitoring Article 2 of the Ireland/Northern Ireland Protocol' (ECNI, 2021).

10 Agreement on the Withdrawal of the UK of Great Britain and NI from the EU and the European Atomic Energy Community 2020 (UK-EU Withdrawal Agreement). Following the Joint Declaration by the UK and the EU and the decision of the Joint Committee in March 2023, the Protocol on Ireland/NI has been renamed as the Windsor Framework. 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; Joint Declaration No 1/2023 of the European Union and the United Kingdom in 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.

2. The United Kingdom shall continue to facilitate the related work of the institutions and bodies set up pursuant to the 1998 Agreement, including the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland and the Joint Committee of representatives of the Human Rights Commissions of Northern Ireland and Ireland, in upholding human rights and equality standards.
- 2.5 Section 7A of the EU (Withdrawal) Act 2018 gives effect to all the rights, obligations and remedies arising under the UK-EU Withdrawal Agreement in UK law without the need for further enactment.
- 2.6 Section 6 of the NI Act 1998 provides that the NI Assembly is prohibited from making any law which is incompatible with Windsor Framework Article 2. Section 24 of the 1998 Act also provides that all acts of the departments should be compatible with Windsor Framework Article 2.
- 2.7 In 2022, the Commissions published a joint **working paper** on the scope of Windsor Framework Article 2(1), which provides an initial assessment of Article 2, how it is engaged and what rights and safeguards fall within its scope.¹¹ The Appendix sets out the EU law which the Commissions have identified as falling within the scope of Article 2. The Commissions take the view that, subject to anticipated consideration by the courts, this is a reasoned and robust interpretation and that it provides an essential contribution to our understanding of the UK Government commitment in Windsor Framework Article 2. The Commissions also published a further table which contains the associated underpinning domestic legislation that has transposed the EU directives identified by the Commissions into NI law.¹²

Court Judgments on Windsor Framework Article 2

- 2.8 In May 2023, the Court of Appeal in NI considered Windsor Framework Article 2 in the context of a challenge to the regulations which empowered the Secretary of State for NI to direct the Department of Health to commission abortion services.¹³ The Court of Appeal was not convinced that the commissioning of abortion services fell within the scope of Windsor Framework Article 2. Nevertheless, the Court of Appeal confirmed that the UN Convention on the Rights of Persons with Disabilities (UN CRPD) was a part of

11 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).

12 NI Human Rights Commission and Equality Commission for NI, 'Table of EU Directives which underpin the Rights, Safeguards and Equality of Opportunity Provisions included in the Chapter of the Belfast (Good Friday) Agreement of the same name and Implementing Domestic Legislation' (ECNI and NIHRC, 2022).

13 *Society for the Protection of the Unborn Child Pro-Life Ltd v Secretary of State for NI* [2023] NICA 35.

the EU legal order prior to UK withdrawal and as such, the NI Assembly was prohibited from legislating contrary to the UN CRPD as EU law where matters fall within the competence of the EU.¹⁴ The court said it had “drawn particular assistance” from the Commissions’ interventions, including the working paper on the scope of Windsor Framework Article 2.¹⁵ The Court of Appeal also set out a six-point test to establish a breach of Windsor Framework Article 2.¹⁶ The Court of Appeal did not dispute the finding of the High Court that Article 2 has direct effect and can be relied on in domestic courts;¹⁷ and that there was a continuing obligation to conform with Court of Justice of the European Union (CJEU) jurisprudence in respect of the Protocol/Windsor Framework.¹⁸ For further discussion of Windsor Framework Article 2 and the rights of people with disabilities, see the section on Equality and Non-Discrimination in Chapter 3.

- 2.9 In October 2023, an asylum seeker challenged the lawfulness of the decision to remove him from NI to Scotland on several grounds including Windsor Framework Article 2.¹⁹ While the applicant was unsuccessful, the NI High Court reiterated that Windsor Framework Article 2 has direct effect, which can be relied on in the domestic courts.²⁰ The High Court further confirmed that the EU Charter on Fundamental Rights falls within the ambit of Article 2(1) of the Windsor Framework and remains enforceable in NI.²¹ The High Court also rejected the argument that the rights and safeguards in the relevant part of the Belfast (Good Friday) Agreement 1998 are frozen in time and limited to the political context of 1998.²² For further discussion of Windsor Framework Article 2 and the rights of asylum seekers and refugees, see the section on Migrants Rights in Chapter 3.
- 2.10 In November 2023, the England and Wales Court of Appeal found that the EU Charter of Fundamental Rights applies to the interpretation and application of the UK-EU Withdrawal Agreement and that the approach taken by the CJEU in the *CG* case²³ should be the benchmark for determining whether there is a breach of the right to human dignity in the EU Charter.²⁴ The Court of Appeal further confirmed that Article 4 of the UK-EU Withdrawal Agreement and Section 7A of the EU (Withdrawal) Act 2018 confer “direct effect on litigants and a connected power and duty on the national courts to disapply

14 Ibid, paras 57 and 68.

15 Ibid, paras 71-72.

16 Ibid, para 54.

17 Re SPUC Pro-Life Limited [2022] NIQB 9, at paras 77 and 88.

18 Ibid, at paras 78 and 93.

19 *In the Matter of an Application by Aman Angesom for Judicial Review* [2023] NIKB 102.

20 Ibid, at para 91.

21 Ibid, at para 93.

22 Ibid, at para 107.

23 *CG v Department for Communities*, Case C-709/20, 15 July 2021.

24 *Secretary of State for Work and Pensions v AT* [2023] EWCA Civ 1307, at para 113. For further discussion of the policy implications of this case, see section on the EU Settlement Scheme in Chapter 4.

inconsistent domestic law”.²⁵ For further discussion of this case in relation to the rights of EU citizens under the Withdrawal Agreement, see the section on the EU Settlement Scheme in Chapter 4.

- 2.11 In February 2024, the NI High Court handed down a judgment in a legal challenge brought by a number of victims raising concerns about the compliance of the NI Troubles (Legacy and Reconciliation) Act 2023 with the European Convention of Human Rights (ECHR) and Windsor Framework Article 2. Both Commissions intervened in the case, with the NIHRC addressing both ECHR and Windsor Framework Article 2 concerns and the ECNI focused on Windsor Framework Article 2 only. For further discussion of this case, see section on Legacy (Victims’ Rights) in Chapter 3.
- 2.12 The High Court found that the conditional immunity scheme breaches Articles 2 and 3 of the ECHR²⁶ and that the removal of the possibility of prosecution was incompatible with the EU Victims Directive and therefore breaches Windsor Framework Article 2.²⁷ The Court concluded that the Vienna Convention on the Law of Treaties applied to the interpretation of the Belfast (Good Friday) Agreement and that it is, therefore, entitled to take a generous and purposive approach in interpreting Windsor Framework Article 2.²⁸ The Court further held that the fundamental rights of victims “are encompassed within the notion of ‘civil rights’ and are protected through the commitment to victims at paragraph 11” in the relevant part of the Belfast (Good Friday) Agreement.²⁹ It also found that a narrow interpretation of “civil rights” undermines the future-facing dimension of the non-diminution commitment in Article 2 and that the rights of victims of crime, recognised in the 1998 Agreement are within the competence of EU law and are underpinned by EU law in the form of the Victims’ Directive and the EU Charter of Fundamental Rights.³⁰ The Court found that where the provisions of the 2023 Act breached Windsor Framework Article 2, the appropriate remedy was disaplication, noting that “any assessment of the diminution of rights also requires assessment of the enforcement mechanisms and procedures available to protect those rights”.³¹ The Court found that the immunity provisions of the Act should be disapplied.³²

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

26 *In the matter of an application by Martina Dillon and others for Judicial Review* [2024] NIKB 11, at para 187.

27 *Ibid.*, at paras 608 and 710.

28 *Ibid.*, at paras 533-535.

29 *Ibid.*, at para 561.

30 *Ibid.*, at paras 554 and 582.

31 Quoting De Smith’s *Judicial Review* (9th Ed, 2023, at para 14.166) at para 586; see also *In the matter of an application by Martina Dillon and others for Judicial Review* [2024] NIKB 11, at paras 527, 608, 613 and 710(ii). For further discussion on this point, see *Constitutional Issues - Divergence of Rights on the Island of Ireland* in Chapter 3.

32 Sections 7(3), 8, 12, 19, 20, 21, 22, 39, 41 and 42(1), NI Troubles (Legacy and Reconciliation) Act 2023. *In the matter of an application by Martina Dillon and others for Judicial Review* [2024] NIKB 11, at para 710(ii).

2.13 In January 2024, the NIHRC brought a legal challenge about the compliance of the Illegal Migration Act 2023 with the ECHR and Windsor Framework Article 2. In March 2024, the NI High Court heard a further challenge to the Illegal Migration Act in respect of an unaccompanied minor.³³ As of 31 March 2024, the judgment in both challenges was awaited.³⁴ For further discussion of Windsor Framework Article 2 and the Illegal Migration Act, see sections on Victims' Rights - Modern Slavery and Human Trafficking and Migrants Rights in Chapter 3.

Amendments to the Windsor Framework

2.14 In February 2023, the UK and EU Commission agreed a new way forward on the Protocol.³⁵ In March 2023, the UK-EU Joint Committee adopted amendments to the text of the original Protocol and a series of recommendations and declarations, including that the Protocol would be renamed the Windsor Framework and that Article 13(3) has been amended as it relates to Annex 2.³⁶ Pursuant to Article 13(3a) of the Windsor Framework, new EU measures which amend or replace those currently listed in the relevant parts of Annex 2 will no longer be automatically read as 'amended or replaced' and will be subject to additional scrutiny by the NI Assembly.

'Stormont Brake'

2.15 The 'Stormont brake' has been further given effect in UK law through the Windsor Framework (Democratic Scrutiny) Regulations 2024 which amend the NI Act 1998.³⁷ This allows the UK Government to potentially stop the application in NI of amended or replaced EU legal provisions in Annex 2 of the Windsor Framework.³⁸ In May 2023, the Commissions raised concerns

33 *In the matter of an application by JR295 for leave to apply for judicial review* [2024] NIKB 7.

34 See *In the matter of an application by the NI Human Rights Commission for judicial review* [2024] NIKB 35.

35 UK Government and EU Commission, 'Windsor Political Declaration by the European Commission and the Government of the United Kingdom', 27 February 2023. The UK Government also produced a Command paper setting out the UK Government's understanding of what has been agreed. UK Government, 'The Windsor Framework: a new way forward - CP806' (UK Gov, 2023).

36 See Decision No 1/2023 of the Joint Committee established by the agreement on the withdrawal of the United Kingdom Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023, laying down arrangements relating to the Windsor Framework.

37 Windsor Framework (Democratic Scrutiny) Regulations 2024 (SI 2024/118). The NI Assembly has published a list of relevant UK and EU law on the implementation of the Windsor Framework.

38 Decision No 1/2023 of the Joint Committee established by the agreement on the withdrawal of the United Kingdom Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023, laying down arrangements relating to the Windsor Framework. In order to activate the 'Stormont brake', MLAs must be acting in good faith, meet the minimum threshold of the petition of concern process, have engaged in a range of consultation processes, and demonstrate that the EU rule has a significant and lasting impact specific to the everyday lives of communities in NI in a way that is liable to persist. Where the Secretary of State accepts the conditions for the 'Stormont brake' are met, and the UK notifies the UK-EU Joint Committee, Article 13(3a) of the Windsor Framework sets out the procedures for next steps, including the non-application of the relevant new EU measure.

that there was no reference in the Explanatory Memorandum to the draft Regulations as to what consideration the UK Government had given to compliance with Windsor Framework Article 2.³⁹

- 2.16 In May 2023, the Commissions, in evidence to the House of Lords Sub-Committee on the Ireland/NI Protocol,⁴⁰ welcomed the exclusion of Annex 1 equality directives from Article 13(3a) of the Windsor Framework and the ‘Stormont brake’ mechanism.⁴¹ However, the Commissions are concerned that there is potential for the ‘Stormont brake’ mechanism to have implications for equality and human rights in NI and for divergence of rights on the island of Ireland in so far as it relates to EU law in Annex 2 of the Windsor Framework which has been identified by the Commissions as falling within the scope of the Article 2 ‘non-diminution’ commitment.⁴² The Commissions are also concerned that new procedural hurdles in ‘applicability motions’ may impede the inclusion of new EU equality and human rights measures in Annex 1.⁴³
- 2.17 In December 2023, the ECNI highlighted concerns regarding divergence of rights in a submission to the House of Lords Sub-Committee on the Windsor Framework.⁴⁴ The ECNI highlighted its concerns about the potential implications for equality and human rights in NI and for an increasing risk of divergence of rights on the island of Ireland stemming from the changes introduced regarding applicability motions aligned to Article 13(4) of the Windsor Framework, as well as the ‘Stormont brake’ mechanism, as it relates to certain EU law in Annex 2 of the Windsor Framework.⁴⁵
- 2.18 In February 2024, following the agreement to restore the NI Executive and NI Assembly the Windsor Framework Democratic Scrutiny Committee was established as a standing committee of the Assembly.⁴⁶ The purpose of the Committee is to assist with the observation and implementation of the ‘Stormont brake’ mechanism under Windsor Framework Article 13(3a) and (4).

39 Equality Commission for NI and NI Human Rights Commission, ‘Submission of the NIHRC and ECNI to the House of Lords Sub-Committee on the Protocol’s call for evidence for its inquiry on the Windsor Framework’ (ECNI and NIHRC, 2023).

40 This Committee was renamed in November 2023. See House of Lords Sub-Committee on the Windsor Framework, ‘New name for the Sub-Committee on the Protocol on Ireland/NI’, 15 November 2023.

41 Under the original Protocol, Article 13(3) provides for dynamic alignment of NI standards with EU law stating that any reference to EU law in the Windsor Framework, is to that law “as amended or replaced”. This represents an automatic keeping pace obligation, subject to notification obligations. Under the Windsor Framework, a new provision at Article 13(3)(a) would allow for the legislation as amended or replaced not to have effect from two weeks after the UK notifies the EU, in writing, through the Joint Committee that it is following the mechanism triggered by the ‘Stormont brake’. Once the notification is made and agreed, the amended or replaced provision would be treated like a new addition to an Annex and the UK and EU would have to agree to its inclusion as under Article 13(4).

42 Equality Commission for NI and NI Human Rights Commission, ‘Submission of the NIHRC and ECNI to the House of Lords Sub-Committee on the Protocol’s call for evidence for its inquiry on the Windsor Framework’ (ECNI and NIHRC, 2023), at paras 2.27-2.52.

43 Equality Commission for NI and NI Human Rights Commission, ‘Submission of the NIHRC and ECNI to the House of Lords Sub-Committee on the Protocol’s call for evidence for its inquiry on the Windsor Framework’ (ECNI and NIHRC, 2023).

44 Equality Commission for NI, ‘Submission to the House of Lords Sub-Committee on the Windsor Framework’s call for evidence for its inquiry on regulatory divergence and the Windsor Framework’ (ECNI, 2023).

45 Ibid, at 9.

46 Windsor Framework (Democratic Scrutiny) Regulations 2024 (SI 2024/118).

- 2.19 Given the potential implications of the ‘Stormont brake’ outlined above the Commissions have highlighted that it is vital that equality and human rights considerations are built into the revised process under Article 13(4) of the Windsor Framework as well as all key stages of the ‘Stormont brake’ mechanism. The Windsor Framework Democratic Scrutiny Committee should also undertake meaningful and timely engagement with the Commissions and equality and human rights groups in NI to seek their views on the implications of proposed EU measures for the promotion and protection of equality and human rights in NI.⁴⁷
- 2.20 In February 2024, the UK Government also published the Windsor Framework (Constitutional Status of NI) Regulations 2024. The regulations seek to amend Section 7A of the EU (Withdrawal) Act 2018 to confirm that the application of EU law relating to the trade in goods in NI is subject to democratic consent and scrutiny provisions in the Windsor Framework. The Secretary of State for NI has confirmed, in answer to a parliamentary question, that this amendment will not result in a regression of rights in NI.⁴⁸

UK-EU Engagement on Windsor Framework Article 2

- 2.21 The UK-EU political agreement on a new way forward on the Windsor Framework committed to establishing enhanced mechanisms for UK-EU cooperation, including for sub-groups to the Joint Consultative Working Group and enhanced engagement with NI stakeholders.⁴⁹
- 2.22 The Commissions had previously highlighted that the establishment of a Windsor Framework Article 2 ‘structured sub-group’ within the Joint Consultative Working Group that focuses on issues relating to Windsor Framework Article 2 and equality and human rights in NI would be beneficial.⁵⁰ This would assist with ensuring regular and structured engagement and information exchange between the Joint Consultative Working Group, the Commissions and wider equality and human rights stakeholders, in terms of the implications of proposed EU measures on the promotion and protection of equality and human rights.

47 Equality Commission for NI and NI Human Rights Commission, ‘Submission of NIHRC and ECNI to House of Lords Sub-Committee on the Protocol’s call for evidence for its inquiry on the Windsor Framework’ (ECNI and NIHRC, 2023); Equality Commission for NI, ‘Submission to the House of Lords Sub-Committee on the Windsor Framework’s call for evidence for its inquiry on regulatory divergence and the Windsor Framework’, (ECNI, 2023), at 9-10.

48 UK Parliament Hansard, ‘House of Commons: Ministerial statement - Northern Ireland Executive Formation – Volume 744, Column 886-887’, 31 January 2024.

49 UK Government and EU Commission, ‘Windsor Political Declaration by the European Commission and UK’ (HM Government, 2023), at 3; EU Commission, ‘Commission statement on Enhanced engagement with NI stakeholders’.

50 Equality Commission for NI and NI Human Rights Commission, ‘Submission of the NIHRC and ECNI to the House of Lords Sub-Committee on the Protocol’s call for evidence for its inquiry on the Windsor Framework’ (ECNI and NIHRC, 2023).

- 2.23 In July 2023 “calls for dedicated sub-groups on agri-food, retail, haulage and the Article 2 provisions on human rights and equalities issues” was endorsed by the House of Lords Sub-Committee on the Windsor Framework.⁵¹ The UK Government’s response to the Sub-Committee did not address this recommendation for an Article 2 subgroup.⁵² However, the Commissions note recent developments to ensure greater, albeit informal, engagement with equality and human rights stakeholders in NI.
- 2.24 The Commissions welcome the introduction of enhanced measures to deepen engagement, including with people in NI, and recognition by the EU Commission of the importance of engagement with NI stakeholders.⁵³ At the time of writing, new arrangements were still in development and the Commissions are keeping the matter under review.

Recommendations

- 2.25 The Commissions continue to recommend that the UK Government, the NI Assembly and the Windsor Framework Democratic Scrutiny Committee build in equality and human rights considerations at all key stages of the ‘Stormont brake’ mechanism and the revised process under Windsor Framework Article 13(4).**
- 2.26 The Commissions continue to recommend that the UK Government and the NI Executive monitor the impact on equality and human rights in NI, of any divergence of rights on the island of Ireland, resulting from the application of the ‘Stormont brake’ mechanism.**
- 2.27 The Commissions continue to recommend that the Windsor Framework Democratic Scrutiny Committee undertakes meaningful and timely engagement with the Commissions and equality and human rights groups in NI in relation to a proposed EU measure, or a replacement EU act, so as to seek their views on the implications for the promotion and protection of equality and human rights in NI.**
- 2.28 The Commissions continue to recommend that the Windsor Framework Democratic Scrutiny Committee interprets broadly the impact on ‘communities’ of the proposed new or amended EU measure to include a consideration of equality and human rights impacts including on Section 75 equality groups.**

51 House of Lords European Affairs Committee, ‘Report from the Sub-Committee on the Protocol on Ireland/Northern Ireland: The Windsor Framework 7 the Report of Session 2022-23’ (HOL, 2023), at para 298.

52 UK Government, ‘Government response to the Northern Ireland Protocol Sub-Committee Report on the Windsor Framework’ (UK Gov, 2023).

53 Equality Commission for NI and NI Human Rights Commission, ‘Submission of the NIHRC and ECNI to the House of Lords Sub-Committee on the Protocol’s call for evidence for its inquiry on the Windsor Framework’ (ECNI and NIHRC, 2023).

- 2.29** The Commissions continue to recommend that the EU Commission undertakes timely, targeted, and structured engagement, both with the Commissions and equality and human rights groups in NI on EU proposals that have implications for equality and human rights in NI.
- 2.30** The Commissions continue to recommend that the EU Commission's impact assessment, as regards NI, on draft EU proposals includes a specific assessment of the impact on the promotion and protection of equality and human rights.
- 2.31** The Commissions continue to recommend that the UK Government and EU Commission keep them informed of any future EU equality law developments relevant to the Annex 1 equality directives, including via the Joint Consultative Working Group, and have the opportunity to highlight in advance any implications of those changes for equality law in NI.
- 2.32** The Commissions continue to recommend that the secretariat of the Joint/Specialised Committee establishes a formal communication channel with the Commissions, to ensure early engagement on anticipated changes or additions to legislation on matters relating to equality and human rights in NI, including Windsor Framework Article 2.

Implementation and Parliamentary Scrutiny of Windsor Framework Article 2

- 2.33** Any new international commitment, such as that set out in Windsor Framework Article 2, requires sustained leadership and a significant body of work by Government and others to implement. In 2023-2024, the Commissions have continued to advise the UK Government on embedding Article 2 across its work through awareness-raising, engagement, training and the provision of guidance and recommendations.
- 2.34** In 2021, the ECNI published independent research which made a number of recommendations to ensure effective scrutiny of the UK Government's compliance with Windsor Framework Article 2.⁵⁴ The proposed measures included setting out in the Explanatory Memoranda for new legislation details of the UK Government's consideration of Article 2 compliance. Building on this research, the Commissions have engaged with relevant Parliamentary Committees and Committee officials; UK Government officials; the NI Office; and the Executive Office with respect to these recommendations.

54 Paul Evans, Alexander Horne, Tasneem Ghazi, 'Legislative Scrutiny and the Dedicated Mechanism for monitoring Article 2 of the Ireland/Northern Ireland Protocol' (ECNI, 2021).

UK Government

- 2.35 In 2022, the NI Office confirmed that it was working with colleagues across government to “consider mechanisms that could be put in place to ensure future Bills or Statutory Instruments being proposed by the UK Government do not diminish rights protected by [Windsor Framework] Article 2”.⁵⁵
- 2.36 In 2022, UK Government confirmed that it would continue to submit Explanatory Memoranda on EU proposals which amend or replace existing proposals that fall under scope of the Windsor Framework, including the Annex 1 equality directives as well as other EU legislation relevant to the provisions of Article 2.⁵⁶
- 2.37 In March 2023, in response to the chairs of four parliamentary Committees,⁵⁷ the Leader of the House of Commons, Penny Mordaunt MP, advised that updated Explanatory Memorandum guidance for statutory instruments has been circulated to departments to ensure consideration of compliance with Windsor Framework Article 2. She further advised that the next update of the Guide to Making Legislation⁵⁸ would reference the importance of compliance with Article 2.⁵⁹
- 2.38 In January 2024, the Cabinet Office published updated guidance on preparing explanatory memoranda for statutory instruments which advises that where legislation may have interactions with Windsor Framework Article 2 contact should be made with the Windsor Framework Taskforce in the Cabinet Office.⁶⁰ In January, the Home Office also updated its factsheet on the Safety of Rwanda (Asylum and Immigration) Bill to address the application of the Bill in NI, but this dismissed the relevance of Windsor Framework Article 2 without detailed consideration.⁶¹
- 2.39 That same month, the UK Government published its Command Paper on Safeguarding the Union, which states that “the Windsor Framework applies

55 Letter from the Minister of State for NI to the NI Human Rights Commission and Equality Commission for NI, 1 December 2022.

56 UK Government, ‘Government response to the Sub-Committee on the Protocol on Ireland/Northern Ireland’s report Scrutiny of EU legislative proposals within the scope of the Protocol on Ireland/Northern Ireland’ (UK Gov, 2022), at para 15; House of Lords European Affairs Committee, ‘5th Report of Session 2021-22 - Report from the Sub-Committee on the Protocol on Ireland/Northern Ireland: Scrutiny of EU legislative proposals within the scope of the Protocol on Ireland/Northern Ireland’ (HOL, 2022), at 35.

57 Joint letter from the Northern Ireland Affairs Committee, the Women and Equalities Committee, the Lords Sub-Committee on the Protocol on Ireland/Northern Ireland and the Joint Committee on Human Rights to the Secretary of State for Northern Ireland, relating to Parliamentary scrutiny of Article 2 of the Protocol on Ireland/Northern Ireland, 23 June 2022.

58 Cabinet Office, ‘Guide to making Legislation’ (CO, 2022).

59 Letter from Leader of the House of Commons, Penny Mordaunt MP, to Chair of the NI Affairs Committee, Simon Hoare MP, 28 March 2023.

60 Cabinet Office, ‘Guide to Preparing Explanatory Memoranda (EMs) to Statutory Instruments’ (CO, 2024), at para 6.1.

61 Home Office, ‘Policy Paper – Safety of Rwanda (Asylum and Immigration) Bill: factsheet’ (HO, 2024).

only in respect of the trade in goods - the vast majority of public policy is entirely untouched by it".⁶² The Paper further sets out the UK Government's position that "Article 2 of the Framework does not apply EU law or ECJ jurisdiction, and only applies in the respect of rights set out in the relevant chapter of the Belfast (Good Friday) Agreement and a diminution of those rights which arises as a result of the UK's withdrawal from the EU".⁶³

- 2.40 In February 2024, four months after writing to the Home Office a second time on the Illegal Migration Act 2023, the House of Lords Sub-Committee on the Windsor Framework received a reply stating that the UK Government had concluded that "our approach is compatible with international law and specifically the [Illegal Migration Act] proposals are compatible with Article 2".⁶⁴ In March 2024, the Sub-Committee expressed regret at the lack of information provided by the Home Office in response to the Sub-Committee's request to set out a detailed and specific assessment of the Bill's compliance with Windsor Framework Article 2.⁶⁵
- 2.41 The Sub-Committee further noted limited information provided by the Minister, noting that in the Safeguarding the Union Command Paper, the UK Government was able to "express clear and frank views on the interrelation of Article 2 of the Windsor Framework and the UK's immigration policy that you are either unwilling or unable to share with this Committee".⁶⁶ The Sub-Committee also expressed concern that the "failure of the Government to respond to letters from this Committee promptly has unacceptably constrained the ability of the Committee (and the House) to scrutinise the issues raised around this legislation and Article 2".⁶⁷

NI Executive

- 2.42 In July 2023, the Executive Office launched a consultation on the Draft Strategic Framework to End Violence Against Women and Girls and published an accompanying Windsor Framework Article 2 Impact Assessment.⁶⁸ Both Commissions responded separately to the consultation welcoming the inclusion of a Windsor Framework Impact Assessment in relation to the draft Strategic Framework and advised that they would welcome further

62 NI Office, 'Safeguarding the Union' (NIO, 2024), at para 46.

63 Ibid, at para 46.

64 Letter from Parliamentary Under Secretary of State in the Home Office, Lord Sharpe of Epson, to the Chair of the House of Lords Sub-Committee on the Windsor Framework, Lord Jay, 12 February 2024.

65 Letter from the Chair of the House of Lords Sub-Committee on the Windsor Framework, Lord Jay, to Parliamentary Under Secretary of State in the Home Office, Lord Sharpe of Epson, 7 March 2024.

66 Ibid.

67 Ibid.

68 The Executive Office, 'Article 2(1) Windsor Framework Impact Assessment for the Draft Strategic Framework to End Violence Against Women and Girls' (TEO, 2023).

engagement with the Executive Office on it.⁶⁹ Both Commissions also called for the development and implementation of training and guidance for departmental officials on Windsor Framework Article 2, including Impact Assessments, to embed consideration of Article 2 throughout legislative and policy processes.⁷⁰

- 2.43 In November 2023, the Executive Office delivered an initial webinar for civil servants on Windsor Framework Article 2 and has circulated guidance for policy makers and a checklist and screening document. The Executive Office has also established an interdepartmental working group which meets on a monthly basis to share information and learning on Windsor Framework Article 2, with additional ad hoc subgroups on specific themes.⁷¹
- 2.44 There has therefore been some progress by the NI Executive in embedding consideration of Windsor Framework Article 2, including into processes, for example, the publication by the Executive Office of a Windsor Framework Article 2 impact assessment,⁷² which is welcomed by the Commissions. However, this approach has not, as yet, been replicated in respect of other consultations and departments.
- 2.45 Significant work is still required at NI Executive and UK Government level to ensure that systematic consideration of Windsor Framework Article 2 is embedded in policy and processes.
- 2.46 The Commissions continue to be concerned that comprehensive training and guidance on Windsor Framework Article 2 has not yet been rolled out across UK Government and NI departments and there is limited evidence that early consideration of Article 2 has been systematically embedded in policy and legislative development and processes.

Additional Mechanisms for Ensuring Compliance and Voluntary Alignment

- 2.47 The Commissions consider that the UK Government should ensure that there are robust mechanisms for engaging with compliance and voluntary alignment issues, to avoid a breach of Windsor Framework Article 2 should the NI Executive be unable to or fail to act in relation to devolved issues.

69 NI Human Rights Commission, 'Submission to the Executive Office's Consultation on the Ending Violence Against Women and Girls Strategic Framework' (NIHRC, 2023); Equality Commission for NI, 'Response to consultation: The Executive Office Strategic Framework to End Violence Against Women and Girls and Foundational Action Plan' (ECNI, 2023).

70 NI Human Rights Commission, 'Submission to the Executive Office's Consultation on the Ending Violence Against Women and Girls Strategic Framework' (NIHRC, 2023), at paras 7.0-7.41; Equality Commission for NI, 'Response to consultation: The Executive Office Strategic Framework to End Violence Against Women and Girls and Foundational Action Plan' (ECNI, 2023), at para 6.32.

71 Email correspondence from the NI Executive Office to the NI Human Rights Commission, 10 November 2023.

72 NI Human Rights Commission, 'Submission to the Executive Office's Consultation on the Ending Violence Against Women and Girls Strategic Framework' (NIHRC, 2023).

- 2.48 The Secretary of State for NI may exercise their power under Section 26 of the NI Act 1998 to ensure that the UK Government's internationally binding commitments, including under Windsor Framework Article 2, are not breached by failure of a NI Minister or Department to act. However, the Commissions consider that there is value in carrying out a review of existing legislative safeguards to ensure that such mechanisms are sufficiently robust and adequate.
- 2.49 Further, the Commissions continue to highlight the value of a Memorandum of Understanding between the UK Government and the NI Executive to assist in clarifying when the UK Government will act to ensure compliance with Windsor Framework Article 2.⁷³ This could also make explicit commitments on voluntary alignment between NI law and developments in EU equality and human rights legislation relevant to Article 2 and North-South equivalence, that enhance protections and reflect international human rights standards.⁷⁴

Recommendations

- 2.50 The Commissions continue to recommend that UK Government and NI departments ensure that consideration of compliance with Windsor Framework Article 2 is embedded in policy and processes at an early stage.**
- 2.51 To ensure effective embedding of Windsor Framework Article 2 in policy and processes the Commissions continue to recommend that UK and NI government officials should roll out effective training on Article 2 to all relevant officials, and act promptly to ensure UK and NI government guidance on policy and legislative development is updated to include consideration of Article 2.**
- 2.52 The Commissions recommend that the Executive Office and NI departments consider Windsor Framework Article 2 within its current impact assessment framework, including Human Rights Impact Assessments, to ensure continuity of human rights and equality protections. Such Impact Assessments should consider all provisions of EU law engaged under the Windsor Framework Article 2 relevant to the legislation or policy being assessed, including EU law which underpins relevant ECHR rights.**

73 Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, 'EU developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC and IHREC, 2022), at 110.

74 Equality Commission for NI, NI Human Rights Commission and Irish Human Rights and Equality Commission, 'Policy Recommendations: European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC and IHREC, 2023), at 34.

- 2.53 The Commissions continue to advise that, in accordance with Article 2 and 13 of the Windsor Framework, the NI Office and the Executive Office continue to monitor and comply with any proposed changes by the EU to the six Annex 1 equality directives, including relevant case law of the CJEU.
- 2.54 The Commissions continue to recommend that the Foreign, Commonwealth and Development Office ensures that Explanatory Memoranda on draft EU proposals which amend or replace the Annex 1 equality directives, as well as other EU legislation relevant to the provisions of Windsor Framework Article 2, set out what consideration has been given to ensuring compliance with Article 2.
- 2.55 The Commissions continue to recommend that the relevant UK Government and NI departments ensure that Explanatory Memoranda /notes and Human Rights Memoranda/impact assessments on Bills and draft statutory instruments that may engage Windsor Framework Article 2 set out detailed consideration of compliance.
- 2.56 The Commissions continue to recommend that the NI Assembly amends Standing Order 41 to ensure the list of topics covered in the Explanatory and Financial Memoranda accompanying Bills be expanded to include a requirement to explain what consideration has been given to equality and human rights.
- 2.57 The ECNI continues to recommend that the NI Assembly Standing Order/s are amended to provide for the Speaker to send a copy of every Bill introduced to the Assembly to the ECNI as soon as practical after its introduction. This is in addition to the NIHRC which already receives a copy of every Bill.
- 2.58 The Commissions continue to recommend that the UK Government undertakes a review of legislative safeguards in place to ensure compliance with Windsor Framework Article 2 should the NI Executive or Assembly fail to act as required.
- 2.59 The Commissions continue to recommend that a memorandum of understanding is established between the UK Government and NI Executive explaining how they will engage on compliance and voluntary alignment issues between NI and EU law relevant to Windsor Framework Article 2.
- 2.60 The ECNI continues to recommend that a new Standing Order is created, to allow for a motion to refer any proposed legislation to the ECNI for an opinion with regards to equality and other matters aligned with our remit,

including Article 2. This will enable both organisations that comprise the Dedicated Mechanism to conduct analysis and provide opinion in relation to equality/human rights and Article 2. Currently neither Standing Orders 34 or 35 allow bills to be referred to the ECNI for an opinion.

Retained European Union Law

- 2.61 The EU (Withdrawal) Act 2018 Act provided for existing EU law to be ‘retained’ in the UK, so that it would continue to have effect after 1 January 2021, subject to amendment or repeal over time. In 2022, the Retained EU Law (Revocation and Reform) Bill was introduced in the UK Parliament.
- 2.62 In January 2023, the Commissions published a briefing which raised several concerns with the then Retained EU Law (Revocation and Reform) Bill, including the sunset clause for all EU-derived subordinate legislation and retained direct EU law by 31 December 2023.⁷⁵ The Commissions advised that failure to preserve or restate all relevant Retained Direct EU Legislation and EU-derived subordinate legislation in NI within the scope of Article 2, within set deadlines, would result in a breach of Windsor Framework Article 2. In March 2023, speaking on behalf of the UK Government, Lord Callanan, stated that the then Bill would not disturb Section 7A of the European Union (Withdrawal) Act 2018, and gave assurances that “the [UK] Government will ensure that all necessary legislation is in place by the [Retained EU Law (Revocation and Reform)] Bill’s sunset date to uphold all the commitments made under Article 2”.⁷⁶
- 2.63 In May 2023, the UK Government brought forward an amendment to the then Bill replacing the sunset clause with a list of retained EU law measures in a Schedule to the Bill. The Secretary of State for Business and Trade acknowledged that this would provide clarity for businesses by making it clear which laws would remain in statute and which would be revoked.⁷⁷ In June 2023, the Retained EU Law (Revocation and Reform) Act 2023 received Royal Assent.
- 2.64 In June 2023, the Secretary of State for Business and Trade, in a letter to the House of Lords Sub-Committee on the Ireland/NI Protocol, stated that the Bill did not disturb sections 7A and 7C of the EU Withdrawal Act 2018. However, the Secretary of State stated that “Article 2 does not itself apply EU law, and so domestic law giving effect to Article 2 rights may be affected by the abolition

75 NI Human Rights Commission and Equality Commission for NI, ‘Briefing on the Retained EU Law (Revocation and Reform) Bill’ (NIHRC and ECNI, 2023).

76 UK Parliament Hansard, ‘House of Lords: Retained EU Law (Revocation and Reform) Bill – Lord Callanan’, 2 March 2023.

77 UK Parliament Hansard, ‘Written Statement: Regulatory Reform Update – Kemi Badenoch – UIN HCWS764’, 10 May 2023.

of retained EU interpretive effects. We therefore expect it may be necessary to use Bill powers to restate the relatively small number of instruments within Article 2 to codify any required effects”.⁷⁸

- 2.65 In the subsequent exchange of letters between the House of Lords Sub-Committee on the Ireland/NI Protocol and the Minister for Industry and Economic Security,⁷⁹ the Sub-Committee raised some concerns about the risks inherent in this approach and pressed the Minister for further clarification on why the UK Government did not amend the Retained EU Law (Revocation and Reform) Act 2023 to signpost that a distinct interpretive approach is required under sections 7A and 7C of the EU Withdrawal Act 2018. The Committee expressed further concerns about the complex and time-consuming process and the risk of incomplete, inaccurate or out-of-date codification.⁸⁰ The Committee also asked if the UK Government had considered the Commissions’ working paper on the scope of Windsor Framework Article 2.
- 2.66 The Minister’s reply stated that the EU (Withdrawal) Act 2018, as amended by the Retained EU Law (Revocation and Reform) Act 2023, is sufficiently clear that the loss of EU interpretive effects is subject to relevant separation agreement law and no further legislative signpost was required.⁸¹ On codifying the interpretive effects of EU law on a case-by-case basis, the Minister stated that it would “provide legal certainty and clarity in areas of retained EU law ... by consolidating, codifying and reproducing more clearly] specific effects resulting from EU principles of interpretation”.⁸²
- 2.67 The Sub-Committee pressed the Minister on whether the Government would publish guidance on the methodology, scope and approach to be taken to the codification of interpretative effects and also on how the Government could be assured that codification will provide legal certainty when the list of measures within the scope of Windsor Framework Article 2 has not been identified and in light of anticipated court rulings over coming years.⁸³

78 Letter from the Secretary of State for Business and Trade, Kemi Badenoch MP, to the House of Lords Sub Committee on the Ireland/NI Protocol, 16 June 2023.

79 Letter from the Chair of the House of Lords Sub-Committee on the Ireland/NI Protocol, Lord Jay, to Secretary of State for Business and Trade, Kemi Badenoch MP, 12 July 2023; Letter from the Minister for Industry and Economic Security at the Department of Business and Trade, Nusrat Ghani MP, to the House of Lords Sub-Committee on the Ireland/NI Protocol, 11 September 2023; Letter from the Chair of the House of Lords Sub-Committee on the Ireland/NI Protocol, Lord Jay, to the Minister for Industry and Economic Security at the Department of Business and Trade, Nusrat Ghani MP, 19 October 2023; Letter from the Minister for Industry and Economic Security at the Department of Business and Trade, Nusrat Ghani MP, to the House of Lords Windsor Framework Sub-Committee, 24 November 2023.

80 Letter from the Chair of the House of Lords Sub-Committee on the Ireland/NI Protocol, Lord Jay, to Secretary of State for Business and Trade, Kemi Badenoch MP, 12 July 2023.

81 Letter from the Minister for Industry and Economic Security at the Department of Business and Trade, Nusrat Ghani MP, to the House of Lords Sub-Committee on the Ireland/NI Protocol, 11 September 2023.

82 Letter from the Minister for Industry and Economic Security at the Department of Business and Trade, Nusrat Ghani MP, to the House of Lords Windsor Framework Sub-Committee, 11 September 2023.

83 Letter from the Chair of the House of Lords Sub-Committee on the Ireland/NI Protocol, Lord Jay, to the Minister for Industry and Economic Security at the Department of Business and Trade, Nusrat Ghani MP, 19 October 2023.

- 2.68 The Minister advised that although there was no plan to publish details of the process adopted on the topic of Windsor Framework Article 2, the Secretary of State would lay a report before Parliament on the revocation and reform of the retained EU law in line with Section 17 of the Retained EU Law (Revocation and Reform) Act 2023.⁸⁴ The Minister also advised that written guidance had been supplied to the UK Government and NI Civil Service officials to support their analysis of the impact of the Act, “including on managing the removal of interpretive effects from the UK statute book at the end of the year”.⁸⁵ The Minister also advised that “Although interpretive effects will cease from the end of 2023, the UK will remain in compliance with our international obligations under Article 2”.⁸⁶
- 2.69 In February 2024, the Commissions jointly responded to the European Scrutiny Committee’s inquiry into the progress and the mechanics of reforming retained EU law.⁸⁷ The response advised that, in contrast to the view presented by the UK Government, the Commissions consider that section 7A EU (Withdrawal) Act 2018 requires that relevant EU measures be read in keeping with EU interpretive requirements and that related domestic provisions should be interpreted in a manner that ensures no diminution of standards, contrary to Windsor Framework Article 2.
- 2.70 The Commissions also raised concerns about the breadth of delegated powers provided under the Retained EU Law (Revocation and Reform) Act 2023 and the potential for inadvertent breach of Windsor Framework Article 2 or wider diminution of human rights and equality, in the absence of detailed parliamentary scrutiny. The response further highlighted the added value of the UK Government and NI Executive Office establishing an accessible and transparent central record of areas of regulatory divergence post-Brexit relating to equality and human rights in NI.
- 2.71 In May 2023, the Department for Business and Trade published a consultation on proposed reforms and repeal of several provisions of retained EU employment law.⁸⁸ The NIHRC identified two provisions where changes could apply to NI and advised that consideration of Windsor Framework Article 2 should be embedded at all stages of policy and decision making to ensure compliance.⁸⁹ In its response to the consultation, the Department for Business

84 Letter from Minister for Industry and Economic Security at the Department of Business and Trade, Nusrat Ghani MP, to the House of Lords Sub-Committee on the Ireland/NI Protocol, 24 November 2023.

85 Ibid.

86 Ibid.

87 NI Human Rights Commission and Equality Commission for NI, ‘NIHRC and ECNI Submission to the European Scrutiny Committee Inquiry on Retained EU law: the progress and mechanics of reform’ (NIHRC and ECNI, 2024).

88 Department for Business and Trade, ‘Retained EU Employment Law: Consultation on Reforms to the Working Time Regulations, Holiday Pay and the Transfer of Undertakings (Protection of Employment) Regulations’ (DBT, 2023).

89 Letter from the NI Human Rights Commission to the Secretary of State for Business and Trade, Kemi Badenoch MP, 7 July 2023.

and Trade did not address these concerns.⁹⁰ The subsequent regulations confirmed that the reform of the Transfer of Undertakings (Protection of Employment) Regulations 2006 would not extend to NI.⁹¹ However, the revocation of the European Cooperative Society (Involvement of Employees) Regulations 2006 does extend to NI and no impact assessment relating to this part of the regulations was undertaken.⁹² The UK Government advised this change is designed to tidy up the statute book.⁹³

2.72 The Retained EU Law (Revocation and Reform) Act 2023 amends section 5 of the EU (Withdrawal) Act 2018 to provide that “no general principle of EU law is part of domestic law after the end of 2023”. However, in October 2023, the NI High Court confirmed that sections 5(4)-5(5) of the EU Withdrawal Act 2018, which restrict the application of EU Charter of Fundamental Rights and EU General Principles, are limited by the domestic incorporation of the UK-EU Withdrawal Agreement by section 7A of the 2018 Act. The High Court concluded that the EU Charter of Fundamental Rights remains enforceable in NI and falls within the ambit of Article 2(1) of the Windsor Framework.⁹⁴ In November 2023, the England and Wales Court of Appeal confirmed that the EU Charter of Fundamental Rights applies to the interpretation and application of the UK-EU Withdrawal Agreement.⁹⁵

Recommendations

- 2.73 The Commissions continue to recommend that the relevant UK or NI department ensures compliance with Windsor Framework Article 2 is considered in advance of amendment, repeal or revocation of retained EU / assimilated law and fully explained in associated Explanatory Memoranda / Notes or Human Rights Impact Assessments.**
- 2.74 The Commissions recommend that when making any change to retained EU law/assimilated law, the relevant UK or NI Minister confirms that an assessment for compliance with the commitment in Windsor Framework Article 2 has been undertaken and that there is no breach of Windsor Framework Article 2.**

90 Department for Business and Trade, ‘Retained EU Employment Law - A government response to the consultation on reforms to retained EU employment law and the consultation on calculating holiday entitlement for part-year and irregular hours workers’ (DBT, 2023).

91 Part 1, The Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023.

92 Department of Business and Trade, ‘Impact Assessment: Changing Transfer of Undertakings (Protection of Employment) (TUPE) Regulations in relation to Retained European Union Law’ (DBT, 2023); Department of Business and Trade, ‘Reducing the administrative burden of the Working Time Regulations’ (DBT, 2022); Department of Business and Trade, ‘Holiday Pay and Entitlement reforms in relation to Retained European Union Law’ (DBT, 2023).

93 Department of Business and Trade, ‘Explanatory Memorandum to the Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023’ (DBT, 2023).

94 *In the Matter of an Application by Aman Angsom for Judicial Review* [2023] NIKB 102, at para 94.

95 *Secretary of State for Work and Pensions v AT* [2023] EWCA Civ 1307, at para 113.

- 2.75** The Commissions continue to recommend that the Retained EU Law (Revocation and Reform) Act 2023 be amended to confirm that sections 2-4 are without prejudice to Section 7A of the EU Withdrawal Act 2018.
- 2.76** The Commissions recommend that, consistent with principles of transparency and openness, the UK Government publishes guidance on the methodology, scope and approach to be taken by UK and NI departments in respect of the proposed codification of interpretative effects on a case-by-case basis, specifically in the context of meeting its Windsor Framework Article 2 commitments.
- 2.77** In order to increase accessibility and clarity of the statute book, and increase accountability, transparency and openness, the Commissions recommend that the Department for Business and Trade and the Executive Office take steps to ensure that any changes to retained EU / assimilated law in NI relating to equality and human rights are made clear and easily accessible, including to those whose rights are affected.
- 2.78** The Commissions continue to recommend that amendment or repeal of retained EU / assimilated law, affecting human rights and/or equality protections in NI, should be progressed on the basis of continuing adherence to the UK constitutional convention of providing for policy change via the primary legislative process, with technical and operational detail addressed in subordinate legislation. This applies to legislation that emanates from either Westminster or the NI Assembly.
- 2.79** The Commissions continue to recommend that relevant UK and NI Ministers engage with stakeholders, including the Commissions and human rights and equality organisations, in NI before using delegated powers to revoke or replace retained EU / assimilated law relating to NI.

Resourcing of the Commissions

- 2.80** The Commissions welcome the UK Government's confirmation of continued funding for the Dedicated Mechanism for 2023-25.⁹⁶ Further to the UK Government's commitment in Article 2(2) of the Windsor Framework to facilitate the related work of the ECNI and the NIHRC, it is important that there is sustained and adequate funding of both Commissions to carry out this related work on upholding rights and equality standards.

⁹⁶ The UK Government has previously confirmed that it is "firmly committed to Article 2 of the Protocol and this includes ensuring that the two Commissions are resourced sufficiently to enable them to fulfil their responsibilities as part of the dedicated mechanism". Letter from Minister of State for NI, Steve Baker MP, to the NI Human Rights Commission and Equality Commission for NI, 1 December 2022. Letter from Minister of State in the NI Office, Conor Burns MP, to the House of Lords EU Affairs Committee Sub Committee on the Ireland/ Northern Ireland Protocol, 24 November 2021.

- 2.81 In 2021, following its 5-year periodic review, the United Nations (UN) deferred its decision on re-accrediting the NIHRC with 'A Status' due to concerns about the impact of funding cuts on the NIHRC's fitness for purpose. The NIHRC advised that there would be a potential breach of Article 2(2) if for this reason its 'A status' was not confirmed on review.⁹⁷ A final six-month deferral was granted in March 2023, pending the outcome of an independent review of the NIHRC commissioned by the Secretary of State for NI, which reported in December 2022.⁹⁸ In September 2023, the UK Government published the independent review's report, together with its response, which accepted most of the independent review's recommendations.⁹⁹ In October 2023, the Sub-Committee on Accreditation decided that the NIHRC should retain its 'A-status'.¹⁰⁰ Consequently, the Commission has retained its voting rights at the Global Alliance of National Human Rights Institutions and has speaking rights at the UN Human Rights Council.¹⁰¹ The NIHRC is under an obligation to self-report to the UN in 2025 if the concerns identified are not addressed through the implementation of the independent review recommendations and resulting economic appraisal.
- 2.82 In 2021, the ECNI published research which called for the continued and sustained resourcing of the Commissions to fulfil their role under Windsor Framework Article 2.¹⁰² Whilst confirmation of continued funding for the Dedicated Mechanism for 2023-25 is welcome, this masks some of the underlying difficulties with the ECNI's core funding which continues to reduce.
- 2.83 As noted below, the Commissions consider that the proposed EU directives on binding standards for equality bodies, amend or replace the provisions of a number of the EU equality directives in Annex 1 of the Windsor Framework and engage the 'keeping pace' obligation under Windsor Framework Article 2. The standards in the proposed directives include ensuring that equality bodies are provided with the human, technical and financial resources necessary to perform their mandates under the relevant EU equality directives in Annex 1. It is therefore important that NI equality law is amended to keep pace with any changes to these equality directives, including on standards relating to resources, if these EU proposals are adopted.¹⁰³

97 Letter from NI Human Rights Commission to Secretary of State for NI, Brandon Lewis MP, 17 November 2021.

98 At its March meeting, the Sub-Committee on Accreditation considered correspondence from the Secretary of State to NIHRC making commitments as regards seeking additional funding and discussing plans for a Comprehensive Spending Review.

99 Simon Routh-Jones, 'Independent Review of the NI Human Rights Commission' (UK Gov, 2022); NI Office, 'UK Government Response to the Independent Review of the NI Human Rights Commission 2022' (NIO, 2023).

100 Letter from the Global Alliance of National Human Rights Institutions Sub-Committee on Accreditation to the NI Human Rights Commission, 1 November 2023.

101 The NI Human Rights Commission's accreditation is due to be reviewed again in 2028.

102 Paul Evans, Alexander Horne, Tasneem Ghazi, 'Legislative Scrutiny and the Dedicated Mechanism for monitoring Article 2 of the Ireland/Northern Ireland Protocol' (ECNI, 2021).

103 EU Commission, 'Proposal for a Council Directive on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in the field of employment and occupation between

Recommendations

- 2.84** The Commissions continue to recommend that the NI Office ensures there is adequate and sustained resourcing of the two Commissions to fulfil their responsibilities as the dedicated mechanism, post March 2025.¹⁰⁴
- 2.85** The Commissions continue to recommend that, further to the UK Government's commitment in Article 2(2) to facilitate the related work of the two Commissions in upholding human rights and equality standards, there is sustained and adequate funding of both Commissions generally.
- 2.86** The NIHRC recommends that the NI Office and HM Treasury ensure that the ongoing economic appraisal of NIHRC results in adequate and secure funding to enable the Commission to fulfil its statutory functions, in line with its role as an 'A status' institution under the UN Paris Principles.
- 2.87** The Commissions advise the NI Executive and relevant NI departments that, pursuant to Articles 2 and 13 of the Windsor Framework, NI law should be amended to keep pace with those provisions of the EU directives on standards for equality bodies, if adopted, which amend or replace any Annex 1 equality directives, including those provisions relating to standards on resources for equality bodies. The implementation of these changes in NI law should align with the transposition deadline for Member States in relation to these directives, if adopted.

persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC' (EU Commission, 2022); EU Commission, 'Proposal for a Directive of the European Parliament and of the Council on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU' (EU Commission, 2022).

104 The work of the Commissions as the Dedicated Mechanism is funded by the UK Government, with funding delivered through the Commissions' respective sponsor departments.

3.0 Windsor Framework Article 2: Rights and Issues

- 3.1 In addition to the recommendations on the implementation and scrutiny of Windsor Framework Article 2 above, the Commissions have considered the non-diminution commitment in a range of substantive areas. This section is organised thematically to reflect the areas where the Commissions have made such recommendations.

Constitutional Issues

- 3.2 Windsor Framework Article 2 adds an additional layer of human rights and equality protections in NI which must be considered within the wider constitutional human rights and equality framework. This section identifies those areas where the Commissions have raised specific concerns and made recommendations on the interaction of Article 2 in respect of a Bill of Rights for NI; divergence of rights on the island of Ireland; and the Human Rights Act.

A Bill of Rights for NI

- 3.3 A Bill of Rights for NI remains an unfulfilled commitment of the Belfast (Good Friday) Agreement.¹⁰⁵ Following commitments made in the New Decade, New Approach agreement,¹⁰⁶ the NI Assembly Ad Hoc Committee on a Bill of Rights was established. In 2021, the Commissions separately provided written submissions and joint oral evidence to the Committee, building upon previous advice.¹⁰⁷ In 2022, the Committee concluded its work and published a report¹⁰⁸ summarising the findings of the extensive stakeholder consultation activities it undertook between 2020-2021. The Committee found that majority of stakeholders and witnesses supported the creation of a Bill of Rights for NI and in June 2021, in light of the evidence, the Committee agreed with this position in principle.¹⁰⁹ However in the absence of a panel of experts

105 In 2008, as required by the Belfast (Good Friday) Agreement and the NI Act 1998, the NIHR produced 'A Bill of Rights for Northern Ireland - Advice to the Secretary of State for Northern Ireland' (NIHRC, 2009). Subsequent UK Government public consultation found "considerable support" for a Bill of Rights along lines recommended but UK Ministers have since referred to lack of political consensus. See UK Parliament Hansard, 'Written Ministerial Statement: Minister of State Hugo Swire MP', 16 December 2010; UK Parliament Hansard, 'House of Commons (Westminster Hall) - Bill of Rights (NI)', 16 July 2003. NI Office, 'New Decade, New Approach' (NIO, 2020).

106 NI Human Rights Commission, 'Briefing Note to the Ad Hoc Committee on a Bill of Rights EU Withdrawal and a Bill of Rights' (NIHRC, 2021); Equality Commission for NI, 'Submission to the Ad Hoc Committee on a Bill of Rights for NI' (ECNI 2021); NI Human Rights Commission, 'Response to the Ad Hoc Committee's Consultation on a Bill of Rights for NI' (NIHRC, 2021); NI Assembly Hansard, 'Ad Hoc Committee on a Bill of Rights: Implications of Brexit for Human Rights: Equality Commission for NI; NI Human Rights Commission', 29 April 2021.

108 Ad Hoc Committee on a Bill of Rights, '156/17-22 Report of the Ad Hoc Committee on a Bill of Rights' (NIA, 2022).

109 Ad Hoc Committee on a Bill of Rights, '156/17-22 Report of the Ad Hoc Committee on a Bill of Rights' (NIA, 2022), at para 13.

and a lack of political consensus in the final report, the Committee was unable to make key decisions about the content of a Bill of Rights.¹¹⁰

- 3.4 In June 2023, the UN Convention on the Rights of the Child (UN CRC) Committee recommended that the UK Government “enact a Bill of Rights for NI”.¹¹¹ In March 2024, the UN Human Rights Committee recommended that the UK Government “Increase its efforts to expedite the process of the adoption of the Bill of Rights for Northern Ireland and ensure that it incorporates all of the rights enshrined in the Covenant.”¹¹²
- 3.5 In 2024, there has been no further progress on creating a Bill of Rights for NI since the Ad Hoc Committee on a Bill of Rights published its report.¹¹³

Recommendations

- 3.6 The Commissions continue to recommend that the NI Office implements the UK Government commitment to legislate for a Bill of Rights for NI, as set out in the Belfast (Good Friday) Agreement.**
- 3.7 The ECNI continues to recommend that the UK Government and NI Executive ensure that there are additional measures within a Bill of Rights to strengthen NI equality laws, address gaps in equality legislation and protect equality and human rights in a post-Brexit context.**

Human Rights Act

- 3.8 In 2020, the UK Government announced an independent review of the Human Rights Act 1998. In 2021, the review team advised there was “an overwhelming body of support for retaining the Human Rights Act”.¹¹⁴
- 3.9 In 2022, the Ministry of Justice introduced the Bill of Rights Bill, stating that its proposed reforms to the Human Rights Act were “fully in line with our

110 Ad Hoc Committee on a Bill of Rights, ‘156/17-22 Report of the Ad Hoc Committee on a Bill of Rights’ (NIA, 2022), at paras 9, 17 and 47.

111 CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at para 8(d). In 2016, the UN ICESCR Committee and the UN CERD Committee also recommended a Bill of Rights for NI. CERD/C/GBR/CO/21-23, ‘UN CERD Committee Concluding Observations on the Combined Twenty-first to Twenty-third Periodic Reports of the UK of Great Britain and NI’, 3 October 2016, at para 10; E/C.12/GBR/CO/6, ‘UN ICESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 14 July 2016, at para 10.

112 CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding observations on the eighth periodic report of United Kingdom of Great Britain and Northern Ireland’, 28 March 2024, at para 5(c).

113 Ad Hoc Committee on a Bill of Right, ‘Report of the Ad Hoc Committee on the Bill of Rights’, 14 February 2022.

114 Independent Human Rights Act Review Team, ‘Independent Human Rights Act Review’ (MoJ, 2021), at para 19. See also NI Human Rights Commission, ‘Response to the Consultation on Human Rights Act Reform: A Modern Bill of Rights’ (NIHRC, 2022); Equality Commission for NI, ‘Response to consultation: Human Rights Act Reform: A Modern Bill of Rights, Ministry of Justice’ (ECNI, 2022).

obligations under the Withdrawal Agreement, the [Windsor Framework] and the UK-EU Trade and Cooperation Agreement”.¹¹⁵ The Commissions were concerned about the UK Government’s lack of consideration of the Bill’s compliance with Windsor Framework Article 2. The ECNI raised concerns about the Bill’s lack of safeguards so as to ensure that the Bill, as applied, does not potentially breach Windsor Framework Article 2. The NIHRC advised that the Bill would create uncertainty and confusion, making the interpretation of Article 2 more challenging and that it is not a substitute for the comprehensive framework of human rights protections in the Human Rights Act.¹¹⁶ In 2023, the Joint Committee on Human Rights found that the proposed Bill of Rights Bill undermined the universality of human rights, weakened human rights protection and that there was an overwhelming lack of support for the proposed reforms.¹¹⁷ The Joint Committee concluded that the UK Government “should not progress the... [Bill of Rights Bill] in its current form through Parliament”.¹¹⁸ This conclusion echoes the advice provided by the Commissions.¹¹⁹

- 3.10 In June 2023, the UK Government confirmed that it was not proceeding with the Bill of Rights Bill and instead was seeking to reform the UK’s human rights framework through a piecemeal approach, such as through the Illegal Migration Act 2023, the NI Troubles (Legacy and Reconciliation) Act 2023, and the Safety of Rwanda (Asylum and Immigration) Bill.¹²⁰ The NIHRC has raised concerns that the proposed changes will reduce access to domestic courts for individuals seeking human rights-based remedy contrary to the ECHR and the Belfast (Good Friday) Agreement 1998, and about the legislation’s compliance with human rights law. Both Commissions have also raised concerns about the compatibility of this legislation with Windsor Framework Article 2.¹²¹

115 Ministry of Justice, ‘Human Rights Act Reform: A Modern Bill of Rights – Consultation Response’ (MoJ, 2022).

116 NI Human Rights Commission, ‘Evidence to Joint Committee on Human Rights Legislative Scrutiny of the Bill of Rights Bill’, (NIHRC, 2022); Equality Commission for NI, ‘Response to the UK Joint Committee on Human Rights call for evidence Legislative Scrutiny: Bill of Rights Bill’, (ECNI, 2022); NI Human Rights Commission, ‘Advice on the Bill of Rights Bill’ (NIHRC, 2022).

117 House of Commons and House of Lords Joint Committee on Human Rights, ‘Legislative Scrutiny: Bill of Rights Bill’ (HC and HoL, 2023), at Chapter 9.

118 Ibid, at para 339.

119 NI Human Rights Commission, ‘Evidence to Joint Committee on Human Rights Legislative Scrutiny of the Bill of Rights Bill’, (NIHRC, 2022); Equality Commission for NI, ‘Response to the UK Joint Committee on Human Rights call for evidence Legislative Scrutiny: Bill of Rights Bill’, (ECNI, 2022); NI Human Rights Commission, ‘Advice on the Bill of Rights Bill’ (NIHRC, 2022).

120 UK Parliament Hansard, ‘House of Commons Oral Question: Topical Questions – Justice – Alex Chalk MP, Secretary of State for Justice – Vol 735, Col 145’, 27 June 2023. See further discussion of these legislative developments in Chapter 2 and in the Victims’ Rights and Migrants’ Rights sections of this chapter.

121 NI Human Rights Commission, ‘Submission to the House of Lords on the Illegal Migration Bill’ (NIHRC, 2023); NI Human Rights Commission, ‘Submission to Joint Committee on Human Rights Inquiry on Illegal Migration Bill’ (NIHRC, 2023); NI Human Rights Commission, ‘Advice on NI Troubles (Legacy and Reconciliation) Bill’ (NIHRC, 2022); NI Human Rights Commission, ‘Supplementary Briefing: UK Government’s Proposed Amendments to NI Troubles (Legacy and Reconciliation) Bill’ (NIHRC, 2023); Letter from the NI Human Rights Commission to the Chair of the House of Lords Sub-Committee on the Ireland/Northern Ireland Protocol, Lord Jay, 30 January 2023; NI Human Rights Commission, ‘Supplementary Briefing: UK Government’s Additional Proposed Amendments to NI Troubles (Legacy and Reconciliation) Bill’ (NIHRC, 2023); NI Human Rights Commission, ‘Advice on the Safety of Rwanda

3.11 The NIHRC highlighted its concerns with the UK Government’s approach in the submission to the UN Human Rights Committee.¹²² In March 2024, the UN Committee recommended that the UK Government “ensure that any legislation that may be adopted in the future to replace or amend the Human Rights Act 1998 is aimed at strengthening the status of international human rights [...] and provide effective protection of those rights across all jurisdictions.”¹²³

Recommendations

- 3.12 The NIHRC continues to recommend that the UK Government recognises the Human Rights Act 1998 as a constitutional statute and ensures any reform builds on the 1998 Act as part of further progress in the promotion and protection of human rights.**
- 3.13 The NIHRC continues to advise that the protections in Windsor Framework Article 2, while an important safeguard against the diminution of rights following UK withdrawal from the EU, are not a substitute for the comprehensive framework of human rights protections under the Human Rights Act.**
- 3.14 The NIHRC advises that the ECHR and ECtHR jurisprudence will continue to inform the interpretation of Windsor Framework Article 2, due to the interpretive requirement in Article 52 of the EU Charter of Fundamental Rights regarding the ECHR and the resulting CJEU jurisprudence.**
- 3.15 The ECNI continues to recommend that the UK Government ensures that any reform of the Human Rights Act does not breach or undermine the Belfast (Good Friday) Agreement or Windsor Framework Article 2 and that current levels of protection under the Human Rights Act and other ratified human rights instruments are not eroded.**

Divergence of Rights on the Island of Ireland

3.16 The Commissions recognise that long term North-South equivalence of protection for equality and human rights is important. For example, it can help facilitate the enjoyment of certain rights on a cross-border basis, in keeping with the North-South rights dimension of the Belfast (Good Friday)

(Asylum and Immigration) Bill (NIHRC, 2024); Equality Commission for NI, ‘Submission on the Safety of Rwanda (Asylum and Immigration) Bill’ (ECNI, 2024); Equality Commission for NI, ‘Submission to the House of Lords on the Illegal Migration Bill’ (ECNI, 2023).

122 NI Human Rights Commission, ‘Submission to the UN Human Rights Committee on the United Kingdom’s Eighth Periodic Report on Compliance with the International Covenant on Civil and Political Rights’ (NIHRC, 2024).

123 CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding observations on the eighth periodic report of United Kingdom of Great Britain and Northern Ireland’, 28 March 2024, at para 5(b).

Agreement. It would assist, for example, in the smooth functioning of North-South co-operation across a range of policy areas from all-island healthcare to North-South justice co-operation, many of which have a strong equality and rights dimension.¹²⁴

- 3.17 Prior to 31 December 2020, EU law had facilitated the alignment of many laws on rights and equality between Ireland and NI. Whilst the Windsor Framework requires that NI equality law keeps pace with any EU changes to the Annex 1 equality directives which enhance protections,¹²⁵ there is the potential for equality and human rights on the island of Ireland to diverge after that date.
- 3.18 The Commissions have previously urged the UK Government and NI Executive to ensure North-South equivalence of rights, by aligning with changes to EU equality and human rights law, even where not required to under the Windsor Framework, that enhance protections and reflect international human rights standards.¹²⁶
- 3.19 The Commissions stress that EU law should be considered minimum requirements, and we would encourage government to adopt an approach when implementing EU law into NI law that goes beyond these minimum standards where this strengthens rights and aligns with international human rights standards.
- 3.20 In 2023, independent research published jointly by the ECNI, NIHRC and Irish Human Rights and Equality Commission¹²⁷ and the three Commissions subsequent policy recommendations,¹²⁸ found that there are already a number of developments in areas of EU law which have the potential to result in divergence of rights on the island of Ireland. These include, for example, the EU Work-life Balance Directive,¹²⁹ and the European Accessibility Act.¹³⁰ Such EU laws will need to be implemented in law in Ireland, but NI law will not be required to align with them pursuant to the Windsor Framework.

124 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).

125 Article 13, Windsor Framework.

126 NI Human Rights Commission and Equality Commission for NI, 'Annual Report of the NIHRC and the ECNI on the implementation of Protocol Article 2 2021 – 2022' (NIHRC and ECNI, 2022).

127 Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, 'European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC, IHREC 2022).

128 Equality Commission for NI, NI Human Rights Commission and Irish Human Rights and Equality Commission, 'Policy Recommendations: European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC and IHREC, 2023).

129 Directive 2019/1158/EU, 'EU Parliament and Council Directive on work-life balance for parents and carers', 20 June 2019.

130 Directive 2019/882/EU, 'EU Parliament and Council Directive on the accessibility requirements for products and services', 17 April 2019.

- 3.21 Prior to the withdrawal of the UK from the EU, in some areas that were not underpinned by EU law, there was already stronger protection against discrimination in both Ireland and Great Britain than in NI.¹³¹ This includes in the areas of gender pay gap reporting, single equality legislation and age discrimination in access to goods, facilities and services.¹³²
- 3.22 The three Commissions also highlighted a number of significant CJEU case law developments since 31 December 2020 relating to the interpretation of the Annex 1 equality directives, which continue to have implications for how particular legal rules operate in NI.¹³³
- 3.23 In December 2023, the ECNI highlighted concerns regarding divergence of rights in a submission to the House of Lords Sub-Committee on the Windsor Framework.¹³⁴ The Sub-Committee raised the issue of North-South divergence of rights with the UK Government.¹³⁵ In its response, the UK Government indicated that it considered that there was no commitment in the Windsor Framework or the Belfast (Good Friday) Agreement for the alignment of rights across the island of Ireland.¹³⁶
- 3.24 The ECNI has also highlighted the value in the UK Government and the Executive Office centrally logging areas of regulatory divergence post Brexit relating to equality and human rights in NI and making this information public in an accessible and transparent way.¹³⁷ This should include in the context of divergence of rights on the island of Ireland and divergence of rights between NI and Great Britain.
- 3.25 The Commissions continue to engage with the Executive Office to advise that monitoring should include those EU laws or proposed EU laws that are relevant to equality and human rights but do not fall within the keeping pace commitment relevant to the Annex 1 directives, in addition to EU law and case law of the CJEU relevant to the ‘keeping pace’ commitment. This would assist

131 Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, ‘European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland’ (ECNI, NIHRC and IHREC, 2022).

132 Equality Commission for NI, NI Human Rights Commission and Irish Human Rights and Equality Commission, ‘Policy Recommendations: European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland’ (ECNI, NIHRC and IHREC, 2023), at 37-41 and 58-61.

133 Article 13(2), Windsor Framework. See Equality Commission for NI, NI Human Rights Commission and Irish Human Rights and Equality Commission, ‘Policy Recommendations: European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland’ (ECNI, NIHRC and IHREC, 2023).

134 Equality Commission for NI, ‘Submission to the House of Lords Sub-Committee on the Windsor Framework’s call for evidence for its inquiry on regulatory divergence and the Windsor Framework’ (ECNI 2023).

135 Letter from the Chair of the House of Lords Sub-Committee on the Windsor Framework, Lord Jay, to the Secretary of State for Foreign, Commonwealth and Development Affairs, Lord Cameron, 19 December 2023.

136 Letter from the Secretary of State for Foreign, Commonwealth and Development Affairs, Lord Cameron, to the House of Lords Sub-Committee on the Windsor Framework, 14 March 2024.

137 Equality Commission for NI, ‘Submission to the House of Lords Sub-Committee on the Windsor Framework’s call for evidence for its inquiry on regulatory divergence and the Windsor Framework’ (ECNI 2023).

in monitoring the potential for divergence of equality and human rights on the island of Ireland after the end of the Brexit transition period.

- 3.26 The Commissions have highlighted the need for the UK Government, together with the EU, to consider measures to limit divergence of rights on the island of Ireland. Specifically, such measures should include the consideration of new EU laws, on a case-by-case basis, for addition to the list of equality directives within Annex 1, as provided for under the mechanisms of Windsor Framework Article 13(4).¹³⁸
- 3.27 The ECNI, on behalf of the three Commissions, commissioned a follow-up report covering the period 1 January 2022 and 31 August 2023. The updated report is expected to be published in 2024.

Effective Judicial Protections

- 3.28 The research report and Commissions' recommendations emphasised the need for real and effective judicial protection of rights, arising from recent CJEU case law.¹³⁹
- 3.29 As highlighted in the decision in *Diskrimineringsombudsmannen v Braathens Regional Aviation AB*¹⁴⁰ and *Appointment of Judges* case,¹⁴¹ Article 47 (Right to an effective remedy and to a fair trial) of the EU Charter on Fundamental Rights¹⁴² has become "a significant supplementary ground in various areas of human rights litigation".¹⁴³ The research report noted that "the CJEU views effective judicial protection as a procedural right that is integral to European Union law, both in the field of equal treatment and in respect of other directly effective rights".

138 For further discussion on adding measures to Annex 1 pursuant to Article 13(4), see Chapter 2.

139 Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, 'European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC, IHREC 2022); Equality Commission for NI, NI Human Rights Commission and Irish Human Rights and Equality Commission, 'Policy Recommendations: European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC and IHREC, 2023).

140 *Diskrimineringsombudsmannen v Braathens Regional Aviation AB*, Case C-30/19, 15 April 2021. The case concerned a passenger who claimed he was discriminated against on grounds of his ethnicity, requiring him to undertake additional security controls, and resulted in a settlement with the airline paying compensation without admitting that discrimination had taken place.

141 *A.B. and Others v Krajowa Rada Sądownictwa and Others*, Case C-824/18, 17 December 2020.

142 Article 47 states: "Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice."

143 Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, 'European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC, IHREC 2022), at 87.

- 3.30 It is essential that the application of UK-wide legislation, such as the NI Troubles (Legacy and Reconciliation) Act 2023, the Illegal Migration Act 2023 and the Safety of Rwanda Bill, does not compromise the specific protection for access to justice and effective judicial protection in NI law of Windsor Framework Article 2.
- 3.31 The Commissions consider that the non-diminution obligation under Article 2 applies not only to the substantive rights but also to how those rights are enforced and available remedies.¹⁴⁴ This has been confirmed by the High Court in the *Dillon* judgment, wherein, the court, citing De Smith's Judicial Review, concluded that "assessment of the diminution of rights also requires assessment of the enforcement mechanisms".¹⁴⁵ Article 4 of the UK-EU Withdrawal Agreement states that provisions of that Agreement shall produce in the UK the same effects as in the EU and the UK shall ensure that courts will be empowered to disapply inconsistent or incompatible domestic provisions. This is implemented through Section 7A of the EU (Withdrawal) Act 2018. Therefore, the Court found that that the offending provisions should be disapplied.¹⁴⁶ Similarly, the Commissions consider that entitlement to compensation must continue to be available under NI law where there are breaches of rights within the scope of Article 2 which occurred prior to the end of the Brexit transition period.¹⁴⁷
- 3.32 Further, the research report refers to the decision in the *VI* case¹⁴⁸ and it was the view of the researchers that this could be interpreted as supporting 'prospective obligations' to provide EU citizens resident in NI and their family with a right to access health and social care benefits, in the same way that UK and Irish citizens can.¹⁴⁹

Recommendations

3.33 The Commissions continue to recommend that the UK Government and NI Executive ensure NI law keeps pace with changes to equality and human

144 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 6.

145 *In the matter of an application by Martina Dillon and others for Judicial Review* [2024] NIKB 11, at para 586. Further discussion of this case can be found in the Victims' Rights - Legacy section of this Chapter and in the legal framework (court judgments) section in Chapter 2.

146 *In the matter of an application by Martina Dillon and others for Judicial Review* [2024] NIKB 11, at para 710.

147 Equality Commission for NI, NI Human Rights Commission and Irish Human Rights and Equality Commission, 'Policy Recommendations: European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC and IHREC, 2023), at 47.

148 *VI v Commissioners for Her Majesty's Revenue & Customs*, Case C247/20, 10 March 2022. In which case the CJEU ruled that the UK had wrongfully required private comprehensive health insurance cover as part of its residence requirements upon EU citizens in relation to the EU Citizens Rights Directive.

149 Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, 'European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC, IHREC 2022), at 91.

rights law, arising as a result of EU laws introduced on or after 1 January 2021, that enhance protections and reflect international human rights standards. This should include aligning on a voluntary basis with rights introduced as a result of EU laws that do not amend or replace the Annex 1 directives.

- 3.34** The Commissions continue to recommend that the Irish Government, NI Executive, and UK Government work to enhance and harmonise equality and human rights protections on the island of Ireland, aligned to their respective remits, and make a clear commitment to working towards ensuring North-South equivalence of rights on the island of Ireland so as to strengthen protections and reflect international human rights standards.
- 3.35** The Commissions recommend that the UK Government and the Executive Office centrally logs and publishes areas of regulatory divergence post Brexit relating to equality and human rights in NI. This should include in the context of divergence of rights on the island of Ireland and divergence of rights between NI and Great Britain.
- 3.36** The Commissions continue to recommend that the UK Government and EU undertake regular reviews of new EU laws relating to equality and human rights to identify new measures to be considered for addition to the Annex 1 equality directives, as provided for under Article 13(4), with particular consideration being given to alignment of standards across the two jurisdictions on the island of Ireland.
- 3.37** The Commissions continue to recommend that the NI Executive reviews remedies available under NI equality law so as to ensure that these remedies result in real and effective judicial protection of the rights derived from the Annex 1 equality directives and Article 47 of the EU Charter of Fundamental Rights.
- 3.38** The Commissions continue to recommend that the UK Government, the NI Executive, and NI departments review relevant CJEU case law developments relating to access to court, effective remedies, and compensation for violations of EU fundamental rights to ensure that their policies/legislation in this area reflect these developments as required and as a matter of best practice.
- 3.39** The Commissions recommend the UK Government takes additional steps to ensure timely, regular, targeted, and structured engagement with equality and human rights groups in NI, including on matters relating to regulatory divergence and the implications of this for equality and human rights in NI.

Equality and Non-Discrimination

- 3.40 Article 2 provides specific protection against discrimination as enshrined in the six EU equality directives listed in Annex 1 of the Windsor Framework (Annex 1 equality directives).¹⁵⁰ The UK Government has said that these directives have “been specifically referenced because of the important framework they provide for the anti-discrimination commitments set out in the relevant chapter of the Belfast (Good Friday) Agreement”.¹⁵¹
- 3.41 NI equality law must keep pace with any changes made by the EU to improve the minimum levels of protection, on or after 1 January 2021 in relation to the Annex 1 directives including monitoring and complying with relevant current and future CJEU case law.¹⁵²

Single Equality Legislation

- 3.42 In NI, discrimination is prohibited by a complex framework of legislation and regulations. Unlike other parts of the UK (which fall under the Equality Act 2010) and Ireland, there is no single legislative instrument to consolidate, clarify and enhance existing equality protections in NI. NI legislation also does not provide for cases of intersectional multiple discrimination. At present in NI, each ground for discrimination must form its own case, meaning it has to be considered and ruled on separately.¹⁵³
- 3.43 In its submission to the Advisory Committee on the Framework Convention on National Minorities, the NIHRC highlighted the lack of a single legislative instrument to consolidate, clarify and enhance existing equality protections in NI, noting that that Windsor Framework Article 2 added a further dimension

150 These are the Racial Equality Directive (Directive 2000/43/EC, ‘Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin’, 29 June 2000); the Employment Equality (Framework) Directive (Directive 2000/78/EC, ‘Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation’, 27 November 2000); the Gender Goods and Services Directive (Directive 2004/113/EC, ‘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); the Gender Equality (Employment) Directive (Directive 2006/54/EC, ‘EU Parliament and Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation (Recast)’, 5 July 2006); the Self-Employment Equality Directive (Directive 2010/41/EU, ‘EU Parliament and 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); and the Equality in Social Security Directive (Directive 79/7/EEC, ‘Council Directive on the Progressive Implementation of the Principle of Equal Treatment for Men and Women in Matters of Social Security’, 19 December 1978).

151 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 3.

152 Article 13(3), Windsor Framework.

153 Equality Commission for NI, ‘Recommendations for law reform: Strengthening protection against racial discrimination’ (ECNI, 2014), at 38. The Equality Act 2010 which applies in England, Scotland and Wales, contains a dual discrimination provision, although this has not been brought into force. See House of Lords Select Committee on the Equality Act 2010 and Disability, ‘The Equality Act 2010: The Impact on Disabled People (Report of session 2015-16) HL Paper 117’, (HL, 2016).

for consideration in this context.¹⁵⁴ The ECNI, in its shadow report to the Advisory Committee, also called for the advancement by the NI Executive of robust and comprehensive single equality legislation.¹⁵⁵

- 3.44 In May 2023, the Advisory Committee published its Fifth Opinion on the UK, expressing concern that the “current fragmented approach in Northern Ireland to anti-discrimination legislation” is not guaranteeing the same protection against discrimination across the UK.¹⁵⁶ Further, the Committee advised that “comprehensive, unified equality legislation should be adopted for Northern Ireland”, alongside continuing to strengthen racial equality legislation by continuing the revision process initiated in 2021.¹⁵⁷
- 3.45 In 2022, the Commissions responded separately to the EU Commission public consultation on potential gaps in the EU Racial Equality Directive and how the gaps should be addressed.¹⁵⁸ Both Commissions highlighted in their submissions that in accordance with Article 2, if the EU Racial Equality Directive is amended in such a way that enhances rights and safeguards, NI law would then be required to keep pace with those changes.¹⁵⁹ The NIHRC recommended that the EU Racial Equality Directive be amended to implement specific protections against intersectional and multiple discrimination and to require all jurisdictions to which the EU Directive applies to take steps to strengthen, simplify and harmonise anti-discrimination protections across all protected categories.¹⁶⁰ The ECNI highlighted the need to introduce protection against intersectional multiple discrimination so that there is protection for individuals who experience discrimination or harassment because of a combination of equality grounds, including racial grounds.¹⁶¹
- 3.46 In 2022, the ECNI published a position paper recommending the adoption of a Single Equality Act for NI that reflects international human rights standards

154 NI Human Rights Commission, ‘Submission to the Advisory Committee on the Framework Convention for the protection of National Minorities – Parallel Report to the Advisory Committee on the Fifth Monitoring Report of the United Kingdom’ (NIHRC, 2022), at para 4.1.

155 Equality Commission for NI, ‘Shadow Report from the Equality Commission for Northern Ireland to the Advisory Committee for the Framework Convention for the Protection of National Minorities on the Fifth Monitoring Report of the United Kingdom’ (ECNI, 2022), at para 5.16.

156 Advisory Committee on the Framework Convention for the Protection of National Minorities, ‘Fifth Opinion the United Kingdom’ (CoE, 2023), at para 63.

157 Advisory Committee on the Framework Convention for the Protection of National Minorities, “Fifth Opinion the United Kingdom” (CoE, 2023), at para 63.

158 EU Commission, ‘Addressing Possible Gaps in the Racial Equality Directive – Public Consultation’ (EU Commission, 2022). NI Human Rights Commission, ‘Response to the European Commission Consultation on the Racial Equality Directive (Directive 2000/43/EC)’ (NIHRC, 2022); Equality Commission for NI, ‘Response to consultation: European Commission - Addressing possible gaps in the Racial Equality Directive’ (ECNI, 2022)

159 NI Human Rights Commission, ‘Response to the European Commission Consultation on the Racial Equality Directive (Directive 2000/43/EC)’ (NIHRC, 2022); Equality Commission for NI, ‘Response to consultation: European Commission - Addressing possible gaps in the Racial Equality Directive’ (ECNI, 2022).

160 NI Human Rights Commission, ‘Response to the European Commission Consultation on the Racial Equality Directive (Directive 2000/43/EC)’ (NIHRC, 2022).

161 Equality Commission for NI, ‘Response to consultation: European Commission - Addressing possible gaps in the Racial Equality Directive’ (ECNI, 2022).

and best practice and builds on equality law in Great Britain.¹⁶² The ECNI reiterated that any legislation should also consider and comply with the Windsor Framework Article 2 commitment and keep pace with all future EU equality laws that enhance protections.

- 3.47 In 2023, the UN International Covenant on Economic, Social and Cultural Rights (UN ICESCR) Committee expressed its regret that no action had been taken on its earlier recommendation to extend “comprehensive anti-discrimination legislation” to NI.¹⁶³ The Committee sought information from the UK Government on measures taken to adopt a comprehensive anti-discrimination law prohibiting multiple forms of discrimination on all grounds in all jurisdictions of the UK.¹⁶⁴
- 3.48 In 2022, the Commissions in partnership with the Irish Human Rights and Equality Commission, published research which found that the introduction of a “consolidated codification of rights and equality legislation”, could assist with NI complying more fully with the principle of equivalence of rights on the island of Ireland under the Belfast (Good Friday) Agreement 1998.¹⁶⁵
- 3.49 In April 2023, the EU Parliament adopted a resolution on combating discrimination in the EU and expressing regret that the horizontal anti-discrimination directive to address the “considerable gaps in the protection afforded by the EU anti-discrimination framework” had been delayed.¹⁶⁶
- 3.50 In June 2023, both Commissions responded separately to the Executive Office Consultation on the Review of the Race Relations (NI) Order. The NIHRC highlighted that the lack of consideration of intersectional multiple discrimination by the consultation was an oversight and called for the Executive Office to ensure intersectional multiple discrimination claims in NI are effectively addressed, including by the provision of intersectionality within equality legislation.¹⁶⁷
- 3.51 In June 2023, the ECNI’s response to the review of the Race Relations (NI) Order 1997, reiterated its position on the need for a Single Equality Act in NI.

162 Equality Commission for NI, ‘The need for a NI Single Equality Act: Policy Position Paper’ (ECNI, 2022).

163 E/C.12/GBR/CO/6, ‘UN ICESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 14 July 2016, at para 22-23.

164 E/C.12/GBR/Q/7, ‘UN ICESCR Committee List of issues in relation to the seventh periodic report of UK of Great Britain and NI’, 23 March 2023, at para 9.

165 Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, ‘European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland’ (ECNI, NIHRC and IHREC, 2022), at 43.

166 EU Parliament Resolution ‘Combating discrimination in the EU - the long-awaited horizontal anti-discrimination directive (2023/2582(RSP))’ (EU Parliament, 2023), at paras D and 1.

167 NI Human Rights Commission, ‘Response to the Executive Office’s Consultation on the Review of the Race Relations (NI) Order 1997’ (NIHRC, 2023).

The ECNI also restated its call for the introduction of combined discrimination so that there is legal protection for individuals who experience direct or indirect discrimination, victimisation or harassment because of a combination of equality grounds, including racial grounds. The response noted that single equality legislation is the most effective means of strengthening and maintaining protections against discrimination in NI.¹⁶⁸

- 3.52 The importance of intersectional discrimination has been highlighted by recent developments in EU law which have implications for NI equality law. In May 2023, the EU Pay Transparency Directive came into force.¹⁶⁹ The Directive, clarifies in Article 3, via a new definition, that discrimination includes “intersectional discrimination”, which is discrimination based on a combination of sex and a number of other equality ground/s protected under EU equality directives.
- 3.53 The Commissions consider that the provisions of the EU Pay Transparency Directive,¹⁷⁰ amend and/or replace provisions in the EU Gender Equality (Employment) Directive¹⁷¹ which is listed in Annex 1 of the Windsor Framework.¹⁷² Therefore, NI equality law must keep pace with these changes, further to the UK Government’s dynamic alignment obligation in the Windsor Framework.¹⁷³ This includes changes to the definition of discrimination to include “intersectional” discrimination. There is more detailed discussion of the EU Pay Transparency Directive in the Employment Rights - Employment Equality section of this chapter.

Recommendations

- 3.54 The Commissions continue to recommend that the NI Executive introduce a single equality act to ensure that NI equality law is strengthened and that gaps are addressed as a matter of urgency.**
- 3.55 The Commissions recommend that the Executive Office provides for intersectional multiple discrimination claims in NI across all equality grounds.**

168 Equality Commission for NI, ‘Consultation Response: The Executive Office Consultation on the Review of the Race Relations (NI) Order 1997’, (ECNI 2023)

169 Directive 2023/970/EU, ‘EU Parliament and Council Directive to strengthen the application of the principle of equal pay for equal work or work of equal value, between men and women through pay transparency and enforcement mechanisms’, 10 May 2023.

170 Apart from a small number of provisions of the EU Pay Transparency Directive that are no longer relevant now that the UK has left the EU.

171 Directive 2006/54/EC, ‘EU Parliament and Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation (Recast)’, 5 July 2006.

172 Equality Commission for NI and NI Human Rights Commission, ‘Briefing Paper: The EU Pay Transparency Directive: The UK Governments dynamic alignment obligations relating to Windsor Framework Article 2’ (ECNI and NIHR, 2024).

173 Article 13(3), Windsor Framework.

- 3.56** The Commissions advise the NI Executive and the Department of Communities that, in accordance with the keeping pace obligation relating to Windsor Framework Article 2, the definition of discrimination in relevant NI equality law should be amended to include “intersectional discrimination” aligned to the relevant provisions of the EU Pay Transparency Directive and the transposition deadline of the Directive.
- 3.57** The NIHRC recommends that the Racial Equality Directive is amended to include a requirement that all jurisdictions to which the Directive applies take steps to strengthen, simplify and harmonise anti-discrimination protections across all protected categories.
- 3.58** The NIHRC recommends that the EU Commission includes, as a minimum standard, stronger recognition of multiple discrimination and the provision of a mechanism for individuals to bring intersectional claims within the EU Racial Equality Directive.

Binding Standards for Equality Bodies

- 3.59** In December 2022, the EU Commission published its proposals on two directives on standards for equality bodies.¹⁷⁴ The directives aim to strengthen equality bodies by setting minimum standards on how they operate in all grounds of discrimination and areas covered by EU equality rules.¹⁷⁵
- 3.60** The aim of the directives is to create a strengthened framework for EU equality bodies to promote equal treatment and equal opportunities and combat discrimination on all grounds and in the fields set out by the EU equality directives. Together, they strengthen the role and independence of equality bodies by setting out standards that address their mandate, tasks, independence, structure, powers, accessibility and resources to engage in the prevention of discrimination, promote equal treatment and awareness raising activities and effectively assist victims of discrimination to access justice. This includes extending the mandate of equality bodies to those equality directives which previously did not have such provisions.

¹⁷⁴ EU Commission, ‘Proposal for a Council Directive on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in the field of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC’ (EU Commission, 2022); EU Commission, ‘Proposal for a Directive of the European Parliament and of the Council on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU’ (EU Commission, 2022).

¹⁷⁵ The ECNI have previously welcomed the EU Commission’s proposals and responded to their calls for feedback on the binding standards Roadmap and to their public consultation on their proposed directives on Binding Standards for Equality Bodies. See Equality Commission for NI, ‘Equality Commission for NI’s response to the European Commission’s public consultation on Binding standards for Equality Bodies’ (ECNI, 2022); Equality Commission for NI, ‘Equality Commission for Northern Ireland response to the European Commission’s proposals on Binding standards for Equality Bodies’ (ECNI, 2023).

- 3.61 Four Annex 1 equality directives reference the minimum competencies of equality bodies in their respective field: the EU Racial Equality Directive;¹⁷⁶ the EU Gender Equality Directive in the field of goods and services;¹⁷⁷ the EU Gender Equality Directive in the field of employment;¹⁷⁸ and the EU Gender Equality Directive in the field of self-employment.¹⁷⁹ As Annex 1 directives, these provisions are subject to the dynamic alignment or “keeping pace” obligation under the Windsor Framework.¹⁸⁰
- 3.62 The Commissions consider that the proposed EU directives on binding standards for equality bodies, amend or replace the provisions of a number of the EU equality directives in Annex 1 of the Windsor Framework and engage the ‘keeping pace’ obligation under Windsor Framework Article 2. It is therefore important that NI equality law is amended to keep pace with any changes to these equality directives, if these proposals are adopted.
- 3.63 The Commissions welcome the UK Government’s recognition that these proposed EU directives, as currently drafted, fall within the scope of Windsor Framework Article 2.¹⁸¹
- 3.64 The Commissions have recognised that the development and adoption of EU legislation on binding standards for equality bodies is a significant and important step to ensure that EU equality legislation is better applied, reducing opportunities for any divergence of rights across countries where such legislation applies, including NI.¹⁸²
- 3.65 If the changes in the proposed directive/s were transposed into NI equality law, they would be important, and of great value, not only to the ECNI in carrying out its role and remit as the designated equality body for NI in the areas covered by the relevant Annex 1 equality directives, but, in turn, also of value to individuals in NI seeking redress against discrimination in areas covered by these Annex 1 equality directives.

176 Directive 2000/43/EC, ‘Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin’, 29 June 2000.

177 Directive 2004/113/EC, ‘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.

178 Directive 2006/54/EC, ‘EU Parliament and Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation (Recast)’, 5 July 2006.

179 Directive 2010/41/EU, ‘EU Parliament and 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.

180 Article 13(3), Windsor Framework.

181 Letter from the Minister of State for NI, Steve Baker MP, to the House of Lords Sub Committee on the Protocol on Ireland/Northern Ireland, 18 September 2022.

182 Equality Commission for NI, NI Human Rights Commission and Irish Human Rights and Equality Commission, ‘Policy Recommendations: European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland’ (ECNI, NIHRC and IHREC, 2023).

- 3.66 It should be noted that the standards outlined in the draft EU directives are minimum standards and the NI Executive could, as a matter of best practice, introduce legislation that goes beyond these standards, aligned to international human rights standards and best practice.
- 3.67 The EU Parliament has set a date in April 2024 for the approval of the first directive.¹⁸³ In February 2024, the Council agreed its approach on the second directive, which will be sent to the EU Parliament, together with a request to give its consent.¹⁸⁴ Both draft directives are expected to be adopted in May 2024 and Member States will have two years to transpose them into domestic law.¹⁸⁵
- 3.68 It is essential that the UK Government and NI Executive Office, tracks and monitors the passage of these draft directives to ensure that, if adopted, the law in NI is amended to keep pace with those changes that amend or replace an Annex 1 directive/s to ensure compliance with Windsor Framework Articles 2 and 13.

Recommendations

- 3.69 The Commissions advise the NI Executive and relevant NI departments that, pursuant to Articles 2 and 13 of the Windsor Framework, NI law should be amended to keep pace with those provisions of the EU directives on standards for equality bodies, if adopted, which amend or replace any Annex 1 equality directives. The implementation of these changes in NI law should align with the transposition deadline for Member States in relation to these directives, if adopted.**

Age Discrimination

- 3.70 Windsor Framework Articles 2 and 13 require the law in NI to keep pace with any improvements to minimum standards of equality protection enshrined in six EU directives listed in Annex 1 to the Windsor Framework, including the **EU Employment Equality (Framework) Directive** which protects against discrimination on the grounds of age in employment and vocational

183 EU Commission, 'Proposal for a Directive of the European Parliament and of the Council on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU' (EU Commission, 2022).

184 EU Commission, 'Proposal for a Council Directive on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in the field of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services - COM(2022) 689', (EU Commission, 2022).

185 Council of EU, 'Press release: Equality bodies: Council agrees on final text to strengthen their role across the EU', 20 February 2024.

training.¹⁸⁶ The obligation also requires compliance with current and future CJEU case-law.

- 3.71 While there is NI legislation prohibiting age discrimination in the areas of employment and occupation, further and higher education and vocational training,¹⁸⁷ there is currently no equality legislation prohibiting discrimination in the provision of goods, facilities and services in NI on the basis of age, unlike in Great Britain and Ireland.¹⁸⁸ The Commissions have consistently called for the urgent reform of equality legislation in NI to strengthen protection for all ages and have made recommendations for change to the age discrimination legislation relating to the provision of goods, facilities, and services.¹⁸⁹ As referenced in the Commissions' research report on divergence of rights¹⁹⁰ and as set out in the Commissions' policy recommendations,¹⁹¹ this would avoid the continuing divergence of rights and ensure that NI law keeps pace with British, Irish and potentially future EU law in relation to age discrimination in the provision of goods, facilities and services.¹⁹²
- 3.72 In 2015, the Office of the First Minister and Deputy First Minister (now the Executive Office) proposed extending age discrimination legislation to cover the provision of goods, facilities and services.¹⁹³ Prior to the suspension of the NI Executive and Assembly, officials were considering next steps.¹⁹⁴ As of March 2024, no further progress had been made.¹⁹⁵
- 3.73 In June 2023, the UN CRC Committee found that there was "insufficient progress in ensuring protection of all children under 18 years of age against discrimination on the grounds of their age".¹⁹⁶ The Committee recommended

186 Directive 2000/78/EC, 'Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation', 27 November 2000. Pursuant to Article 13, Windsor Framework, NI equality law must keep pace with any enhancements made by the EU to the six Annex 1 directives, on or after 1 January 2021, including monitoring current and future CJEU case law.

187 The Employment Equality (Age) Regulations (Northern Ireland) 2006 (the Regulations).

188 Equality Commission for NI, 'Gaps in equality law between Great Britain and Northern Ireland' (ECNI, 2014).

189 Equality Commission for NI, 'Press Release: Age discrimination law needs strengthened in NI', 3 February 2023. NI Human Rights Commission, 'Response to Consultation on Proposals to Extend Age Discrimination Legislation (Age, Goods, Facilities and Services)' (NIHRC, 2015).

190 Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, 'European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC and IHREC, 2022).

191 Equality Commission for NI, NI Human Rights Commission and Irish Human Rights and Equality Commission, 'Policy Recommendations: European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC and IHREC, 2023).

192 See for example, EU Commission, 'Proposal for a Council Directive on implementing the principle of equal treatment outside the labour market, irrespective of age, disability, sexual orientation or religious belief, COM(2008)0426 - 2008/0140(CNS) (EU Commission, 2008).

193 Office of the First Minister and Deputy First Minister, 'Proposals to Extend Age Discrimination Legislation (Age Goods, Facilities and Services) Consultation Document' (OFMDFM, 2015).

194 NI Assembly Hansard, 'Written Question: Age Discrimination Legislation - Andrew Muir MLA - AQW 28071/17-22', 26 January 2022.

195 Email correspondence from the Executive Office to NI Human Rights Commission, 27 March 2024; Equality Commission for NI, 'Press Release: Age discrimination law needs strengthened in NI', 3 February 2023.

196 CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Sixth and Seven Periodic Report of the UK of

that the UK Government and the NI Executive “take legislative and other measures to ensure the protection of all children below 18 years of age from discrimination on the grounds of their age, particularly in... NI”.¹⁹⁷

- 3.74 As noted above, in 2022, EU Commission introduced proposals for two EU directives on standards for equality bodies.¹⁹⁸ The Commissions consider that these proposals amend provisions of EU Employment Equality (Framework) Directive which protects against discrimination on grounds of age in employment.¹⁹⁹

Recommendations

- 3.75 The Commissions continue to recommend that the NI Executive and the Executive Office introduces legislation protecting against age discrimination in the provision of goods, facilities and services.
- 3.76 The Commissions advise the NI Executive and the Department for Communities that, pursuant to Articles 2 and 13 Windsor Framework, NI law should be amended to keep pace with those provisions of the EU directives on standards for equality bodies, if adopted, which amend or replace the EU Employment Equality (Framework) Directive. The timing of implementing these changes in NI law should align with the transposition deadline for Member States in relation to these directives, if adopted.

Disability Equality

- 3.77 Windsor Framework Articles 2 and 13 require the law in NI to keep pace with any improvements to minimum standards of equality protection enshrined in six EU directives listed in Annex 1 to the Windsor Framework, including the **EU Employment Equality (Framework) Directive** which protects against discrimination on the grounds of disability in employment and vocational

Great Britain and NI', 2 June 2023, at para 46 (d).

197 Ibid, at para 20 (f).

198 See section on Binding Standards for Equality Bodies in this chapter. EU Commission, 'Proposal for a Directive on Standards for Equality Bodies in the Field of Equal Treatment and Equal Opportunities between Women and Men in Matters of Employment and Occupation, and Deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU - COM(2022) 688' (EU Commission, 2022); EU Commission, 'Proposal for a Directive on Standards for Equality Bodies in the Field of Equal Treatment between Persons Irrespective of their Racial or Ethnic Origin, Equal Treatment in the Field of Employment and Occupation Between Persons Irrespective of their Religion or Belief, Disability, Age or Sexual Orientation, Equal Treatment Between Women and Men in Matters of Social Security and in the Access to and Supply of Goods and Services, and Deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC - COM(2022) 689' (EU Commission, 2022).

199 Directive 2000/78/EC, 'Council of the EU Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation', 27 November 2000. See also Letter from the Minister of State for NI, Steve Baker MP, to the House of Lords Sub Committee on the Protocol on Ireland/Northern Ireland, 18 September 2022.

training.²⁰⁰ The obligation also requires compliance with current and future CJEU case-law.

3.78 The UK Government has also recognised a non-exhaustive list of other measures which fall within the scope of the commitment in Windsor Framework Article 2, including specific measures which protect the rights of disabled people.²⁰¹ In 2022, the Commissions set out an initial view as to the EU laws related to the rights of disabled people which fall within the scope of Article 2.²⁰²

3.79 The Commissions have identified measures which fall within the scope of Windsor Framework Article 2,²⁰³ which are to be subject the ‘Stormont brake’ mechanism.²⁰⁴ These include measures that are relevant for disabled people in terms of accessibility standards. For example, Article 24 of the EU Directive on Machinery (Directive 2006/42/EC),²⁰⁵ amends the law on the manufacture of lifts in relation to access for, and use by, disabled people, which is included in Windsor Framework Annex 2. The ‘Stormont brake’ mechanism may therefore have potential implications for equality and human rights, including those relating to disabled people in NI. The Commissions have called for equality and human rights considerations to be built into all key stages of the ‘Stormont brake’ mechanism.²⁰⁶

UN Convention on the Rights of Persons with Disabilities

3.80 In accordance with Section 7A of the EU Withdrawal Act 2018, all the rights, obligations and remedies arising under the UK-EU Withdrawal Agreement are part of UK law. The definition of EU law in the UK-EU Withdrawal Agreement encompasses those international agreements to which the EU is party, including the UN CRPD. As the EU acceded to the UN CRPD prior to UK withdrawal,²⁰⁷ the overriding obligation to promote, protect and implement

200 Directive 2000/78/EC, ‘EU Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation’, 27 November 2000. Pursuant to Article 13, Windsor Framework, NI equality law must keep pace with any enhancements made by the EU to the six Annex 1 directives, on or after 1 January 2021, including monitoring current and future CJEU case law.

201 NI Office, ‘UK Government Commitment to “No Diminution of Rights, Safeguards and Equality of Opportunity” in Northern Ireland: What does it Mean and How will it be Implemented?’ (NIO, 2020), at para 13.

202 For example, Directive 2016/2102/EU ‘EU Parliament and Council Directive on the accessibility of the websites and mobile applications of public sector bodies’, 26 October 2016; and Regulation (EC) 1107/2006, ‘EU Parliament and Council Regulation concerning the rights of disabled persons and persons with reduced mobility when travelling by air’, 5 July 2006. (See table of EU law in Appendix to 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)).

203 See table of EU law in Appendix to 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).

204 For further discussion on the Stormont Brake see Legal Framework section in Chapter 2.

205 Directive 2006/42/EC, ‘EU Parliament and Council Directive on machinery, and amending Directive 95/16/EC (recast)’, 17 May 2006.

206 Equality Commission for NI and NI Human Rights Commission, ‘Submission of the NIHRC and ECNI to the House of Lords Sub-Committee on the Protocol’s call for evidence for its inquiry on the Windsor Framework’ (ECNI and NIHRC, 2023). See also discussion on the Stormont Brake in Legal Framework section in Chapter 2.

207 Council Decision 2010/48/EC concerning the conclusion, by the European Community, of the United Nations Convention

the UN CRPD through EU law and policy is relevant to the interpretation of UK-EU Withdrawal Agreement 2020, including Windsor Framework Article 2, and to all EU measures referenced in that Agreement.²⁰⁸

- 3.81 The UN CRPD is therefore part of NI domestic law to the extent that it was within EU competence prior to the UK leaving the EU and is relevant for the interpretation of the Annex 1 equality directives and the EU law underpinning rights within the scope of Windsor Framework Article 2.²⁰⁹ In 2022, the ECNI published research which highlighted that the lack of progress in incorporating the UN CRPD into law has been linked to delays in disability strategies and an absence of progressive change to improve the lives of deaf and disabled people.²¹⁰
- 3.82 The NI High Court has recognised that the UN CRPD is an integral part of the EU legal order and is relevant to Windsor Framework Article 2.²¹¹ In May 2023, the Court of Appeal in NI confirmed that since UN CRPD was a part of the EU legal order prior to UK withdrawal, the NI Assembly was prohibited from legislating contrary to the UN CRPD as EU law where matters fell within the competence of the EU.²¹²
- 3.83 In 2023, the Commissions published research which highlighted EU policy developments which encourage EU Member States to ensure full integration and compliance with the UN CRPD, as well as EU legislative proposals to protect the rights of people with disabilities, extending the protections afforded by the EU Employment Equality (Framework) Directive.²¹³ Therefore incorporating UN CRPD rights into NI law would limit any potential for future divergence between NI and Ireland in the area of disability discrimination.
- 3.84 In August 2023, the Commissions, as part of the UK Independent Monitoring Mechanism alongside the Equality and Human Rights Commission and the

on the Rights of Persons with Disabilities, 26 November 2009.

208 Article 4, UK-EU Withdrawal Agreement.

209 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). See also Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, 'European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC and IHREC, 2022); and Equality Commission for NI, NI Human Rights Commission and Irish Human Rights and Equality Commission, 'Policy Recommendations: European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC and IHREC, 2023).

210 Nuala Toman, Tony O'Reilly, Michael McConway, Andrew Hamilton, Emma O'Neill, 'Progress Towards the Implementation of the UN CRPD in Northern Ireland' (ECNI, 2022), at 15.

211 *Re SPUC Pro-Life Limited* [2022] NIQB 9, at paras 105-106.

212 *Society for the Protection of the Unborn Child Pro-Life Ltd v Secretary of State for NI* [2023] NICA 35, at paras 57 and 68.

213 EU Parliament, 'Resolution on the implementation of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation in light of the UN CRPD', 10 March 2021 (2021) OJ C 474/04; Directive 2000/78/EC, 'EU Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation', 27 November 2000. See Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, 'European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC and IHREC, 2022).

Scottish Human Rights Commission,²¹⁴ made a submission to the UN CRPD Committee.²¹⁵ The report highlighted the continued relevance of the UN CRPD in relation to Windsor Framework Article 2 and implementation gaps and key issues in several areas. These included concerns about slow progress implementing previous UN CRPD Committee recommendations; lack of meaningful engagement between governments and disabled people; and limited availability of official data that reflects the intersectional experiences and outcomes for disabled people.²¹⁶

- 3.85 In March 2024, the UK Independent Monitoring Mechanism submitted further written evidence to the UN CRPD Committee to inform its inquiry review into the UK. The letter highlighted concerns that changes in the Data Protection and Digital Information Bill may result in a diminution of rights contrary to Windsor Framework Article 2 and that the use of automated decision-making within the social security system may impact on individuals' human rights.²¹⁷

Disability Strategy

- 3.86 Following the New Decade, New Approach commitment to publish a Disability Strategy, the Department for Communities has adopted a co-design approach to its development. The Commissions have highlighted, among other equality and human rights considerations, the need to embed consideration of Article 2 into the Strategy. The public consultation on the Disability Strategy was due to take place in early 2022, but this process has been delayed. In February 2024, the Minister was considering next steps on the development of the strategy.²¹⁸

CJEU Developments on Disability

- 3.87 In 2022, the Commissions published research which highlighted areas where NI disability discrimination law needs to be updated to meet the Windsor Framework's requirements of dynamic alignment, including in relation to evolving CJEU case law on the Annex 1 equality directives post

214 In accordance with Article 33(2), UN CRPD, the UK Independent Mechanism is tasked with promoting, protecting and monitoring implementation of the UN CRPD across the UK.

215 UK Independent Mechanism, 'Seven Years On: disabled people's rights to independent living, employment and standard of living in the UK' (UKIM, 2023); Independent Mechanism for NI, 'Jurisdictional 'Parallel' Submission on the implementation, in NI, of the recommendations by the Committee on the Rights of Persons with Disabilities in its 2016 report on an Inquiry, carried out under Article 6 of the Optional Protocol, into the UK' (ECNI and NIHRC, 2023).

216 UK Independent Mechanism, 'Seven Years On: disabled people's rights to independent living, employment and standard of living in the UK' (UKIM, 2023), at 7. The report further highlighted issues around the impact of the social security system organisation on disabled people, as well as the disproportionate effect the cost-of-living increases and the Covid-19 pandemic have had and continue to have on disabled people. The report also criticised the lack of social care provision, which has led to acute violations of disabled people's human rights.

217 Letter from the NI Human Rights Commission, Equality Commission for NI, Scottish Human Rights Commission and Equality and Human Rights Commission to the UN CRPD Committee, 1 March 2024 providing additional information for the UN CRPD Committee to inform its inquiry review into the UK. For further discussion of the Data Protection and Digital Information Bill, see the Data Protection section of this Chapter.

218 NI Assembly Hansard, 'Written Question: Disability Strategy – Robbie Butler MLA – AQW 6680/22-27' 27 February 2024.

31 December 2020.²¹⁹ For example, the CJEU ruling in the case of *Szpital Kliniczny*²²⁰ elaborated on the concept of disability within the EU Framework Equality Directive.²²¹ In addition, *Jurors*²²² and *Tartu Vangla*²²³ highlighted that justifications for the exclusion of persons with a disability from certain professional roles must be scrutinised closely.

- 3.88 While some aspects of the Court's findings are covered by the Disability Discrimination Act 1995, as amended, further reform of the 1995 Act is needed, particularly in relation to the definition of disability discrimination. The ECNI has previously called for disability-related discrimination to be replaced by provisions prohibiting indirect discrimination and discrimination arising from disability, which will remove the requirement for a disabled person to compare his or her treatment with that of someone else.²²⁴

EU Accessibility Act

- 3.89 In 2022, the Commissions' research highlighted that the implementation of the European Accessibility Act²²⁵ in Ireland will create a potential divergence of rights between Ireland and NI for people with disabilities and older people.²²⁶ The Act provides for more accessible products and services, at more competitive prices and fewer barriers to accessing transport and education.²²⁷
- 3.90 There is no obligation on the UK Government or NI Executive to adopt the EU Directive into UK law. The Commissions have called on the UK Government and NI Assembly, to keep pace with this EU accessibility legislation, on a voluntary basis, to address key inequalities that exist for disabled people and older people in accessing goods and services, where rights are strengthened and where it aligns with international human rights standards and best

219 Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, 'European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC and IHREC, 2022), at 9.

220 *Szpital Kliniczny im. dra J. Babińskiego Samodzielny Publiczny Zakład Opieki Zdrowotnej w Krakowie*, Case C-16/19, 29 January 2021. The CJEU ruled that under Article 1 of the Framework Equality Directive the definition of 'disability discrimination' should include discrimination between persons with disabilities. It also ruled that under Article 2 of this Directive any form of discrimination which is inextricably linked to a protected characteristic amounts to direct discrimination, rather than indirect discrimination.

221 Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, 'European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC and IHREC, 2022), at 69.

222 *TC and UB v Komisja za zashtita ot diskriminatsia and VA* ('Jurors'), Case C-824/19, 21 October 2021.

223 *XX v Tartu Vangla*, Case C-795/19, 15 July 2021.

224 Equality Commission for NI, 'Strengthening Protection for Disabled People Proposals for Reform - Full report' (ECNI, 2012), at 7-8.

225 Directive 2019/882/EU, 'Directive of the EU Parliament and Council on the accessibility requirements for products and services (European Accessibility Act)', 17 April 2019.

226 The European Accessibility Act does not fall directly under the Windsor Framework Article 2 commitment. See Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, 'European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC and IHREC, 2022), at 104.

227 EU Commission, 'Employment, Social Affairs & Inclusion: European accessibility act'.

practice.²²⁸ The deadline for EU member states to transpose the Accessibility Act into national law was June 2022. As of June 2025, companies must ensure that the products and services covered by the Act are accessible. Ireland has implemented the Act via the European Union (Accessibility Requirements of Products and Services) Regulations 2023.²²⁹

Autism Strategy

- 3.91 The Autism Act (NI) 2011 places a statutory responsibility on the Department of Health to publish an autism strategy every seven years. In March 2021, the Department of Health published an ‘Autism Interim Strategy 2021-2022’.²³⁰ The Autism (Amendment) Act NI 2022 provides for what should be included in a regional autism strategy.²³¹ In December 2023, the Department of Health published the Autism Strategy 2023-2028 with an associated delivery plan for 2023-2025.²³² In March 2024, the Department of Health confirmed that the actions set out in the delivery plan of the Strategy are underway, and that a monitoring and funding report will be produced, signed off by the Health Minister and published in the coming months.²³³

Assistance Dogs

- 3.92 In 2023, the UK and EU Commission reached a resolution on pet passports, which addressed concerns highlighted by the Commissions²³⁴ regarding potential equality and human rights implications in respect of changes to rules around taking pets, including assistance dogs, from Great Britain to NI.²³⁵ The UK Government confirmed that “for Northern Ireland pet owners there will be no new requirements of any kind” and that “pets owners can come and go from Great Britain without ever having to think about any paperwork or process”.²³⁶

228 Equality Commission for NI, NI Human Rights Commission and Irish Human Rights and Equality Commission, ‘Policy Recommendations: European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland’ (ECNI, NIHRC and IHREC, 2023).

229 European Union (Accessibility Requirements of Products and Services) Regulations 2023 (SI 636/2023).

230 Department of Health, ‘Autism Interim Strategy 2021-2022’ (DoH, 2021).

231 The NIHRC submitted advice to the Committee for Health on the Bill. See NI Human Rights Commission, ‘Response to Autism (Amendment) Bill’ (NIHRC, 2021).

232 Department of Health, ‘Autism Strategy 2023-2028’ (DoH, 2023); Department of Health, ‘Autism Strategy Delivery plan 2023-2028’ (DoH, 2023).

233 Email correspondence from the Autism Strategy Delivery Team, Department of Health to the NI Human Rights Commission, 26 March 2024.

234 Letter from the NI Human Rights Commission and the Equality Commission for NI to the Head of the NI Civil Service, 10 June 2021. In 2022, the Commissions reiterated their call for the UK and the EU to find a long-term, sustainable solution to pet travel arrangements to the House of Lords Sub-Committee on the Protocol’s follow up Inquiry on the Impact of the [original] Protocol. See Equality Commission for NI and NI Human Rights Commission, ‘Submission of the NIHRC and ECNI to the House of Lords Sub-Committee on the Protocol’s follow up Inquiry on the impact of the Protocol’ (ECNI and NIHRC 2022).

235 UK Government, ‘Political Declaration by the European Commission and the Government of the United Kingdom’, 27 February 2023, at 2.

236 UK Government, ‘The Windsor Framework: a new way forward - Command 806’ (UKG, 2023), para 45.

3.93 The Commissions welcomed the developments which remove or reduce checks on assistance dog owners. The Commissions also welcomed the UK Government’s indication that it would work with ferry companies to ensure that their online guidance reflects these new arrangements and gives travellers confidence to travel once again with their pets.²³⁷

Medicines

3.94 Following concerns about access to medicines post UK withdrawal from the EU,²³⁸ in 2023, the UK and EU announced that a permanent resolution had been found to ensure that patients in NI “will have access to new medicines at the same time and under the same conditions as Great Britain”, which would fully safeguard the supply of medicines from Great Britain into NI.²³⁹

3.95 The Commissions welcomed the announcements by the UK and EU which aim to address issues relating to the supply of medicines from Great Britain to NI. The Commissions continue to monitor the changes pursuant to the Windsor Framework to ensure there is no diminution of the current provision, including for disabled people, and to protect the highest attainable standard of health.

Recommendations

3.96 The Commissions continue to recommend that the Department for Communities promptly publishes and effectively implements a robust Disability Strategy, which embeds consideration of Windsor Framework Article 2, and is accompanied by a measurable plan of action for improving the living conditions of all persons with disabilities and effective monitoring arrangements.

3.97 The Commissions advise the NI Executive and the Department for Communities that, pursuant to Articles 2 and 13 of the Windsor Framework, NI law should be amended to keep pace with those provisions of the EU directives on standards for equality bodies, if adopted, which amend or replace the EU Employment Equality (Framework) Directive.

237 Equality Commission for NI and NI Human Right Commission, ‘Annual Report of the Equality Commission for NI and NI Human Right Commission on the implementation of Article 2 of the Windsor Framework 2022-2023 (ECNI and NIHRC, 2023).

238 Equality Commission for NI and NI Human Rights Commission, ‘Submission of the NIHRC and ECNI on the UK and EU proposals and the prospects for Agreement to the House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland’, (ECNI and NIHRC 2021); Letter from Minister of State for NI, Steve Baker MP, to Geraldine McGahey (ECNI) and Alyson Kilpatrick (NIHRC) on Annual Report of the Dedicated Mechanism on the implementation of Protocol Article 2 2021-2022, 1 December 2022; and Sub-Committee on the Protocol on Ireland/Northern Ireland, ‘Report from the Sub-Committee on the Protocol on Ireland/Northern Ireland: Follow-up report’ (HOL, 2022), at para 40.

239 UK Government and EU Commission, ‘Windsor Political Declaration by the European Commission and the Government of the United Kingdom’, 27 February 2023.

- 3.98** The Commissions continue to advise the NI Executive, and relevant NI departments, that, pursuant to Articles 2 and 13 of the Windsor Framework, the EU Framework Equality Directive and domestic law which gives effect to this Directive, should be interpreted in line with the decision of the CJEU in the *Szpital Kliniczny* case relating to disability discrimination.
- 3.99** The Commissions continue to recommend that the Department for Communities bring forward proposals to reform disability equality legislation so as to ensure that disability-related discrimination is replaced by provisions prohibiting indirect discrimination and discrimination arising from disability.
- 3.100** The Commissions continue to recommend that the UK Government and NI Executive give effect to the UN Convention on the Rights of Persons with Disabilities in domestic legislation.
- 3.101** The Commissions continue to recommend that the NI Executive, and relevant NI departments, including the Department for Communities, Department for the Economy and the Executive Office ensure that NI law aligns, on a voluntary basis, with the EU Accessibility Act where this enhances protections for people with disabilities and older people and aligns with international human rights standards and best practice.

Discrimination on Grounds of Sexual Orientation

- 3.102** Windsor Framework Articles 2 and 13 require the law in NI to keep pace with any improvements to minimum standards of equality protection enshrined in six EU directives listed in Annex 1 to the Windsor Framework, including the **EU Employment Equality (Framework) Directive** which protects against discrimination on the grounds of sexual orientation in employment and vocational training.²⁴⁰ The obligation also requires compliance with current and future CJEU case-law.
- 3.103** As noted above, in 2022, the EU Commission published proposals for two EU directives on standards for equality bodies.²⁴¹ The Commissions consider

²⁴⁰ Directive 2000/78/EC, 'EU Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation', 27 November 2000. Pursuant to Article 13, Windsor Framework, NI equality law must keep pace with any enhancements made by the EU to the six Annex 1 directives, on or after 1 January 2021, including monitoring current and future CJEU case law.

²⁴¹ See section on Binding Standards for Equality Bodies in this chapter. EU Commission, 'Proposal for a Directive on Standards for Equality Bodies in the Field of Equal Treatment and Equal Opportunities between Women and Men in Matters of Employment and Occupation, and Deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU - COM(2022) 688' (EU Commission, 2022); EU Commission, 'Proposal for a Directive on Standards for Equality Bodies in the Field of Equal Treatment between Persons Irrespective of their Racial or Ethnic Origin, Equal Treatment in the Field of Employment and Occupation Between Persons Irrespective of their Religion or Belief, Disability, Age or Sexual Orientation, Equal Treatment Between Women and Men in Matters of Social

that these proposals amend provisions of the EU Employment Equality (Framework) Directive, which protects against discrimination on grounds of sexual orientation.²⁴²

LGBTQI+ Strategy

- 3.104 In 2020, the New Decade, New Approach agreement included a commitment to publish a Sexual Orientation Strategy.²⁴³
- 3.105 In March 2023, the NIHRC provided a written briefing to the UN Independent Expert on Sexual Orientation and Gender Identity in relation to LGBTQI+ rights in NI in advance of a country visit to the UK in April 2023.²⁴⁴ In his end-of-mission statement, Mr Madrigal-Borloz noted that “the absence of an Executive has resulted in the failure to deliver on the ambitious LGBT human rights strategy”.²⁴⁵ The independent expert will present a full report on his visit to the Human Rights Council by June 2024.²⁴⁶
- 3.106 Progress of the Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy in 2023, was hindered by the suspension of the NI Executive.²⁴⁷ In March 2024, the Department for Communities advised that the Minister was considering the next steps and that final decisions on content and timelines for implementation of the strategy will be subject to Executive agreement.²⁴⁸

Recommendations

- 3.107 The Commissions continue to recommend that the Department for Communities promptly publishes and implements a robust LGBTQI+ Strategy for NI, which takes a human rights-based approach in line with international human rights standards and Windsor Framework Article 2, including the keeping pace obligations relating to the EU Employment Equality (Framework) Directive. This strategy should be accompanied by a measurable plan of action and effective monitoring mechanisms.**

Security and in the Access to and Supply of Goods and Services, and Deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC - COM(2022) 689' (EU Commission, 2022).

- 242 Directive 2000/78/EC, 'Council of the EU Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation', 27 November 2000. See also Letter from the Minister of State for NI, Steve Baker MP, to the Chair of the House of Lords Sub Committee on the Protocol on Ireland/Northern Ireland, 18 September 2022.
- 243 NI Office, 'New Decade, New Approach' (NIO, 2020), at 27.
- 244 NI Human Rights Commission, 'Briefing on Article 2 of the Ireland/Northern Ireland Protocol and sexual orientation and gender identity' (NIHRC, 2023).
- 245 UN Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity, 'Country visit to the United Kingdom of Great Britain and Northern Ireland (24 April – 5 May 2023) - End of mission statement' (OHRHR, 2023), at para 36.
- 246 Office of the High Commissioner on Human Rights, 'Press Release: UK: Keep calm and respect diversity, says UN expert', 11 May 2024.
- 247 Letter from Department for Communities to NI Human Rights Commission, 16 June 2023.
- 248 Email correspondence from Department for Communities to NI Human Rights Commission, 25 March 2024.

3.108 The Commissions advise the NI Executive and the Department for Communities that, pursuant to Articles 2 and 13 of the Windsor Framework, NI law should be amended to keep pace with those provisions of the EU directives on standards for equality bodies, if adopted, which amend or replace the EU Employment Equality (Framework) Directive.

Gender Equality

- 3.109 Windsor Framework Articles 2 and 13 require the law in NI to keep pace with any improvements to minimum standards of equality protection enshrined in six EU directives listed in Annex 1 to the Windsor Framework. This includes the **EU equality directives which protect against gender discrimination** and which cover **employment and vocational training**,²⁴⁹ **access to goods and services**,²⁵⁰ **and social security**.²⁵¹ The obligation also requires compliance with current and future CJEU case-law.
- 3.110 The rights, safeguards and equality of opportunity provisions set out in the relevant chapter of the Belfast (Good Friday) Agreement include the “right to equal opportunity in all social and economic activity, regardless of ... gender”. To the extent that additional EU obligations fall within the scope of Windsor Framework Article 2, such as the EU Parental Leave Directive²⁵² and the EU Pregnant Worker’s Directive,²⁵³ there should be no diminution of rights, safeguards and equality of opportunity following the UK withdrawal from the EU.
- 3.111 As noted above, in December 2022, the EU Commission published proposals for two EU directives on standards for equality bodies.²⁵⁴ The Commissions, consider that the proposed directives amend provisions of the gender equality

249 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.

250 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.

251 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.

252 Directive 2010/18/EU, ‘Council Directive implementing the revised Framework Agreement on parental leave’, 8 March 2010.

253 Directive 92/85/EEC, ‘Council Directive on the Introduction of Measures to Encourage Improvements in the Safety and Health at Work of Pregnant Workers and Workers who have Recently Given Birth or are Breastfeeding’, 19 October 1992.

254 See section on Binding Standards for Equality Bodies in this chapter. EU Commission, ‘Proposal for a Directive on Standards for Equality Bodies in the Field of Equal Treatment and Equal Opportunities between Women and Men in Matters of Employment and Occupation, and Deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU - COM(2022) 688’, (EU Commission, 2022); EU Commission, ‘Proposal for a Directive on Standards for Equality Bodies in the Field of Equal Treatment between Persons Irrespective of their Racial or Ethnic Origin, Equal Treatment in the Field of Employment and Occupation Between Persons Irrespective of their Religion or Belief, Disability, Age or Sexual Orientation, Equal Treatment Between Women and Men in Matters of Social Security and in the Access to and Supply of Goods and Services, and Deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC - COM(2022) 689’ (EU Commission, 2022).

directives specified in Annex 1 to the Windsor Framework.²⁵⁵

3.112 In addition, in June 2023, the EU Pay Transparency Directive came into force.²⁵⁶ The Commissions consider that the provisions of the EU Pay Transparency Directive amend and/or replace provisions in the EU Gender Equality (Employment) Directive²⁵⁷ which is listed in Annex 1 of the Windsor Framework.²⁵⁸ Therefore, they consider that NI equality law must keep pace with these changes, further to the UK Government's dynamic alignment obligation in the Windsor Framework.²⁵⁹ There is more detailed discussion of the EU Pay Transparency Directive in the Employment Equality (Employment Rights) section of this chapter.

3.113 These directives set out minimum requirements and the Commissions would encourage the NI Executive to adopt an approach when implementing any EU changes to these directives that goes beyond these minimum standards where this reflects best practice, including international human rights best practice, and where it seeks to strengthen rights in this area.

Gender Equality Strategy

3.114 In 2020, the New Decade, New Approach agreement included a commitment to publish a new Gender Equality Strategy.²⁶⁰ The Department for Communities has adopted a co-design approach to its development. In 2022, a public consultation on the Gender Equality Strategy was delayed. In March 2024, the Department for Communities advised that the Minister was considering the next steps and that final decisions on content and timelines for implementation of the strategy will be subject to Executive agreement.²⁶¹

Participation of Women in Public Life

3.115 In addition to the keeping pace obligation, the NI Executive as a matter of best practice can voluntarily align with EU developments, even where it is not required to do so under the Windsor Framework. Voluntary alignment that strengthens rights and is aligned to international human rights standards

255 Directive 2004/113/EC, 'Council of the EU 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, 'Council of the EU Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation', 5 July 2006; Directive 2010/41/EU, 'EU Parliament and Council of the EU 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. See also Letter from the Minister of State for NI, Steve Baker MP, to the Chair of the House of Lords Sub Committee on the Protocol on Ireland/Northern Ireland, 18 September 2022.

256 Directive 2023/970/EU, 'EU Parliament and Council Directive to strengthen the application of the principle of equal pay for equal work or work of equal value, between men and women through pay transparency and enforcement mechanisms', 10 May 2023.

257 Directive 2006/54/EC, 'EU Parliament and Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation (Recast)', 5 July 2006.

258 Equality Commission for NI and NI Human Rights Commission, 'Briefing Paper: The EU Pay Transparency Directive: The UK Governments dynamic alignment obligations relating to Windsor Framework Article 2' (ECNI and NIHRC, 2024).

259 Article 13(3), Windsor Framework.

260 NI Office, 'New Decade, New Approach' (NIO, 2020).

261 Email correspondence from Department for Communities to NI Human Rights Commission, 25 March 2024.

and best practice could help ensure equivalence of rights on the island of Ireland.²⁶²

3.116 In 2022, the EU adopted a directive on gender balance in non-executive director roles ('EU Gender Balance Directive'), whereby Member States are required to ensure that listed companies have at least 40% of non-executive director roles or 33% of all director positions to be of the underrepresented sex by June 2026.²⁶³ Ireland is obliged under EU law to adopt these measures by that date. Such provisions may not be reflected in NI law and could potentially lead to a divergence of rights on the island of Ireland. The ECNI has previously noted the under-representation of women on boards in NI and has highlighted the business benefits of having gender diversity on boards.²⁶⁴

3.117 In March 2024, the ECNI published independently commissioned research on the impact of Brexit on women in NI.²⁶⁵ This research found that Brexit had been perceived by those who participated in the research as a gendered process, with women and women's issues marginalised and under-represented including in UK-EU Brexit negotiations. It highlighted that a key obstacle to women's participation in Brexit discussions was the level of abuse and intimidation directed towards women in the public sphere who spoke out on Brexit, including on social media.²⁶⁶

3.118 The ECNI is currently considering the findings of this research and will be developing policy recommendations in response to these issues.²⁶⁷ The ECNI has previously called for action to increase the participation of women in political and public life and decision-making in NI.²⁶⁸

Recommendations

3.119 The Commissions continue to recommend that the Department for Communities promptly publishes and implements a robust Gender Equality Strategy for NI, accompanied by a measurable plan of action, which takes into account its obligations under Windsor Framework Article 2, including the keeping pace obligations relating to the four gender equality directives in Annex 1.

262 Equality Commission for NI, NI Human Rights Commission and Irish Human Rights and Equality Commission, 'Policy Recommendations: European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC and IHREC, 2023)

263 Directive 2022/2381/EU, 'EU Parliament and Council Directive on improving the gender balance among directors of listed companies and related measures', 23 November 2022.

264 Equality Commission for NI, 'Gender Equality: Policy Priorities and Recommendations' (ECNI, 2016), at 33-35.

265 Katharine Wright, Ruth McAreavey and Rebecca Donaldson, 'The Impact of Brexit on Women in Northern Ireland' (ECNI, 2024), at 29.

266 Ibid, at 33-34.

267 Ibid, at 31.

268 Equality Commission for NI, 'Gender Policy Priorities' (ECNI, 2016), at 31.

- 3.120** The Commissions advise the NI Executive, and relevant NI departments, that, pursuant to Articles 2 and 13 of the Windsor Framework, NI law should be amended to keep pace with those provisions of the EU directives on standards for equality bodies, if adopted, which amend or replace the EU Gender (Goods and Services) Directive, the EU Equal Treatment (Employment) Directive and/or EU Equal Treatment (Self-Employment) Directive.
- 3.121** The Commissions advise the UK Government, the NI Executive, and the NI Department for Communities, pursuant to Articles 2 and 13 of the Windsor Framework, that NI equality law should be amended to keep pace with the relevant provisions of the EU Pay Transparency Directive. The timeline for transposition of the relevant provisions of the Directive should align with the transposition deadline for Member States.²⁶⁹
- 3.122** The Commissions recommend that the NI Executive ensure that NI law voluntarily aligns with the EU Gender Balance Directive where this strengthens protections and aligns with international human rights standards and best practice.²⁷⁰

Racial Equality

- 3.123** Windsor Framework Articles 2 and 13 require the law in NI to keep pace with any improvements to minimum standards of equality protection enshrined in six EU directives listed in Annex 1 to the Windsor Framework, including the **EU Racial Equality Directive**.²⁷¹ The obligation also requires compliance with current and future CJEU case-law.
- 3.124** In 2016, the UN Convention on the Elimination of Racial Discrimination (UN CERD) Committee recommended that the UK Government and NI Executive promptly adopt comprehensive legislation prohibiting racial discrimination in line with UN CERD.²⁷²

²⁶⁹ In particular, the Commissions advise that, apart from a small number of provisions of the Pay Transparency Directive that are no longer relevant now that the UK has left the EU, all other provisions of the Pay Transparency Directive are transposed into NI law by 7 June 2026.

²⁷⁰ Equality Commission for NI, NI Human Rights Commission and Irish Human Rights and Equality Commission, 'Policy Recommendations: European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC and IHREC, 2023).

²⁷¹ 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. Pursuant to Article 13, Windsor Framework, NI equality law must keep pace with any enhancements made by the EU to the six Annex 1 directives, on or after 1 January 2021, including monitoring current and future CJEU case law.

²⁷² CERD/C/GBR/CO/21-23, 'Concluding Observations on the Twenty-first to Twenty-third Periodic Reports of United Kingdom', 26 August 2016, at para 8(c). This was reiterated by UN Special Rapporteur on contemporary forms of racism, E Tendayi Achiume when she visited in NI in 2018 (A/HRC/41/54/Add.2, 'Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance: Visit to the UK of Great Britain and NI', 27 May 2019, at para 74(f)).

- 3.125 In March 2023 the ECNI published independently commissioned research on the Impact of Brexit on Minority Ethnic and Migrant People.²⁷³ Based on the research findings, and taking into account the views of stakeholders, policy recommendations were published by the ECNI in 2024.²⁷⁴
- 3.126 In June 2023, the UN CRC Committee recommended that the UK Government and NI Executive “address the overrepresentation of children belonging to minority groups in detention and develop measures, in consultation with affected children and their families, to prevent racial profiling by law enforcement authorities”.²⁷⁵
- 3.127 In May 2023, both Commissions submitted parallel reports to the Council of Europe (CoE) European Commission against Racism and Intolerance. In November 2023, both Commissions met with the CoE Commission as part of its country visit. The NIHRC identified the relevance of Windsor Framework Article 2 and raised concerns across a number of areas including inclusive education, migration, modern slavery and hate crime.²⁷⁶ ECNI reiterated the continued relevance of EU legislative developments in the area of racial equality for NI under Article 2 commitments, as well as the findings of its commissioned research into the Impact of Brexit on Minority Ethnic and Migrant People in NI.²⁷⁷
- 3.128 In November 2023, the NIHRC published research on the rights of refugees, asylum-seekers and migrants post-Brexit.²⁷⁸ The paper found that refugees and asylum seekers are protected by Windsor Framework Article 2 and identified relevant EU law which underpins the non-diminution commitment. It also used the Nationality and Borders Act 2022 and the Illegal Migration Act 2023 to illustrate the factors that must be taken into consideration when seeking to determine whether there has been a diminution of rights contrary to Article 2.²⁷⁹
- 3.129 In November 2023, the NIHRC also published a legal analysis of immigration or related rights and equality protections in NI after Brexit, which explored which migration or related rights, if any, will be covered by potential future developments of the six EU Annex 1 equality directives. This analysis included

273 Pivotal, ‘Impact of Brexit on minority ethnic and migrant people in Northern Ireland’ (ECNI, 2023).

274 Equality Commission for NI, ‘Policy Recommendations: The Impact of Brexit on Minority Ethnic and Migrant People in NI’ (ECNI, 2024).

275 CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 22 June 2023, at para 54(g).

276 NI Human Rights Commission, ‘Submission to the CoE European Commission Against Racism and Intolerance - Parallel Report for the Sixth Cycle in Monitoring the United Kingdom’ (NIHRC, 2023).

277 Pivotal, ‘Impact of Brexit on Minority Ethnic and Migrant People in Northern Ireland’ (ECNI, 2023).

278 Alison Harvey, ‘Article 2 of the Windsor Framework and the rights of refugees and persons seeking asylum’ (NIHRC, 2023).

279 Ibid.

a section on nationality discrimination and the interaction between the EU Racial Equality Directive and discrimination in the immigration context.²⁸⁰

EU Racial Equality Directive

- 3.130 The EU Racial Equality Directive protects against discrimination on the grounds of race and ethnicity across a range of areas, including employment and vocational training, access to goods and services, education and social security.²⁸¹
- 3.131 In 2022, the Commissions responded separately to a consultation by the EU Commission on gaps in the EU Racial Equality Directive,²⁸² as part of their respective mandates to monitor the alignment of NI law with any enhancements to rights or safeguards under the EU Racial Equality Directive.²⁸³
- 3.132 Both Commissions highlighted the importance of the requirement that the law in NI ‘keep pace’ with any changes to the EU Racial Equality Directive that strengthen rights.²⁸⁴ NIHRC recommended specific acknowledgement of Windsor Framework Article 2 in the text of the EU Directive.²⁸⁵
- 3.133 The ECNI also highlighted several areas of importance when identifying gaps in the EU Racial Equality Directive including protection against discrimination on the grounds of colour and nationality, and in relation to public functions, multiple discrimination, third party harassment, increasing protection against victimisation and equality data and monitoring.²⁸⁶
- 3.134 The NIHRC also outlined the need to enhance the scope of discrimination and compliance under the EU Directive and highlighted the need to identify discrimination arising from algorithms and data-driven technology.²⁸⁷ Furthermore, the NIHRC noted that the review of the EU Directive provided a welcome opportunity to address local gaps, including protections against intersectional and multiple discrimination in NI and providing for a duty on all public authorities to collect, analyse and monitor equality data.²⁸⁸

280 Alison Harvey, ‘Legal analysis of immigration or related rights and equality protections in NI after Brexit’ (NIHRC, 2023).

281 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.

282 EU Commission, ‘Addressing possible gaps in the Racial Equality Directive – Public Consultation’ (EU, 2022).

283 Section 78A(1), Northern Ireland Act 1998; Articles 2 and 13, Windsor Framework and s7A EU (Withdrawal) Act 2018.

284 NI Human Rights Commission, ‘Response to the European Commission Consultation on the Racial Equality Directive (Directive 2000/43/EC)’ (NIHRC, 2022); Equality Commission for NI, ‘Response to European Commission - Addressing possible gaps in the Racial Equality Directive’ (ECNI, 2022).

285 NI Human Rights Commission, ‘Response to the European Commission Consultation on the Racial Equality Directive (Directive 2000/43/EC)’ (NIHRC, 2022).

286 Equality Commission for NI, ‘Response to European Commission - Addressing possible gaps in the Racial Equality Directive’ (ECNI, 2022).

287 NI Human Rights Commission, ‘Response to the European Commission Consultation on the Racial Equality Directive (Directive 2000/43/EC)’ (NIHRC, 2022).

288 Ibid.

3.135 In 2022, the EU Commission published proposals for two EU directives on standards for equality bodies.²⁸⁹ The Commissions consider that these proposals, if adopted, amend provisions of the EU Race Equality Directive.²⁹⁰

3.136 A response by the EU Commission in relation to its consultation on the EU Racial Equality Directive is awaited.

Race Law Reform

3.137 In 2015, the Executive Office committed to reviewing the Race Relations (NI) Order 1997.²⁹¹

3.138 In March 2023, the TEO launched a consultation on legislative reform of the Race Relations (NI) Order which ran until June 2023. The review consulted on several proposals, including provision of goods and services, education and employment.²⁹² It also proposed to introduce a provision to enact Ethnic Equality Monitoring through secondary legislation after it pushes forward with Public Sector Ethnic Equality Monitoring.²⁹³

3.139 In June 2023, in response to the consultation, the ECNI welcomed that, following significant engagement with the Executive Office, many of its proposals aligned with ECNI advice, but expressed disappointment that the consultation did not address all ECNI recommendations, in particular combined discrimination, which ECNI identified as a priority area for change.²⁹⁴

3.140 Both Commissions also highlighted the importance of compliance with Windsor Framework Article 2, including the dynamic alignment obligations in relation to the EU Racial Equality Directive, the proposed EU directives on binding standards for equality bodies and CJEU case law.²⁹⁵ In its response, ECNI encouraged steps to be taken voluntarily by TEO, to ensure that NI law

289 See section on Binding Standards for Equality Bodies in this chapter. EU Commission, 'Proposal for a Directive on Standards for Equality Bodies in the Field of Equal Treatment and Equal Opportunities between Women and Men in Matters of Employment and Occupation, and Deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU - COM(2022) 688' (EU Commission, 2022); EU Commission, 'Proposal for a Directive on Standards for Equality Bodies in the Field of Equal Treatment between Persons Irrespective of their Racial or Ethnic Origin, Equal Treatment in the Field of Employment and Occupation Between Persons Irrespective of their Religion or Belief, Disability, Age or Sexual Orientation, Equal Treatment Between Women and Men in Matters of Social Security and in the Access to and Supply of Goods and Services, and Deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC - COM(2022) 689' (EU Commission, 2022).

290 Article 13(3), Windsor Framework; Directive 2000/43/EC, 'Council of the EU Directive on Implementing the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin', 29 June 2000.

291 The Executive Office, 'Racial Equality Strategy 2015-2025' (TEO, 2015).

292 The Executive Office, 'Review of the Race Relations (NI) Order 1997: Consultation Document' (TEO, 2023).

293 Ibid.

294 Equality Commission for NI, 'Consultation Response: The Executive Office: Consultation on the Review of the Race Relations (NI) Order 1997' (ECNI, 2023).

295 For further discussion of these directives see section on Binding Standards for Equality Bodies in this chapter. NI Human Rights Commission, 'Response to The Executive Office's Consultation on the Review of the Race Relations (NI) Order 1997' (NIHRC, 2023); Equality Commission for NI, 'Consultation Response: The Executive Office: Consultation on the Review of the Race Relations (NI) Order 1997' (ECNI, 2023).

aligns with changes to EU laws or directives, where they have the potential to strengthen equality and human rights protections, standards or frameworks.²⁹⁶

- 3.141 The NIHRC response to the consultation, also noted the importance of a human rights-based approach and welcomed the commitment within the proposals to ensure that the Race Relations (NI) Order 1997, or equivalent, imposes a duty on specified public authorities to collect data on racial equality and set racial equality objectives. The NIHRC also stressed that this commitment should be delivered as quickly as possible in its entirety.²⁹⁷
- 3.142 In 2022, the ECNI published a paper on “Race Law Reform: Priorities and Recommendations”, outlining that in the absence of harmonised single equality legislation, urgent changes are required to strengthen racial equality legislation in NI. The ECNI’s paper highlighted five priorities for action in relation to race equality laws including harmonising and expanding the scope of racial grounds;²⁹⁸ ensuring broader protection against racial discrimination and harassment by public bodies when carrying out their public functions; introducing protections against combined or multiple discrimination; greater protection for employees against third party racial harassment; and expanding the scope of positive action measures.
- 3.143 The ECNI also reiterated the need to improve workforce monitoring on racial equality grounds, limit exceptions to racial equality law and improve enforcement and remedies.²⁹⁹ The ECNI further highlighted the UK Government’s commitment under Windsor Framework Article 2 to ensure there is no diminution of rights, safeguards and equality of opportunity protections and provisions, including those underpinned by the EU Racial Equality Directive, as set out in the relevant part of the Belfast (Good Friday) Agreement. It also highlighted the UK Government’s commitment to ensure NI’s equality laws keep pace with any changes the EU may make to amend or replace the Annex 1 equality directives that enhance protections, including the EU Racial Equality Directive.³⁰⁰
- 3.144 In March 2024, the Executive Office confirmed that a draft report on the findings of the consultation on reforming the Race Relations (NI) Order is currently with Ministers for consideration.³⁰¹

296 Equality Commission for NI, ‘Consultation Response: The Executive Office: Consultation on the Review of the Race Relations (NI) Order 1997’ (ECNI, 2023).

297 NI Human Rights Commission, ‘Response to The Executive Office’s Consultation on the Review of the Race Relations (NI) Order 1997’ (NIHRC, 2023).

298 Including on grounds of colour and nationality.

299 Equality Commission for NI, ‘Race Law Reform: Priorities and Recommendations’ (ECNI, 2022).

300 Articles 2 and 13, Windsor Framework.

301 Email correspondence from the Executive Office to NI Human Rights Commission, 25 March 2024.

Racial Equality Strategy

- 3.145 In August 2023, the Executive Office commissioned an Independent Review of progress on the implementation of the Racial Equality Strategy 2015-2025.³⁰² In November 2023, the NIHRC met with the Independent Review team and raised several issues including ethnic equality monitoring, multiple intersectional discrimination, racial profiling and the UK Government and NI Executive's commitment under Windsor Framework Article 2, particularly in relation to the obligation to 'keep pace' with the EU Racial Equality Directive.³⁰³
- 3.146 The ECNI's policy recommendations on the Impact of Brexit on Minority Ethnic and Migrant People in NI noted that the current Racial Equality Strategy, as it predates Brexit, did not take account of the impact of Brexit on minority ethnic and migrant people in NI.³⁰⁴
- 3.147 The ECNI has highlighted that it is vital that the review and evaluation of the current Racial Equality Strategy, and that the development and implementation of a revised Strategy and action plan, following its expiration at the end of 2025, should address the ECNI's recommendations relating to the impact of Brexit on minority ethnic and migrant people, as well as the ECNI's non-Brexit related recommendations and concerns regarding the Strategy.³⁰⁵
- 3.148 The ECNI has set out a framework for action, which is aimed at ensuring an effective approach to addressing its recommendations and to ensuring that promoting racial equality post Brexit is, and continues to be, a priority for Government. This includes overarching recommendations in relation to the need for collaborative working, commitment and leadership; engagement with NI stakeholders; resourcing and equality mainstreaming.³⁰⁶

Minority Ethnic Groups/Faith Communities

- 3.149 Since 2021 the Commissions have been raising the issue of access to, as well as cost and availability of, halal and kosher food and ritual items and the impact on certain ethnic minority groups/faith communities in NI.³⁰⁷ These issues arose in relation to the movement of goods from Great Britain to NI following the UK's withdrawal from the EU.³⁰⁸

302 The Executive Office, 'Racial Equality'.

303 Meeting between NI Human Rights Commission and the Independent Review of Progress on the Implementation of the Racial Equality Strategy 2015-2025, 3 November 2023.

304 Equality Commission for NI, 'Policy Recommendations: The Impact of Brexit on Minority Ethnic and Migrant People in NI' (ECNI, 2024).

305 Ibid.

306 Ibid.

307 NI Human Rights Commission and Equality Commission for NI, 'Submission of the NIHRC and ECNI to the House of Lords Sub-Committee on the Protocol's follow up Inquiry on the impact of the Protocol' (NIHRC and ECNI, 2021), paras 2.3 – 2.7.

308 Equality Commission for NI and NI Human Rights Commission, Annual Report of the NIHRC and the ECNI on the

3.150 In February 2023, the UK Government and EU Commission reached a political agreement in principle in relation to the trading arrangements under the Windsor Framework aimed at improving the flow of goods between Great Britain and NI.³⁰⁹ The Commissions continue to monitor the impact of the developments in the Windsor Framework, in terms of the ability of these communities to access these food products and ritual items.

Funding of Services for Minority Ethnic and Migrant People

3.151 The ECNI's policy recommendations on the Impact of Brexit on Minority Ethnic and Migrant People highlighted that research participants and minority ethnic and migrant participants at Commission engagement events felt that there was a lack of financial support for organisations that provide advice and support to minority ethnic and migrant groups, whether relating to the EUSS or other issues such as housing, social security, healthcare or education.³¹⁰

3.152 The ECNI is aware of the concerns held by many in the community and voluntary sector regarding the implications of the loss of EU funding and the outworking of the UK Shared Prosperity Fund. For example, for organisations that provide services for equality groups, including minority ethnic and migrant people, these losses have been severely compounded by budget cuts by NI departments, and the Commission shares those concerns.³¹¹ The impact of loss of EU funding on equality groups is further discussed in the EU Loss of Funding section in Chapter 4.

Recommendations

3.153 The Commissions continue to advise that the Executive Office monitor and comply with any proposed changes by the EU to the six Annex 1 equality directives, including relevant case law of the CJEU and pays particular attention to the ongoing consultation by the EU on the Racial Equality Directive.

3.154 The Commissions continue to recommend that the NI Executive and Executive Office introduce strengthened racial equality legislation in NI and that developments on race law reform in NI are in compliance with Windsor Framework Article 2, including the keeping pace obligations relating to the EU Racial Equality Directive.

implementation of Protocol Article 2 2021 – 2022 (ECNI and NIHRC, 2022), at 41-42

309 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.

310 Equality Commission for NI, 'Policy Recommendations: Impact of Brexit on Minority Ethnic and Migrant People' (ECNI 2024).

311 Equality Commission for NI and NI Council for Voluntary Action, 'Joint statement on Budget cuts and inequality in Northern Ireland' (ECNI and NICVA, 2023). For further discussion on the impact of the loss of EU funding see the related Section in Chapter 4.

- 3.155** The Commissions advise the Executive Office that, pursuant to Articles 2 and 13 of the Windsor Framework, NI law should be amended to keep pace with those provisions of the EU directives on standards for equality bodies, if adopted, which amend or replace the EU Racial Equality Directive.
- 3.156** The NIHRC recommends that the EU Racial Equality Directive is amended to include a specific acknowledgement of the significance of Windsor Framework Article 2 and the keep pace obligations for racial equality in NI.
- 3.157** The NIHRC recommends that the Executive Office takes effective steps to ensure its data collection on racial equality is consistent, extensive and disaggregated. This includes working with the NI Executive and NI Assembly to promptly amend the Race Relations (NI) Order 1997 so that it imposes a duty on specified public authorities to collect data on racial equality and set racial equality objectives.
- 3.158** The ECNI recommends that the Racial Equality Strategy and action plan address its recommendations relating to the impact of Brexit on minority ethnic and migrant people, as well as the ECNI's non-Brexit related recommendations and concerns regarding the Strategy.
- 3.159** The ECNI recommends that the NI Executive, and relevant NI departments, should review, on an ongoing basis, the funding for third sector organisations who provide advice and support to minority ethnic and migrant groups, including representative organisations, as well as organisations that provide specialist advice. Such funding should be adequate to meet additional advice and support needs for EU nationals and frontier workers and address gaps in support and funding shortfalls in services for minority ethnic and migrant people, that have occurred as a result of Brexit.

Sectarianism³¹²

- 3.160** In 2022/2023, 1,125 sectarian incidents and 792 sectarian crimes were recorded.³¹³ This represented a decrease from 1,192 recorded sectarian incidents and 864 recorded sectarian crimes in 2021/2022.³¹⁴
- 3.161** The rights, safeguards and equality of opportunity provisions set out in the relevant chapter of the Belfast (Good Friday) Agreement include the “the right to freedom from sectarian harassment”.³¹⁵ The Commissions advise that EU

³¹² This section should be read in conjunction with the section on Victims' Rights – Hate Crime in this Chapter.

³¹³ Police Service of NI, 'Incidents and Crimes with a Hate Motivation Recorded by the Police in Northern Ireland: Update to 30th September 2023' (PSNI, 2023), at 5.

³¹⁴ Ibid.

³¹⁵ Belfast (Good Friday) Agreement, 10 April 1998, at Part 6 on Rights, Safeguards and Equality of Opportunity –

obligations underpinning the rights of victims fall within the scope of Windsor Framework Article 2,³¹⁶ including the EU Victims' Directive³¹⁷ as well as other relevant EU laws which support victims.³¹⁸

- 3.162 After the Independent Hate Crime Review in 2020,³¹⁹ and the Department of Justice response,³²⁰ the first of a two-stage public consultation was launched in 2022 seeking responses on improving the effectiveness of NI hate crime legislation.³²¹ Both Commissions responded separately to stage one of the consultation process, in line with their respective remits.
- 3.163 The NIHRC supported the introduction of a sectarian offence definition and a new statutory aggravation for sectarian prejudice.³²² The NIHRC also recommended that the legislation is future-proofed to accommodate the inclusion of sectarianism against a broader range of religious beliefs, descent, nationalities or citizenship.³²³
- 3.164 The ECNI, welcomed a specific reference to sectarianism in hate crime legislation. The ECNI also recommended that indicators of sectarianism should be expanded to include religious belief, national identity, nationality and citizenship to address gaps in protection, and that the Government should ensure that any proposed provisions are compliant with human rights legislation.³²⁴
- 3.165 In 2024, the Department of Justice confirmed that Phase 2 of the consultation on Hate Crime Legislation is planned for Autumn 2024 and that the Minister has committed to introducing a foundational Hate Crime Bill in this mandate. It is scheduled to be introduced in 2026.³²⁵

Human Rights.

- 316 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).
- 317 Directive 2012/29/EU, 'EU Parliament and Council Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.
- 318 See Directive 2011/36/EU, 'Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011; Directive 2011/92/EU, 'Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography', 13 December 2011; Directive 2012/29/EU, 'EU Parliament and Council Directive establishing minimum standards on the rights, support and protection of victims of crime', 25 October 2012.
- 319 Independent Hate Crime Review Team, 'Hate Crime Legislation in NI: Independent Review' (DoJ, 2020).
- 320 Department of Justice, 'Review of Hate Crime Legislation in Northern Ireland - Departmental Response' (DoJ, 2021).
- 321 Department of Justice, 'Improving the Effectiveness of Hate Crime Legislation in NI: A Public Consultation and Call for Views' (DoJ, 2022).
- 322 NI Human Rights Commission, 'Response to Public Consultation on Improving the Effectiveness of Hate Crime Legislation in NI' (NIHRC, 2022).
- 323 Ibid.
- 324 Equality Commission for NI, Response to consultation: Department of Justice – Improving the effectiveness of Hate Crime Legislation in Northern Ireland (ECNI, 2022)
- 325 Email Correspondence from the Department of Justice to the NI Human Rights Commission, 5 April 2024.

EU Racial Equality Directive

3.166 In 2022, the EU Commission launched a public consultation to pinpoint potential gaps in the Racial Equality Directive and identify measures to address these gaps.³²⁶ In its response, the NIHRC reiterated its position that, given the complex interplay between ethnicity, nationality and sectarianism in NI, sectarianism should be recognised as a type of racial discrimination within the EU Directive. This would allow for greater alignment with international standards and guidance on protecting against racial discrimination.³²⁷

Recommendations

3.167 The Commissions continue to recommend that the Department of Justice ensures compliance with Windsor Framework Article 2 in the context of the EU Victims' Directive, when developing hate crime legislation, including as regards sectarian hate crime.

3.168 In line with the 'keeping pace' obligations under Windsor Framework Article 2, the Commissions continue to advise the Department of Justice to monitor and comply with any proposed changes by the EU to the six Annex 1 equality directives, including relevant case law of the CJEU and pay particular attention to the ongoing consultation by the EU on the Racial Equality Directive.

3.169 In line with UN and Council of Europe standards and recommendations, the NIHRC continues to recommend that the EU Racial Equality Directive be amended to include a recognition of sectarianism as a form of racial discrimination.

Trans Equality

3.170 Windsor Framework Articles 2 and 13 require the law in NI to keep pace with any improvements to minimum standards of equality protection enshrined in six EU directives listed in Annex 1 to the Windsor Framework. This includes the **EU equality directives which protect against gender discrimination and which cover employment and vocational training,³²⁸ access to goods and services,³²⁹ and social security³³⁰** and protect against gender discrimination,

326 EU Commission, 'Addressing possible gaps in the Racial Equality Directive – Public Consultation' (EU Commission, 2022).

327 NI Human Rights Commission, 'Response to the European Commission Consultation on the Racial Equality Directive (Directive 2000/43/EC)' (NIHRC, 2022).

328 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.

329 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.

330 Directive 79/7/EEC, 'EU Council Directive on the Progressive Implementation of the Principle of Equal Treatment for Men

including transgender people. The obligation also requires compliance with current and future CJEU case-law. The CJEU has made it clear that “to tolerate such discrimination would be tantamount, as regards such a person, to a failure to respect the dignity and freedom to which he or she is entitled, and which the Court has a duty to safeguard”.³³¹ Pursuant to Article 13 of the Windsor Framework, NI equality law must keep pace with any enhancements made by the EU to the six Annex 1 directives, on or after 1 January 2021, including monitoring current and future CJEU case law.

- 3.171 In March 2023, the NIHRC provided a written briefing to inform a country visit to the UK in April 2023 by the UN Independent Expert on Sexual Orientation and Gender Identity. The briefing outlined the ongoing relevance of the Annex 1 gender equality directives in respect of trans rights and the requirement that NI law keep pace with any changes to EU law which improve on minimum levels of protection. In his end-of-mission statement, Mr Madrigal-Borloz noted that “the absence of an Executive has resulted in the failure to deliver on the ambitious LGBT human rights strategy”.³³² The independent expert will present a full report on his visit to the Human Rights Council by June 2024.³³³
- 3.172 As noted above, in December 2022, the EU Commission published proposals for two EU directives on standards for equality bodies.³³⁴ The Commissions, consider that the proposed directives amend provisions of the gender equality directives specified in Annex 1 to the Windsor Framework.³³⁵

LGBTQI+ Strategy

- 3.173 As noted above, the Department for Communities has adopted a co-design approach to developing the Lesbian, Gay, Bisexual, Transgender, Queer

and Women in Matters of Social Security’, 19 December 1978.

331 *P v S and Cornwall County Council*, Case C-13/94, 30 April 1996, at para 22.

332 UN Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity, ‘Country visit to the United Kingdom of Great Britain and Northern Ireland (24 April – 5 May 2023) - End of mission statement’ (OHRHR, 2023), at para 36.

333 Office of the High Commissioner on Human Rights, ‘Press Release: UK: Keep calm and respect diversity, says UN expert’, 11 May 2023.

334 See section on Binding Standards for Equality Bodies in this chapter. EU Commission, ‘Proposal for a Directive on Standards for Equality Bodies in the Field of Equal Treatment and Equal Opportunities between Women and Men in Matters of Employment and Occupation, and Deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU - COM(2022) 688’, (EU Commission, 2022); EU Commission, ‘Proposal for a Directive on Standards for Equality Bodies in the Field of Equal Treatment between Persons Irrespective of their Racial or Ethnic Origin, Equal Treatment in the Field of Employment and Occupation Between Persons Irrespective of their Religion or Belief, Disability, Age or Sexual Orientation, Equal Treatment Between Women and Men in Matters of Social Security and in the Access to and Supply of Goods and Services, and Deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC - COM(2022) 689’ (EU Commission, 2022).

335 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, ‘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 Council of the EU 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. See also Letter from the Minister of State for NI, Steve Baker MP, to the Chair of the House of Lords Sub Committee on the Protocol on Ireland/Northern Ireland, 18 September 2022.

(or Questioning), Intersex+ Strategy. A public consultation on the strategy was due to take place in early 2022, but this process has been delayed. In 2023, progress on the Strategy was hindered by the suspension of the NI Executive.³³⁶ In March 2024, the Department for Communities advised that the Minister was considering the next steps and that final decisions on content and timelines for implementation of the strategy will be subject to Executive agreement.³³⁷

Recommendations

3.174 The Commissions continue to recommend that the Department for Communities promptly publishes and effectively implements a robust LGBTQI+ Strategy for NI, accompanied by a measurable plan of action, including effective monitoring arrangements, which takes into account its obligations under Windsor Framework Article 2. This includes the keeping pace obligations relating to the four gender equality directives listed in Annex 1.

3.175 The Commissions advise the NI Executive and the Department for Communities that, pursuant to Articles 2 and 13 of the Windsor Framework, NI law should be amended to keep pace with those provisions of the EU directives on standards for equality bodies, if adopted, which amend or replace the EU Gender (Goods and Services) Directive, the EU Equal Treatment (Employment) Directive and EU Equal Treatment (Self-Employment) Directive.

Victims' Rights and Freedom from Slavery

3.176 In the rights, safeguards and equality of opportunity section of the Belfast (Good Friday) Agreement the parties affirmed their “commitment to ... the civil rights and religious liberties of everyone in the community” before affirming “in particular” a non-exhaustive list of rights and safeguards.³³⁸ This section is headed ‘Human Rights’ and includes the UK Government’s commitment to the incorporation of the ECHR with direct access to the courts and remedies for breach.³³⁹ The chapter also includes “the rights of victims to remember as well as to contribute to a changed society”.³⁴⁰

336 Letter from Department for Communities to NI Human Rights Commission, 16 June 2023.

337 Email correspondence from Department for Communities to NI Human Rights Commission, 25 March 2024.

338 Belfast (Good Friday) Agreement, 10 April 1998, at Part 6 on Rights, Safeguards and Equality of Opportunity-Human Rights. See also UK Government, ‘UK Government commitment to no-diminution of rights, safeguards and equality of opportunity in Northern Ireland’ (NIO, 2020); *In the matter of an application by Martina Dillon and others for Judicial Review* [2024] NIKB 11, at para 540.

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

340 Ibid.

The UK Government has recognised that the EU Victims' Directive falls within the scope of Windsor Framework Article 2.³⁴¹

3.177 The Commissions consider that the commitment to civil rights in the relevant chapter embraces a range of civil, political, economic, social and cultural rights and equality of opportunity.³⁴² In particular, the Commissions consider that the full range of rights in the ECHR, to the extent that they are underpinned by EU law in force in NI on or before 31 December 2020, fall within the scope of the non-diminution commitment in Windsor Framework Article 2. In February 2024, the NI High Court adopted a 'generous and purposive' approach to the interpretation of the relevant chapter of the Belfast (Good Friday) Agreement.³⁴³ The High Court held that "a narrow interpretation of 'civil rights' undermines the forward-facing dimension of the non-diminution commitment in article 2(1)".³⁴⁴ The Court has further confirmed that the rights of victims of crime are within the scope of the relevant chapter in the Belfast (Good Friday) Agreement, are within the competence of EU law, and are underpinned by EU law in the form of the EU Victims' Directive and the EU Charter of Fundamental Rights.³⁴⁵ The decision of the High Court is under appeal.

3.178 In addition, the Commissions have identified other relevant EU laws which support victims, including the EU Trafficking Directive³⁴⁶ and the EU Child Sexual Exploitation Directive.³⁴⁷ The Commissions consider these directives are within the scope of Windsor Framework Article 2 for a number of reasons: firstly, on the basis that these directives underpin ECHR rights;³⁴⁸ secondly since these are sub-categories of victims and victims' rights are recognised in the relevant chapter of the Belfast (Good Friday) Agreement and thirdly on the basis of the equality commitments in the relevant chapter of the Belfast (Good Friday) Agreement.

3.179 This section of the report sets out a range of areas for which these directives have implications. This includes many areas within the responsibility of NI

341 Directive 2012/29/EU, 'EU Parliament and Council Directive establishing minimum standards on the rights, support and protection of victims of crime', 25 October 2012.

342 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).

343 *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NIKB 11, at para 547.

344 *Ibid*, at para 554.

345 *Ibid*, at para 582.

346 Directive 2011/36/EU, 'Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011.

347 Directive 2012/29/EU, 'EU Parliament and Council Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012; Directive 2011/36/EU, 'Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011; Directive 2004/80/EC, 'Council Directive relating to the Compensation to Crime Victims', 29 April 2004.

348 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).

departments, such as: hate crime; domestic and sexual violence; legacy; modern slavery and human trafficking; child and forced marriage; female genital mutilation; and child sexual exploitation. In addition, this section covers areas where law and policy are reserved or excepted, such as in relation to immigration and terrorism offences, or in other areas where the UK Government and Parliament is responsible for law and policy in NI. In each area, due consideration should be given to Windsor Framework Article 2.

Child, Early and Forced Marriage

3.180 The Marriage (NI) Order 2003 permits the marriage of a child aged 16 or 17 years, with the consent of their parents or legal guardians or the courts.

3.181 International human rights oversight bodies have consistently called on the UK Government and the NI Executive to raise the minimum age of marriage to 18 years.³⁴⁹ In June 2023, the UN CRC Committee recommended that the UK Government and the NI Executive “prohibit all marriages under 18 years of age, without exception, in... NI”.³⁵⁰ The UN CRC Committee also called for the state to “develop national strategies aimed at eliminating and preventing harmful practices affecting children, including child marriage”.³⁵¹ The UN Convention on the Elimination of Discrimination against Women (CEDAW) Committee and UN CRC Committee advise that “child marriage is considered to be a form of forced marriage, given that one or both parties have not expressed full, free and informed consent”.³⁵²

3.182 In 2022, 36 girls and 9 boys were married in NI.³⁵³ This is a decrease compared to 2021, when 39 girls and 15 boys were married in NI.³⁵⁴

3.183 In 2022, in response to the Department of Finance consultation on changes to Marriage Law in NI,³⁵⁵ the NIHR noted that international human rights

349 CRC/GC/2003/4, ‘UN CRC Committee General Comment No 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child’, 1 July 2003; CRC/C/GC/20, ‘UN CRC Committee General Comment No. 20 on the Implementation of the Rights of the Child during Adolescence’, 6 December 2016; CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 2 June 2023, at para 18(b); CEDAW/C/GBR/CO/8, ‘UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 14 March 2019, at para 59(b); CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019, at para 57(f).

350 CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 2 June 2023, at para 18(b).

351 Ibid, at para 35(a).

352 CEDAW/C/GC/31/Rev.1–CRC/C/GC/18/Rev.1, ‘Joint General Recommendation 31 of the UN CEDAW Committee/General Comment 18 of and UN CRC Committee on harmful practices’, 14 November 2014, at para. 20. See also CRC/C/GC/13, ‘UN CRC Committee General Comment No.13: The right of the child to freedom from all forms of violence’, 18 April 2011, at para 29.

353 Email correspondence from NI Statistics and Research Agency to NI Human Rights Commission, 21 June 2023.

354 Ibid.

355 Department of Finance, ‘Belief marriage and minimum age for marriage or civil partnership – a public consultation’ (DoF, 2021).

standards consider child marriage to be a form of forced marriage and the EU Victims' Directive recognises forced marriage as a form of gender-based violence.³⁵⁶ The NIHRC advised that it considers that certain provisions on marriage law engage Windsor Framework Article 2.³⁵⁷

3.184 In July 2022, the Department of Finance published its consultation analysis report, which revealed near unanimous support among respondents for increasing the minimum age for marriage and civil partnerships to 18 years.³⁵⁸ The then Minister for Finance, Conor Murphy MLA, responded signalling his intention to prepare legislation to raise the minimum age for marriage to 18 years old.³⁵⁹ Such legislation could not progress while the NI Executive and NI Assembly were suspended. The Department has indicated that the Minister hopes to bring forward amendments to law on marriage and civil partnership, including raising the minimum age to 18 before the end of the current Assembly mandate.³⁶⁰

Recommendations

3.185 The NIHRC continues to recommend that the Department of Finance ensures that Windsor Framework Article 2, including the EU Victims' Directive, is considered and complied with in the development of legislation to repeal all legal provisions permitting the marriage of children in NI.

Child Sexual Exploitation

3.186 EU obligations underpinning the rights of child victims under Windsor Framework Article 2 include the EU Child Sexual Exploitation Directive³⁶¹ as well as other relevant EU laws which support victims.³⁶²

3.187 The EU Directive recognises that the best interests of the child is a primary consideration for child victims, in line with the EU Charter of Fundamental Rights and UN CRC.³⁶³ It also recognises the need for enhanced protections for

356 Recital 17, Directive 2012/29/EU, 'EU Parliament and Council Directive establishing minimum standards on the rights, support and protection of victims of crime', 25 October 2012.

357 NI Human Rights Commission, 'Submission to the Department of Finance consultation on marriage law' (NIHRC, 2022).

358 Department of Finance, 'Marriage Law Consultation: Results and Analysis' (DoF, 2022).

359 Department of Finance, 'Marriage Law: Written Ministerial Statement - Conor Murphy MLA - Minister of Finance' (DoF, 2022).

360 Email correspondence from the Department of Finance to the NI Human Rights Commission, 27 March 2024.

361 Directive 2011/92/EU, 'Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography', 13 December 2011.

362 Directive 2012/29/EU, 'EU Parliament and Council Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012; Directive 2011/36/EU, 'Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011; Directive 2004/80/EC, 'Council Directive relating to the Compensation to Crime Victims', 29 April 2004.

363 Recital 6, Directive 2011/93/EU, 'EU Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography', 13 December 2011.

victims, including, in recognition of the harm caused by these offences, that assistance should be provided for as long as necessary for the child’s physical and psychological recovery, including into adulthood.³⁶⁴

3.188 In June 2023, the UN CRC Committee recommended “that all children under 18 years of age, including 16-and-17-year olds, who are victims of offences... including sexual exploitation, sexual abuse material and sexual exploitation in prostitution, are treated as victims, receive adequate protection under the law and have access to remedies”.³⁶⁵ The Committee also recommended that all cases of sexual exploitation of children are promptly and effectively investigated; that data is systematically collected and analysed to inform strategies on child sexual abuse; and that training for professionals working with children, including in the criminal justice system, is improved to “identify and effectively respond” to sexual exploitation.³⁶⁶

3.189 In 2020, the Criminal Justice Inspection NI found that Public Prosecution Service NI staff needed instructions specific to child sexual abuse and exploitation and that “where cases did progress to court, support for children was required”.³⁶⁷ The Barnahus (children’s house) model was proposed as the preferred approach.³⁶⁸

3.190 In 2022/2023, there were 2,324 recorded child sexual abuse offences in NI, the highest figure recorded since the beginning of the data series in 2007/2008.³⁶⁹ Female victims represented 71 per cent of all sexual offence victims under 18 years old.³⁷⁰ In July 2023, the Police Service of NI and the Health and Social Care Trusts launched a new Interface Protocol on children missing from care that includes specific measures targeted at children at risk of sexual exploitation.³⁷¹

364 Recital 31, Directive 2011/93/EU, ‘EU Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography’, 13 December 2011.

365 CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at para 55(a).

366 Ibid, at paras 33(c), 33(i) and 33(k).

367 Criminal Justice Inspection NI, ‘Child Sexual Exploitation in NI: An Inspection of the Criminal Justice System’s Response’ (CJINI, 2020).

368 Ibid.

369 For each of the main sexual offence classifications of rape, sexual assault and sexual activity, there have been generally increasing trends between 2007/2008 and 2022/2023 where the victim was under 18 at the time the offence was committed. Rape recorded the highest number of offences in 2021/22 at 519 and sexual assaults reached the highest level in 2022/2023 at 1,087. See Police Service of NI, ‘Trends in Police Recorded Crime in Northern Ireland 1998/1999 to 2022/2023’ (PSNI, 2023).

370 In 2022/2023 there were four female victims per 1,000 of the population under 18. See Police Service of NI, ‘Trends in Police Recorded Crime in Northern Ireland 1998/1999 to 2022/2023’ (PSNI, 2023).

371 Police Service of NI and Department of Health, ‘Interface Protocol Between Health and Social Care Trusts and Police Service of NI: Where a Child is Reported Missing and Other Police Interactions with Residential Children’s Homes’ (PSNI and DoH, 2023), at para 14.

- 3.191 The Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022 aims to implement certain Gillen Review Recommendations,³⁷² and to improve services for victims of trafficking and exploitation. It removes potentially harmful terms such as ‘child prostitution’ and ‘child pornography’ and extends the scope of offences to include the abuse of positions of trust to sport and faith sector.³⁷³
- 3.192 In December 2023, the NIHRC made a submission to the Lanzarote Committee, who monitor the implementation of the CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), in respect of their thematic monitoring round on the protection of children against sexual exploitation and sexual abuse in the circle of trust. The submission highlighted the continued relevance of the EU Child Sexual Exploitation Directive in respect of NI, which requires member states to take the necessary measures to ensure that an abuse of a recognised position of trust, authority or influence over the child, is punishable by a maximum prison term and that abuse of trust is considered an aggravating factor in an offence. That Directive also recognises the Lanzarote Convention as a crucial step in the process of enhancing international cooperation to protect children from all forms of sexual exploitation and abuse and that the best interests of the child must be a primary consideration.³⁷⁴
- 3.193 The NIHRC further highlighted that the definition of position of trust in legislation, which extended the abuse of position of trust offence to sport and faith sectors, was not consistent with the requirements of the Lanzarote Convention.³⁷⁵ The Convention requires an “open-ended enumeration” of situations involving abuse of trust to ensure there is enough flexibility to determine on a case-by-case basis whether there is abuse of authority, influence or trust.³⁷⁶

Human Trafficking of Children

- 3.194 In 2023, the Commissions separately responded to the Department of Justice consultation on its three-year strategy on Modern Slavery and Human Trafficking.³⁷⁷ Both Commissions highlighted the need to build in consideration

372 Sir John Gillen, ‘Report into the Law and Procedures in Serious Sexual Offences in NI: Recommendations’ (DoJ, 2019).
 373 Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022. NI Human Rights Commission, ‘Response to Committee for Justice Call for Evidence on the Justice (Sexual Offences and Trafficking Victims) Bill’ (NIHRC, 2021).
 374 Letter from the NI Human Rights Commission to the Secretariat of the CoE Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse on the thematic monitoring round on the protection of children against sexual exploitation and sexual abuse in the circle of trust, 6 December 2023.
 375 NI Human Rights Commission, ‘Response to Committee for Justice Call for Evidence on Justice (Sexual Offences and Trafficking Victims) Bill’ (NIHRC, 2021).
 376 Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, ‘First implementation report: protection of children against sexual abuse in the circle of trust’, 8 January 2016, at para 19.
 377 Department of Justice, ‘NI Draft Modern Slavery and Human Trafficking Strategy: Consultation’ (DoJ, 2022).

of Windsor Framework Article 2 during the development and implementation of policy and legislation on modern slavery and human trafficking, with particular attention paid to the EU Child Sexual Exploitation Directive³⁷⁸ and the EU Trafficking Directive.³⁷⁹ The NIHRC also welcomed the inclusion of more child specific measures in the new strategy and highlighted the links between child sexual exploitation, missing children, child criminal exploitation, online exploitation, forced marriage, forced labour and domestic servitude.³⁸⁰ The ECNI highlighted that those providing advice and resources to victims/potential victims of modern slavery/human trafficking should make clear to recipients the rights of individuals under both equality legislation and in relation to alleging a breach of Windsor Framework Article 2.³⁸¹

Illegal Migration Act 2023

- 3.195 The Illegal Migration Act 2023 was introduced to Parliament in March 2023 and received royal assent in July 2023. The Commissions raised concerns that the Act denies victims of modern slavery, especially children, who have arrived in the UK irregularly, access to existing support.³⁸² In its briefings, the NIHRC noted that the EU Trafficking Directive³⁸³ remains relevant for determining the minimum standards for protecting victims of human trafficking in NI under Windsor Framework Article 2.³⁸⁴ The NIHRC further noted that a systematic denial of support and assistance to potential victims of human trafficking, without individual consideration, does not appear to be compliant with Article 2.³⁸⁵
- 3.196 In its submission to the House of Lords, the ECNI raised concerns that the Act will reduce existing rights and protections for victims of trafficking and modern slavery, including for children, women and girls, and risks re-traumatising vulnerable individuals.³⁸⁶ The ECNI highlighted that it is essential that the Act's provisions do not reduce the rights of victims of trafficking or modern slavery

378 Directive 2011/92/EU, 'EU Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography', 13 December 2011.

379 Directive 2011/36/EU 'Council of the EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011.

380 NI Human Rights Commission, 'Submission to Department of Justice Consultation on the Draft Modern Slavery and Human Trafficking Strategy' (NIHRC, 2023).

381 Equality Commission for NI 'Response to the Department of Justice's Public Consultation on the Modern Slavery and Human Trafficking Strategy 2022' (ECNI, 2023).

382 Sections 22-29, Illegal Migration Act 2023; NI Human Rights Commission, 'Submission to Joint Committee on Human Rights Inquiry on Illegal Migration Bill' (NIHRC, 2023); NI Human Rights Commission, 'Submission to House of Lords on the Illegal Migration Bill' (NIHRC, 2023); Equality Commission for NI, 'Submission to the House of Lords on the Illegal Migration Bill' (ECNI, 2023).

383 Directive 2011/36/EU, 'Council of the EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011.

384 NI Human Rights Commission, 'Submission to Joint Committee on Human Rights Inquiry on Illegal Migration Bill' (NIHRC, 2023); NI Human Rights Commission, 'Submission to House of Lords on the Illegal Migration Bill' (NIHRC, 2023).

385 NI Human Rights Commission, 'Submission to House of Lords on the Illegal Migration Bill' (NIHRC, 2023), at para 6.10.

386 Equality Commission for NI, 'Submission to the House of Lords on the Illegal Migration Bill' (ECNI, 2023).

under those directives³⁸⁷ that fall within the scope of Windsor Framework Article 2.³⁸⁸

3.197 In September 2023, the NIHRC brought a legal challenge to the Illegal Migration Act 2023 on grounds that it is not compliant with the ECHR and Windsor Framework Article 2. The case was heard in January 2024 and a judgment was awaited as of 31 March 2024.

Recommendations

- 3.198** The Commissions continue to recommend that the Department of Justice, the Home Office and other relevant departments and bodies, ensure that policy and legislation on child sexual exploitation and on modern slavery and human trafficking is developed in compliance with Windsor Framework Article 2 including the requirements of the EU Child Sexual Exploitation Directive, EU Victims' Directive, and the EU Trafficking Directive which require that the child's best interests be a primary consideration in their implementation.
- 3.199** The NIHRC continues to recommend that, in line with best international practice and the requirements of the EU Trafficking Directive, the Department of Justice ensures specialised training is provided for relevant professionals and measures reflective of the Barnahus Model are adopted throughout the criminal justice system.
- 3.200** The Commissions recommend that the Home Office takes immediate steps to amend the Illegal Migration Act 2023 to ensure human rights compliant support and assistance is provided to potential child victims of human trafficking and to protect against any diminution of rights in NI law, in breach of Windsor Framework Article 2.

Domestic and Sexual Violence and Abuse

3.201 EU obligations underpinning the rights of victims under Windsor Framework Article 2 include the EU Victims' Directive³⁸⁹ as well as other relevant EU laws which support victims.³⁹⁰ The EU Victims' Directive recognises that where

387 Including Directive 2012/29/EU, 'EU Parliament and Council Directive establishing minimum standards on the rights, support and protection of victims of crime', 25 October 2012; Directive 2011/36/EU, 'EU Council Directive on preventing and combating trafficking in human beings and protecting its victims', 5 April 2011 and Directive 2003/9/EC, 'Council Directive laying down minimum standards for the reception of asylum seekers', 27 January 2003.

388 Equality Commission for NI, 'Submission to the House of Lords on the Illegal Migration Bill' (ECNI, 2023).

389 Directive 2012/29/EU, 'EU Parliament and Council Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

390 Directive 2011/36/EU 'Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011; Directive 2011/92/EU, 'Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography', 13 December 2011; Directive 2004/80/EC, 'Council Directive Relating to the Compensation to Crime Victims', 29 April 2004.

physical, sexual, psychological or economic violence is committed in a close relationship, this can cause psychological and physical trauma and such victims are therefore in need of special protection measures. The Directive further recognises that women are disproportionately impacted by this harm.³⁹¹

EU Combatting Violence Against Women Directive

- 3.202 In 2022, the EU Commission consulted on a proposed directive on combatting violence against women which aims to ensure a minimum level of protection across the EU against such violence.³⁹² The proposal takes into account cyber violence perpetrated against women which includes non-consensual sharing of intimate images; cyber stalking; cyber harassment; and cyber incitement to violence or hatred. The proposed directive includes provisions aimed at supporting victims of sexual harassment in the workplace.³⁹³
- 3.203 In its response, the ECNI welcomed the EU Commission’s commitment to effectively combat violence against women and domestic violence throughout the EU. It recommended the inclusion of a targeted approach to tackling the specific nature and impact of violence against women and domestic violence as well as the meaningful involvement of affected individuals and their representative organisations and effective equality data collection and monitoring.³⁹⁴
- 3.204 The adoption of the proposed EU directive on combating violence against women and domestic violence by the EU Parliament is expected in April 2024.

Domestic and Sexual Abuse and Violence Against Women and Girls Strategies

- 3.205 In May 2023, both Commissions separately responded to the Department of Health and Department of Justice consultation on the draft Domestic and Sexual Abuse Strategy, highlighting the relevance of Windsor Framework Article 2.³⁹⁵ The NIHRC welcomed the acknowledgement of the EU Victims’ Directive³⁹⁶ and urged the departments to take a human rights-based approach to the strategy, which includes compliance with Windsor Framework Article 2.³⁹⁷

391 Recital 18, Directive 2012/29/EU, ‘EU Parliament and Council Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’, 25 October 2012.

392 EU Commission, ‘Proposal for a Directive on combating violence against women and domestic violence – COM/2022/105’ (EU Commission, 2022).

393 EU Commission, ‘Proposal for a Directive on combating violence against women and domestic violence – COM/2022/105’ (EU Commission, 2022).

394 Equality Commission for NI, ‘Response to consultation: European Commission – Combatting Violence Against Women and Domestic Violence Directive’ (ECNI, 2022).

395 Department of Health and Department of Justice, ‘Draft Domestic and Sexual Abuse Strategy: 2023-2030’ (DoH and DoJ, 2023).

396 Directive 2012/29/EU, ‘EU Parliament and Council Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’, 25 October 2012.

397 NI Human Rights Commission, ‘Consultation Response to the Draft Domestic and Sexual Abuse Strategy’ (NIHRC, 2023), at 11.

3.206 The EU Victims' Directive recognises that women are disproportionately impacted by domestic abuse, and recognises it as a form of gender-based violence and the particular psychological and physical trauma caused where physical, sexual, psychological or economic violence is committed in a close relationship.³⁹⁸ The Directive requires Member States to ensure that victims' access to rights are not conditional on the victim's residence status and also notes that this harm is aggravated if a woman is dependent on the offender for residence status.

3.207 In its response, the ECNI highlighted the need to address the nature and impact of domestic and sexual violence and abuse on women and men in a gender specific context and that the strategy should place lived experience at the heart of delivery.³⁹⁹ The ECNI noted the relevance of a number of EU directives to the strategy in the context of Windsor Framework Article 2.⁴⁰⁰ It also highlighted the importance of the proposed EU Directive on combating violence against women and domestic violence⁴⁰¹ to the development of this strategy including in relation to the dynamic alignment obligation in the Windsor Framework.⁴⁰²

3.208 In July 2023, the Executive Office consulted on a strategic framework and action plan for ending violence against women and girls.⁴⁰³ In October 2023, the NIHRC provided a response welcoming the proposed framework and action plan. However, the NIHRC called for the adoption of the Barnahus model and for there to be greater consideration of specific needs, disaggregated data and adequate funding.⁴⁰⁴ The NIHRC also welcomed the inclusion of a Windsor Framework Impact Assessment regarding the proposed strategic framework. However, the NIHRC was concerned that in its draft Impact Assessment, the Executive Office interpreted victims' rights in the Belfast (Good Friday) Agreement as limited to victims' of violence related to the troubles, and therefore, had excluded consideration of the EU

398 Recitals 17 and 18, Directive 2012/29/EU, 'EU Parliament and Council Directive establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

399 Equality Commission for NI, 'Equality Commission consultation response on Strategic Framework to End Violence Against Women and Girls' (ECNI, 2023).

400 Directive 2011/92/EU, 'Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography', 13 December 2011; Directive 2012/29/EU, 'EU Parliament and Council Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012; Directive 2011/36/EU 'Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011.

401 EU Commission, 'Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence, Strasbourg - COM(2022) 105 final' (EU Commission, 2022). The proposed EU Directive on combating violence against women and domestic violence was adopted on 24 April 2024 by the EU Parliament. The Directive will come into force twenty days after publication in the EU Official Journal with three years for Member States to implement the provisions.

402 Equality Commission for NI, 'Equality Commission consultation response on Strategic Framework to End Violence Against Women and Girls' (ECNI, 2023).

403 The Executive Office, 'Strategic Framework to End Violence Against Women and Girls' (TEO, 2023).

404 NI Human Rights Commission, 'Submission to the Executive Office's Consultation on the Ending Violence Against Women and Girls Strategic Framework' (NIHRC, 2023).

Victims' Directive.⁴⁰⁵ In its response, the NIHRC advised that NI's status as a post-conflict society is contextually relevant to any framework for addressing violence against women and girls and that it is difficult to discern who is and who is not a victim of the conflict in NI, especially pertaining to victims of gender-based violence.⁴⁰⁶ Moreover, the EU Victims' Directive recognises gender-based violence as a form of discrimination and underpins relevant ECHR rights and is therefore relevant in the context of the draft Strategic Framework.⁴⁰⁷

3.209 The NIHRC's response further identified the relevance of the Annex 1 directives, specifically the gender equality directives⁴⁰⁸ and the need to monitor the proposed EU Directive on combatting violence against women as it intends to set minimum standards "on support and access to justice of victims of such harassment".⁴⁰⁹ The NIHRC also noted the relevance of the EU Child Sexual Exploitation Directive⁴¹⁰ and the EU Trafficking Directive to the draft Strategic Framework.⁴¹¹

3.210 In its response, the ECNI reiterated the need for action to tackle the nature and specific impact of gender-based violence, including for those with multiple identities, and the importance of measures to address gendered stereotyping and prejudicial attitudes. It highlighted the importance of the broader impact of Brexit within the strategy, noting a number of issues and concerns raised in the ECNI's commissioned research⁴¹² on the impact of Brexit on minority ethnic women and migrant women here who have been subjected to domestic violence, including the vulnerability of those who rely on partners to help them secure their legal immigration status.⁴¹³

405 The Executive Office, 'Draft Article 2(1) Windsor Framework Impact Assessment for the Draft Strategic Framework to End Violence Against Women and Girls' (TEO, 2023).

406 CEDAW/C/GC/30, 'UN CEDAW Committee General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations', 18 October 2013, at para 34 and 38.

407 NI Human Rights Commission, 'Submission to the Executive Office's Consultation on the Ending Violence Against Women and Girls Strategic Framework' (NIHRC, 2023), at 29-31.

408 Directive 2004/113/EC, '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 Parliament and Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation (Recast)', 5 July 2006; Directive 2010/41/EU, 'EU Parliament and 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.

409 EU Commission, 'Proposal for a Directive of the EU Parliament and of the Council on Combatting Violence against Women and Domestic Violence-COM(2022)' (EU Commission, 2022).

410 Directive 2011/92/EU, 'EU Parliament and Council Directive on Combatting the Sexual Abuse and Sexual Exploitation of Children and Child Pornography and Replacing Council Framework Decision 2004/68/JHA', 13 December 2011.

411 Directive 2011/36/EU, 'Council of the EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims', 5 April 2011.

412 Pivotal, 'Impact of Brexit on minority ethnic and migrant people in Northern Ireland' (ECNI, 2023).

413 Equality Commission for NI, 'Equality Commission consultation response on Strategic Framework to End Violence Against Women and Girls', (ECNI, 2023).

- 3.211 The ECNI also noted the importance of adopting a systematic approach to disaggregated data on violence against women and girls, in the context of the loss of the ability, post Brexit, to benchmark against EU Member States. It encouraged the Executive Office to consider provisions of the EU Directive on combating violence against women and domestic violence aimed at improving data collection across Member States.⁴¹⁴
- 3.212 Both Commissions welcomed the first full impact assessment of Windsor Framework Article 2 compliance by the Executive Office.⁴¹⁵ The Commissions emphasised that the impact assessment should provide detailed consideration of Windsor Framework Article 2, including all relevant provisions of EU law.⁴¹⁶

Istanbul Convention

- 3.213 In 2022, the CoE Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) came into force in the UK. However, the UK Government has placed a reservation against Article 59, which requires States to grant residence to victims of domestic abuse whose immigration status depends on an abusive partner, excluding many migrant women from the protections contained within the Convention.
- 3.214 In December 2023, the NIHRC submitted a briefing to the CoE Group of Experts on Action against Violence against Women and Domestic Violence (Grevio Committee) as part of its baseline evaluation in respect of the UK.⁴¹⁷ The NIHRC advised of the relevance of Windsor Framework Article 2 in respect of equality and non-discrimination, including gender pay gap reporting, support for victims of trafficking and gender based asylum claims.⁴¹⁸ In January 2024, the NIHRC met with Grevio Committee members during their visit to the UK.

UN Special Rapporteur on Violence Against Women and Girls

- 3.215 In February 2024, both Commissions provided briefings to the UN Special Rapporteur on Violence Against Women and Girls as part of the Rapporteur's country visit to the UK. Both Commissions outlined UK Government's

414 Equality Commission for NI, 'Equality Commission consultation response on Strategic Framework to End Violence Against Women and Girls', (ECNI, 2023).

415 See Implementation and Parliamentary Scrutiny section in Chapter 2; Equality Commission for NI, 'Equality Commission consultation response on Strategic Framework to End Violence Against Women and Girls', (ECNI, 2023); NI Human Rights Commission, 'Submission to the Executive Office's Consultation on the Ending Violence Against Women and Girls Strategic Framework', (NIHRC, 2023).

416 Directive 2012/29/EU, 'EU Parliament and Council Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012. The ECNI noted the importance of the test for Article 2 outlined in the SPUC Court of Appeal decision in assessing compliance with Windsor Framework Article 2 and the relevance of the dynamic alignment obligations in relation to the gender equality directives to the Strategy.

417 NI Human Rights Commission, 'Submission to the CoE Group of Experts on Action against Violence against Women and Domestic Violence - Parallel Report for the Baseline Report in Monitoring the United Kingdom' (NIHRC, 2023).

418 NI Human Rights Commission, 'Submission to the CoE Group of Experts on Action against Violence against Women and Domestic Violence - Parallel Report for the Baseline Report in Monitoring the United Kingdom' (NIHRC, 2023).

obligations under Windsor Framework Article 2 and the continuing relevance of the EU gender directives and other relevant EU law, including the EU Victims Directive⁴¹⁹ and the EU Trafficking Directive⁴²⁰ to NI.⁴²¹

- 3.216 The ECNI particularly highlighted the relevance of Article 2 in relation to the Violence Against Women and Girls strategy in NI.⁴²² The ECNI also highlighted the need for effective strategies to tackle the nature and specific impact of gender-based violence and to counter gender-based stereotypes and prejudicial attitudes.⁴²³
- 3.217 The NIHRC highlighted a number of specific issues including the gendered effect of paramilitarism, the need to adopt a gender-sensitive approach to tackle all forms of violence against women and girls. This approach should include access to specialised, gender-sensitive support services, which are available regardless of an individual's immigration status. The NIHRC also highlighted the need to ensure that that asylum law applying in NI is compliant with the principle of non-refoulment and Windsor Framework Article 2.⁴²⁴

Recommendations

- 3.218 The Commissions continue to recommend that the Department of Health and the Department of Justice embed consideration of Windsor Framework Article 2 and the EU Victims' Directive in the development and implementation of the Domestic and Sexual Abuse Strategy.**
- 3.219 The Commissions recommend that the Executive Office embeds consideration of Windsor Framework Article 2 and the EU Victims' Directive in the development and implementation of the Violence Against Women and Girls Strategy.**
- 3.220 The Commissions recommend that the Executive Office defines, in future Impact Assessments, victims' rights under the Belfast (Good Friday) Agreement to include all victims of crime and considers relevant provisions of the EU Victims' Directive, and other relevant EU law, in future legislation**

419 Directive 2012/29/EU, 'EU Parliament and Council Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

420 Directive 2011/36/EU 'Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011.

421 Equality Commission for NI, 'Equality Commission input for UN Special Rapporteur on Violence Against Women and Girls' Country Visit to the UK' (ECNI, 2024); NI Human Rights Commission, 'Submission to the UN Special Rapporteur on Violence Against Women and Girls' (NIHRC, 2024).

422 Equality Commission for NI, 'Equality Commission input for UN Special Rapporteur on Violence Against Women and Girls' Country Visit to the UK' (ECNI, 2024).

423 Ibid.

424 NI Human Rights Commission, 'Submission to the UN Special Rapporteur on Violence Against Women and Girls' (NIHRC, 2024).

and policy relating to victims of crime, including the Violence Against Women and Girls Strategy.

- 3.221** The Commissions recommend that, in addition to any changes required by the keeping pace obligation under the Windsor Framework, the Executive Office ensure NI law aligns, on a voluntary basis, with any enhancement to equality and human rights pursuant to the EU Directive on combatting violence against women, where these enhancements align with international human rights standards and best practice.
- 3.222** The NIHRC recommends that the Department of Justice, Department of Health and the Executive Office ensure that all policies and support for victims of domestic and sexual violence and abuse are specialised, accessible, gender-sensitive and guaranteed sustainable funding and that support is available regardless of an individual's immigration status.
- 3.223** The ECNI recommends that the Department of Justice, Department of Health and the Executive Office ensure that all strategies and policies for victims of domestic and sexual violence and abuse should include gender-specific actions in order to address the nature and impact of domestic and sexual abuse. These strategies should also take specific action to meet the needs of, and tackle barriers faced by, those from across the equality groups, including those with multiple identities.
- 3.224** The ECNI recommends that the Executive Office gives consideration to ensuring, post Brexit, that procedures are put in place to ensure there is a systemic approach to produce disaggregated data on violence against women and girls which not only meets the specific needs of NI but where possible is comparable with common international frameworks, including at EU level.

Female Genital Mutilation

- 3.225** EU obligations underpinning the rights of victims in Windsor Framework Article 2 include the EU Victims' Directive⁴²⁵ as well as other relevant EU laws which support victims.⁴²⁶ The EU Victims' Directive recognises that victims of gender-based violence, including female genital mutilation, and their children,

425 Directive 2012/29/EU, 'EU Parliament and Council Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

426 Directive 2011/36/EU 'Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011; Directive 2011/92/EU, 'Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography', 13 December 2011; Directive 2004/80/EC, 'Council Directive Relating to the Compensation to Crime Victims', 29 April 2004.

often require special support and protection against secondary and repeat victimisation, intimidation and retaliation.⁴²⁷

- 3.226 In June 2023, the UN CRC Committee recommended that the UK Government and NI Executive “develop national strategies aimed at eliminating and preventing harmful practices affecting children, including... female genital mutilation”.⁴²⁸
- 3.227 Female genital mutilation is illegal under the Female Genital Mutilation Act 2003. The Serious Crime Act 2015 provides for Female Genital Mutilation Protection Orders. In 2014, the NI Executive published the Multi-Agency Practice Guidelines on female genital mutilation.⁴²⁹ In 2021, the Department of Health was revising and updating multi-agency guidelines that would take into account Female Genital Mutilation Protection Orders, new care pathways and a risk assessment tool.⁴³⁰ In 2023, restructuring of the Department of Health delayed publication of this new guidance.⁴³¹
- 3.228 The Female Genital Mutilation Protection Order (Relevant Third Party) Order (NI) 2021 enables health and social care trusts in NI to obtain a third-party protection order without the need to seek the leave of a court. It is intended to speed up the process of obtaining a protection order.⁴³² In March 2024, an amendment to Article 8(4) of the Children (NI) Order 1995 to allow proceedings for Female Genital Mutilation Protection Orders to be classified as family proceedings was laid and was due to enter into force in April 2024.⁴³³

Recommendations

- 3.229 The NIHRC recommends the Department of Justice and Department of Health implement a prevention strategy and action plan, which includes increasing efforts to raise awareness, particularly within affected communities, that female genital mutilation is a form of both child abuse and gender-based violence against women and girls.**
- 3.230 The NIHRC recommends that the Department of Justice and Department of Health ensure that all legislative and policy developments to prevent female genital mutilation and support victims, including the Domestic and Sexual**

427 Recitals 17 and 21, Directive 2012/29/EU, ‘EU Parliament and Council Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’, 25 October 2012.

428 CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Combined Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 2 June 2023, at para 35(a).

429 NI Executive, ‘Multi-Agency Practice Guidelines: Female Genital Mutilation’ (NIE, 2014).

430 Email correspondence from the Department of Justice to the NI Human Rights Commission, July 2021.

431 Email correspondence from the Department of Health to the NI Human Rights Commission, 21 June 2023.

432 Email correspondence from the Department of Finance to the NI Human Rights Commission, 7 July 2023.

433 Article 2(1)(a), The Adoption and Children (2022 Act) (Commencement No. 2) Order (Northern Ireland) 2024.

Abuse Strategy and the Violence Against Women and Girls Strategy, embed consideration of Windsor Framework Article 2 and the EU Victims' Directive, and other relevant EU law.

Hate Crime

- 3.231 The international human rights oversight bodies have consistently called for the UK Government and NI Executive to strengthen their efforts to investigate alleged hate crimes and prosecute perpetrators, provide effective remedies to victims, take action to increase reporting from people impacted by hate crime and to systematically collect disaggregated data.⁴³⁴ In June 2023, the UN CRC Committee recommended that the state “encourage the reporting of hate crimes against children; investigate and prosecute cases of racially, ethnically and religiously motivated crime; punish perpetrators with commensurate sanctions; and provide adequate compensation to the victims, as appropriate”.⁴³⁵ In March 2024, the UN Human Rights Committee called for the UK Government and NI Executive to establish a clear and comprehensive legal framework which applies to all protected groups, including “taking effective steps to promptly enhance hate crime legislation in NI”.⁴³⁶
- 3.232 In May 2023, the ECNI published independent research on the impact of Brexit on minority ethnic and migrant people in NI, which includes consideration of the experiences of racism and race hate crime after Brexit. One of the findings in the report is a widespread perception that Brexit has led to an increase in the expression of racism in NI.⁴³⁷
- 3.233 The research report notes that there was a marked increase in race related hate crimes in NI in the period 2021-2022, as evidenced by Police Service of NI (PSNI) Hate Motivation Statistics for the period ending March 2022. The overall number of racist incidents and crimes fell in 2022/23, but the number of race related hate crimes against minority ethnic people has risen.⁴³⁸ Incidents and crimes with a racist motivation showed the largest overall increase.⁴³⁹ In 2023, there have been increased reports of ‘organised’ hate

434 CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 28 March 2024, at para 17; CRC/C/GBR/CO/6-7, ‘Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at para 20; CERD/C/GBR/CO/21-23, ‘Concluding Observations on the Twenty-first to Twenty-third Periodic Reports of the UK of Great Britain and NI’, 26 August 2016, at para 16; CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019, at para 63.

435 CRC/C/GBR/CO/6-7, ‘Concluding Observations on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI’, 2 June 2023, at para 20(d).

436 CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 28 March 2024, at para 17.

437 Pivotal, ‘Impact of Brexit on Minority Ethnic and Migrant People in NI’ (ECNI 2023), at 10.

438 Race related hate crimes against minority ethnic people have increase from 317 in 2021/22 to 350 in 2022-23. See Police Service NI, ‘Hate Motivation Statistics: Financial year update, period ending 31 March 2024, providing figures for 2023/24’.

439 Police Service of NI, ‘Incidents and Crimes with a Hate Motivation Recorded by the Police in Northern Ireland: Update to 31 March 2022’ (PSNI, 2022), at 4.

crimes in NI, particularly racist hate crimes.⁴⁴⁰ In November 2023, a follow-up public meeting on tackling racist hate crimes in Belfast was cancelled due to persistent intimidation and concern for the safety of attendees.⁴⁴¹

- 3.234 After the Independent Hate Crime Review in 2020,⁴⁴² and the Department of Justice response to the Review,⁴⁴³ the first of a two-stage public consultation was launched in 2022 seeking responses on improving the effectiveness of NI hate crime legislation. Both Commissions responded highlighting the relevance of the EU Victims' Directive in the context of Windsor Framework Article 2.⁴⁴⁴ The ECNI's response noted the need to update, harmonise, consolidate, and strengthen hate crime legislation, including by addressing the significant gaps in the legislation and the importance of actions to prevent and tackle hate crime and reform equality law.⁴⁴⁵
- 3.235 The NIHRC has called on the Department of Justice to promptly and effectively improve hate crime legislation in NI, guided by the Independent Hate Crime Review Team's recommendations and to ensure that any new legislation compliments existing and future strategies on race and community relations. The NIHRC has also highlighted that the EU Victims' Directive provisions on timely and individual assessments of the needs of victims of hate crimes, on the need for a gender-sensitive approach to addressing gender-based violence, and on the need for special support for women victims and their children, are key provisions for the development of effective hate crime legislation.⁴⁴⁶
- 3.236 In 2023, the Department of Justice published a summary report of stage one consultation responses, noting that subsequent changes to legislation in a Hate Crime Bill are progressing.⁴⁴⁷ The Department of Justice has confirmed that Phase 2 of the consultation on Hate Crime Legislation is planned for

440 'Why has there been a spike in racist attacks in south Belfast?', *BBC News*, 17 October 2023; Meeting of refugee and ethnic minority business owners hosted by Participation and Practice of Rights, 31 August 2023; 'Sandy Row: Belfast fire treated as racially motivated hate crime', *BBC News*, 18 August 2023; 'Belfast Multi-Cultural Association building for sale after arson attacks', *BBC News*, 14 February 2023; 'Belfast mosque leader's worries after Nazi flags flown nearby', *BBC News*, 23 August 2023; Sarah McKinley, 'South Belfast businesses in emergency meeting over multiple racist attacks', *UTV News*, 1 September 2023; Sara Girvan and Eimear Flanagan, 'Syrian man to move shop after four racist attacks', *BBC News*, 18 September 2023; Kevin Sharkey, 'Belvoir: Anti-migrant signs treated as "hate incident"', *BBC News*, 2 November 2023.

441 Email correspondence from Participation and the Practice of Rights to NI Human Rights Commission, 2 November 2023.

442 Independent Hate Crime Review Team, 'Hate Crime Legislation in NI: Independent Review' (DoJ, 2020).

443 Department of Justice, 'Review of Hate Crime Legislation in Northern Ireland - Departmental Response' (DoJ, 2021).

444 NI Human Rights Commission, 'Response to Public Consultation on Improving the Effectiveness of Hate Crime Legislation in NI', (NIHRC, 2022); Equality Commission for NI, 'Response to consultation: Department of Justice – Improving the effectiveness of Hate Crime Legislation in Northern Ireland' (ECNI, 2022).

445 Equality Commission for NI, 'Response to consultation: Department of Justice – Improving the effectiveness of Hate Crime Legislation in Northern Ireland'. (ECNI, 2022).

446 NI Human Rights Commission, 'Response to Public Consultation on Improving the Effectiveness of Hate Crime Legislation in NI' (NIHRC, 2022), at para 5.18.

447 Department of Justice, 'Improving the effectiveness of Hate Crime Legislation in Northern Ireland: Summary of Phase One Consultation and Call for Views Responses and Way Forward' (DOJ, 2023).

the Autumn 2024 and that the Minister has committed to introducing a foundational Hate Crime Bill in this mandate. It is scheduled to be introduced in 2026.⁴⁴⁸

Recommendations

- 3.237** The Commissions recommend that the Department of Justice embeds consideration of Windsor Framework Article 2 and the EU Victims' Directive in the development of hate crime legislation.
- 3.238** The NIHRC recommends that the Department of Justice ensures that a victim-centred approach is adopted when investigating, prosecuting and remedying hate crimes.
- 3.239** The Commissions continue to recommend action to update, harmonise, consolidate, and strengthen hate crime legislation, including by addressing the significant gaps in the legislation and ensuring support for victims of hate crime, including additional support to vulnerable victims.
- 3.240** The Commissions recommend that the NI Executive, the Department of Justice, criminal justice agencies and other relevant NI departments should take further actions to prevent, and tackle race hate crimes, including online race hate speech, address the under-reporting of race hate crime and ensuring support is provided to victims. This should include addressing any identified impact of Brexit on levels and forms of hate crime and hate speech, including online hate speech.
- 3.241** The ECNI recommend that the Department of Justice commissions further research to investigate the reasons behind the recent increase in race-related hate crimes against minority ethnic people so as to ascertain any impact of Brexit.

Legacy

NI Troubles (Legacy and Reconciliation) Act

- 3.242** Between 2021 and 2023, several UN and CoE institutions expressed “grave concern” at the UK Government’s plans for Troubles-related offences, including the NI Troubles (Legacy and Reconciliation) Act 2023.⁴⁴⁹ In June 2023,

448 Email Correspondence from the Department of Justice to the NI Human Rights Commission, 5 April 2024.

449 Office of the UN High Commissioner for Human Rights, ‘Press Release: UN experts voice concern at proposed blanket immunity to address the legacy of “the Troubles” in NI’, 10 August 2021; Letter from CoE Commissioner for Human Rights, Dunja Mijatovic, to Secretary of State for NI, Brandon Lewis MP, 13 September 2021; CoE, ‘Submission by the CoE Commissioner for Human Rights Under Rule 9.4 of the Rules of the Committee of Ministers for the Supervision of the Execution of Judgments and of the Terms of Friendly Settlements in the Cases of McKerr v UK, Finucane v UK, Kelly and Others v UK, Shanaghan v UK, McCaughey and Others v UK’ (CoE, 2022), at para 28; CM/Notes/1443H46-32,

the CoE Commissioner for Human Rights, Dunja Mijatović emphasised that the then Bill “ignores the many warnings that this legislation would violate the UK’s international obligations and put victims’ rights at risk”.⁴⁵⁰

3.243 In 2019, the UN Convention against Torture (UN CAT) Committee recommended that the UK Government “refrain from enacting amnesties or statutes of limitations for torture or ill-treatment”, which are inconsistent with UN CAT.⁴⁵¹

3.244 As noted above,⁴⁵² EU obligations underpinning the rights of victims include the EU Victims’ Directive⁴⁵³ as well as other relevant EU laws which support victims.⁴⁵⁴ The UK Government has acknowledged that the EU Victims’ Directive falls within the scope of Windsor Framework Article 2.⁴⁵⁵ In February 2024, the NI High Court held that adopting a narrow interpretation of “civil rights” undermines the future-facing dimension of the non-diminution commitment in Windsor Framework Article 2.⁴⁵⁶ The High Court also concluded that the fundamental human rights of victims “are encompassed within the notion of ‘civil rights’ and are protected though the commitment to victims at paragraph 11” of the Agreement. It stated that these rights include the right to life, the right to be free from torture, cruel, inhuman or degrading treatment, the right to access a court, the right to be free from discrimination and the right to dignity.⁴⁵⁷ The Court has further confirmed that the rights of victims of crime are within the scope of the relevant chapter in the Belfast (Good Friday) Agreement, are within the competence of EU law and are underpinned by EU law in the form of the EU Victims’ Directive and the EU Charter of Fundamental Rights.⁴⁵⁸

‘CoE Committee of Ministers *McKerr Group v UK* (Application No 28883/95) Supervision of the Execution of the ECtHR’s Judgments’, 22 September 2022, at para 8; CoE Parliamentary Assembly, ‘Resolution 2464(2002) – The Impact of Brexit on Human Rights on the Island of Ireland’, 31 October 2022, at paras 8 and 9; CommDH(2022)27, ‘CoE Commissioner for Human Rights, Dunja Mijatovic: Report Following Visit to UK From 27 June to 1 July 2022’, 18 November 2022, at 37-40; A/HRC/52/10, ‘Report of the UN Working Group on the Universal Periodic Review: UK of Great Britain and NI’, 9 January 2023, at paras 43.27, 43.106 and 43.112; CM/Del/Dec(2023)1459/H46-35, ‘*McKerr Group v UK* (Application No 28883/95 Supervision of the Execution of the European Court’s Judgments), 9 March 2023, at para 5; CM/ResDH(2023)148, ‘CoE Committee of Ministers Interim Resolution: *McKerr* and Four Cases Against the UK’, 7 June 2023.

450 CoE Commissioner for Human Rights, ‘Press Release: UK – Adopting NI Legacy Bill will undermine justice for victims, truth seeking and reconciliation’, 20 June 2023.

451 CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019.

452 See introduction to Victims’ Rights section at 3.176-3.179.

453 Directive 2012/29/EU, ‘EU Parliament and Council Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’, 25 October 2012.

454 Directive 2011/36/EU ‘EU Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims’, 5 April 2011; Directive 2011/92/EU, ‘EU Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography’, 13 December 2011; Directive 2004/80/EC, ‘EU Council Directive Relating to the Compensation to Crime Victims’, 29 April 2004.

455 UK Government, ‘UK Government Commitment to No-diminution of Rights, Safeguards and Equality of Opportunity in NI: What Does It Mean and How Will It Be Implemented?’ (NIO, 2020).

456 *In the matter of an application by Martina Dillon and others for Judicial Review* [2024] NIKB 11, at para 554.

457 *Ibid*, at para 561.

458 *Ibid*, at para 582.

- 3.245 In 2022, the then NI Troubles (Legacy and Reconciliation) Bill was introduced to the UK Parliament.⁴⁵⁹ Throughout the passage of the Bill, the NIHRC raised grave concerns about its compatibility with the ECHR, international human rights obligations and Windsor Framework Article 2.⁴⁶⁰ Issues raised included the lack of practical independence, the use of the conditional immunity scheme and cessation of proceedings.⁴⁶¹ In relation to Windsor Framework Article 2, the NIHRC also raised concerns about the compliance of the Act with minimum standards in the EU Victims' Directive, including the right to a review of a decision not to prosecute⁴⁶² and the right to information regarding any decision not to proceed with an investigation.⁴⁶³ The Act does not include an express requirement for victims or family members to be informed when an individual has applied for immunity, or other information relating to the review process or the outcome of the immunity request. The EU Victims' Directive must be interpreted in line with the EU Charter of Fundamental Rights provisions, including Article 47 (right to an effective remedy and to a fair trial) and general principles of EU law.⁴⁶⁴
- 3.246 In September 2023, the Secretary of State for NI stated that UK Government lawyers believed the then NI Troubles (Legacy and Reconciliation) Bill to be ECHR compliant and the Act received Royal Assent.⁴⁶⁵ The Act establishes an Independent Commission for Reconciliation and Information Recovery (ICRIR). In May 2023, Sir Declan Morgan was announced as its Chief Commissioner.⁴⁶⁶ ICRIR has been undertaking a number of consultations on how it should

459 See also, NI Office, 'Addressing the Legacy of NI's Past' (NIO, 2021). Contrary to the majority of views expressed in 2018, the plans indicated a shift away from conducting human rights compliant Troubles-related investigations, towards seeking and receiving information about Troubles-related deaths and injuries. See NI Office, 'Addressing the Legacy of NI's Past: Analysis of the Consultation Responses' (NIO, 2019).

460 House of Commons NI Affairs Committee, 'Oral Evidence: Addressing the Legacy of NI's Past - The UK Government's New Proposals', 7 June 2022; NI Human Rights Commission, 'Legislative Scrutiny: NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); NI Human Rights Commission, 'Rule 9 Submission to the CoE Committee of Ministers in Relation to the Supervision of the Cases Concerning the Actions of the Security Forces in NI: Advice on NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); NI Human Rights Commission, 'Advice on NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); Letter from the NI Human Rights Commission to Chair of the House of Lords Sub-Committee on the Ireland/Northern Ireland Protocol, Lord Jay, 30 January 2023; NI Human Rights Commission, 'Supplementary Briefing: UK Government's Proposed Amendments to NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2023).

461 NI Human Rights Commission, 'Advice on the NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); Letter from NI Human Rights Commission to Chair of the European Affairs Sub-Committee on the Protocol on Ireland/Northern Ireland, Lord Jay, 30 January 2023. NI Human Rights Commission, 'Supplementary Briefing: UK Government's Proposed Amendments to NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2023).

462 Articles 6 and 11, Directive 2012/29/EU, 'EU Parliament and Council Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

463 Article 6(1)(a), Directive 2012/29/EU, 'EU Parliament and Council Directive establishing minimum standards on the rights, support and protection of victims of crime', 25 October 2012.

464 Article 4, Agreement on the Withdrawal of the UK of Great Britain and NI from the EU and the European Atomic Energy Community 2020.

465 House of Commons Hansard, 'NI Troubles (Legacy and Reconciliation) Bill – Chris Heaton-Harris MP', 6 September 2023.

466 NI Office, 'Press Release: Secretary of State announces Independent Commission for Reconciliation and Information Recovery Chief Commissioner', 11 May 2023. Other roles have subsequently been filled, including the Commissioner for Investigations - NI Office, 'Press Release: Appointment of Commissioner for Investigations of Independent Commission for Reconciliation and Information Recovery', 14 September 2023.

conduct different aspects of its work.⁴⁶⁷ ICRIR will conduct reviews, on request, into deaths and serious injuries resulting from, or connected with, conduct during the Troubles. ICRIR is also tasked with producing a historical record of all remaining deaths that occurred during the Troubles which are not subject to a review. The 2023 Act provided that ICRIR would operate a conditional immunity scheme for certain Troubles-related offences and that most Troubles-related proceedings will cease by 1 May 2024. The 2023 Act also establishes several statutory-based initiatives aimed at memorialising the Troubles.

- 3.247 In September 2023, a number of separate judicial reviews were lodged arguing that the NI Troubles (Legacy and Reconciliation) Act 2023 violates the ECHR and is not compliant with Windsor Framework Article 2.⁴⁶⁸ In November 2023, the High Court heard three cases that were identified as best suited to determine the issues raised. Both Commissions were granted leave to intervene: the NIHRC on grounds relating to the correct interpretation and application of the ECHR and Windsor Framework Article 2; and the ECNI on Windsor Framework Article 2 grounds only.
- 3.248 In February 2024, the High Court found that the conditional immunity scheme breaches Articles 2 and 3 of the ECHR, noting that “victims have no role or say in these decisions” and made a declaration of incompatibility.⁴⁶⁹ The High Court also found that the removal of the possibility of prosecution was incompatible with the EU Victims’ Directive and therefore breaches Windsor Framework Article 2.⁴⁷⁰ The Court held that pursuant to S7A of the EU (Withdrawal) Act 2018, Windsor Framework Article 2 has primacy over the conflicting provisions of the Act and therefore those provisions should be disapplied.⁴⁷¹
- 3.249 In February 2024, the NIHRC raised the above issues in its submission to the UN Human Rights Committee.⁴⁷² In March 2024, the UN Human Rights Committee expressed concerns about the conditional immunity scheme for serious human rights violations; the weakness of the “review” function; the allegations of the lack of independence of the ICRIR; and procedural barriers stifling any criminal or civil proceedings.⁴⁷³ The UN Committee called on the UK Government to “repeal or reform the Northern Ireland Troubles (Legacy and

467 Independent Commission for Reconciliation and Information Recovery, ‘Documents’.

468 ‘Troubles legacy: Controversial bill facing more legal challenges’, *BBC News*, 18 September 2023; Jayne McCormack, ‘Tony Harrison: Family of murdered paratrooper launches legal challenge over legacy act’, *BBC News*, 27 September 2023.

469 *In the matter of an application by Martina Dillon and others for Judicial Review* [2024] NIKB 11, at para 187 and 710(i).

470 *Ibid*, at para 608 and 710.

471 *Ibid*, at para 710.

472 NI Human Rights Commission, ‘Submission to the UN Human Rights Committee on the UK’s Eighth Periodic Report on Compliance with the International Covenant on Civil and Political Rights’ (NIHRC, 2024).

473 CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of UK of Great Britain and NI’, 28 March 2024, at para 10.

Reconciliation) Act 2023 and to adopt proper mechanisms with guarantees of independence, transparency, and genuine investigation power that discharge the State party's human rights obligations and deliver truth, justice and effective remedies, including reparations to victims of the Northern Ireland conflict".⁴⁷⁴

Victims and Survivors Strategy

- 3.250 In December 2023, the Executive Office issued a draft Strategy for Victims and Survivors of the Troubles/Conflict.⁴⁷⁵ In their respective responses, both Commissions advised the Executive Office to ensure impact assessments build in consideration of Windsor Framework Article 2 and the EU Victims' Directive.⁴⁷⁶ The NIHRC welcomed the victim-centred and trauma-informed approach taken by the Executive Office, which is consistent with EU minimum standards and advice from international human rights bodies.⁴⁷⁷ The NIHRC advised the Executive Office to ensure that a human rights based approach to the whole of the strategy is adopted, including the full range of internationally accepted human rights standards, Windsor Framework Article 2 and the relevant EU law minimum standards.⁴⁷⁸
- 3.251 The ECNI, in its response, advised the Executive Office that the Strategy should take account of and not diminish the rights protected under relevant EU directives contrary to Windsor Framework Article 2 which underpin the rights of victims including the EU Victims' Directive⁴⁷⁹ and other relevant EU laws that support victims.⁴⁸⁰ The ECNI called for the Executive Office to monitor and consider the EU Commission's proposed amendments to the EU Victims Directive,⁴⁸¹ which if adopted would strengthen protections in areas related to this strategy.⁴⁸²

474 Ibid, at para 11.

475 The Executive Office, Strategy for Victims and Survivors of the Troubles/Conflict (TEO, 2023).

476 Equality Commission for NI, 'Response to consultation: The Executive Office: New Strategy for Victims and Survivors', (ECNI, 2024); NI Human Rights Commission, 'Submission to the Executive Office's Consultation on the New Strategy for Victims and Survivors' (NIHRC, 2024).

477 NI Human Rights Commission, 'Submission to the Executive Office's Consultation on the New Strategy for Victims and Survivors' (NIHRC, 2024).

478 Ibid.

479 Directive 2012/29/EU, 'EU Parliament and Council Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

480 Directive 2011/92/EU, 'Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography', 13 December 2011; Directive 2011/36/EU 'Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011; Directive 2004/80/EC, 'Council Directive relating to the Compensation to Crime Victims', 29 April 2004.

481 EU Commission, 'Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA - COM/2023/424', 12 July 2023.

482 Equality Commission for NI, 'Response to consultation: The Executive Office: New Strategy for Victims and Survivors' (ECNI, 2024).

Recommendations

- 3.252** The NIHRC recommends that the NI Office takes steps to immediately repeal the NI Troubles (Legacy and Reconciliation) Act 2023 and undertakes an immediate and thorough reassessment of the fundamentals of the Act. The resulting legislation should be victim-centred and compliant with the UK's international human rights obligations and Windsor Framework Article 2.
- 3.253** The ECNI recommends that the NI Office amends the NI Troubles (Legacy and Reconciliation) Act 2023 so as to ensure that it complies with Windsor Framework Article 2.
- 3.254** The NIHRC recommends that the Executive Office ensures that the fundamental concerns with the NI Troubles (Legacy and Reconciliation) Act 2023 are addressed to the greatest extent possible within the Victims and Survivors Strategy, including adopting human rights based and victim-centred mitigation strategies that protect victims' and survivors' access to justice, redress and rehabilitation.
- 3.255** The Commissions recommend that the Executive Office ensure impact assessments build in consideration of Windsor Framework Article 2 and the minimum standards in relevant EU law relating to victims' rights in the development of all policy on victims and survivors, including the current draft Victims and Survivors Strategy.
- 3.256** The Commissions recommend that the Executive Office brings forward legislation to align on a voluntary basis with any changes to the EU Victims' Directive, where these changes strengthen protections for victims, including victims and survivors of the Troubles, and align with international human rights standards and best practice.

Modern Slavery and Human Trafficking

- 3.257** As noted above,⁴⁸³ the Commissions take the view that EU obligations underpinning the rights of victims in Windsor Framework Article 2 include the EU Trafficking Directive⁴⁸⁴ as well as other relevant EU laws which support victims.⁴⁸⁵

483 See introduction to Victims' Rights section at 3.179-3.179.

484 Directive 2011/36/EU, 'Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011.

485 Directive 2012/29/EU, 'EU Parliament and Council Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012; Directive 2011/36/EU 'Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011; Directive 2004/80/EC, 'Council Directive relating to the Compensation to Crime Victims', 29 April 2004.

3.258 The EU Trafficking Directive sets out a number of provisions which are particularly aimed at criminalisation of trafficking offences,⁴⁸⁶ non-prosecution and non-application of penalties to victims,⁴⁸⁷ investigation and prosecution of offences⁴⁸⁸ and supporting victims, including child victims of trafficking.⁴⁸⁹

Modern Slavery and Human Trafficking Strategy

3.259 In 2022, in response to a Department of Justice consultation on strengthening their response to modern slavery and human trafficking,⁴⁹⁰ the NIHRC outlined the relevance of Windsor Framework Article 2, the EU Trafficking Directive⁴⁹¹ and the EU Child Sexual Exploitation Directive.⁴⁹² The NIHRC also highlighted that any processing of personal data, may still be subject to standards required under EU General Data Protection Regulations (EU GDPR).⁴⁹³

3.260 In 2022, the Department of Justice published a consultation on its three-year strategy on Modern Slavery and Human Trafficking, which sought to operationalise the measures brought in under the Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022.⁴⁹⁴ Both Commissions highlighted the need to ensure that Windsor Framework Article 2 is built into, and actively considered during, the development and implementation of policy and legislation on modern slavery and human trafficking.⁴⁹⁵ The ECNI also noted that any legislative developments progressed under this strategy should not reduce the rights of trafficked victims, including children, and that advice and support provided to victims should include their rights under both equality legislation and Windsor Framework Article 2.⁴⁹⁶ The NIHRC further emphasised the importance of specialist support being made available to victims of modern slavery, appropriately tailored to take account of age, gender and culture.⁴⁹⁷

486 Articles 2-7, Directive 2011/36/EU, 'Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011.

487 Article 8, Directive 2011/36/EU, 'Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011.

488 Articles 9-10, Directive 2011/36/EU, 'Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011.

489 Articles 11-17, Directive 2011/36/EU, 'Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims', 5 April 2011.

490 Department of Justice, 'Public Consultation on Measures to Strengthen Response to Modern Slavery and Human Trafficking - Proposed amendments to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015' (DoJ, 2022).

491 Directive 2011/36/EU, 'EU Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims', 5 April 2011.

492 Directive 2011/92/EU, 'EU Parliament and Council Directive on Combatting the Sexual Abuse and Sexual Exploitation of Children and Child Pornography, and Replacing Council Framework Decision 2004/68/JHA', 13 December 2011.

493 The Commissions have identified that the EU GDPR fall within the scope of Windsor Framework Article 2. For further discussion see the Data Protection section of this chapter. NI Human Rights Commission, 'Submission to Department of Justice's Consultation on Measures to Strengthen the Response to Modern Slavery and Human Trafficking' (NIHRC, 2022).

494 Department of Justice, 'NI Draft Modern Slavery and Human Trafficking Strategy: Consultation' (DoJ, 2022).

495 NI Human Rights Commission, 'Submission to the Department of Justice's Consultation on the Draft Modern Slavery and Human Trafficking Strategy', (NIHRC, 2023); Equality Commission for NI, 'Response to the Department of Justices' Public Consultation on the Modern Slavery and Human Trafficking Strategy 2022' (ECNI, 2023).

496 Equality Commission for NI, 'Response to the Department of Justices' Public Consultation on the Modern Slavery and Human Trafficking Strategy 2022' (ECNI, 2023).

497 NI Human Rights Commission, 'Submission to the Department of Justice's Consultation on the Draft Modern Slavery

Nationality and Borders Act 2022

- 3.261 The Commissions remain concerned that there is no reference to child victims in the Nationality and Borders Act, that it disapplies the requirements of the EU Trafficking Directive, and that late compliance with a Trafficking Information Notice, without good reason, must be considered as damaging the credibility of a potential victim.⁴⁹⁸
- 3.262 In 2022, the NIHRC published legal research on the human trafficking provisions of the then Nationality and Borders Bill which supported the Commissions' position that the EU Trafficking Directive falls within the scope of Windsor Framework Article 2.⁴⁹⁹

Illegal Migration Act 2023

- 3.263 In March 2023, the UK Government introduced the then Illegal Migration Bill which makes provision for the removal of support for victims of modern slavery and human trafficking who have entered the UK in breach of immigration control.⁵⁰⁰ In July, the Illegal Migration Act 2023 received Royal Assent.
- 3.264 The NIHRC provided initial advice on the then Illegal Migration Bill to the House of Commons and House of Lords Joint Committee on Human Rights.⁵⁰¹ Both Commissions provided separate detailed briefings to the House of Lords peers.⁵⁰² The Commissions expressed serious concerns that the Illegal Migration Act 2023 denies victims of modern slavery arriving in the UK irregularly, access to existing support.⁵⁰³ For example, sections 22 and 25 of the 2023 Act disapply, in certain circumstances, domestic provisions which reflected obligations previously arising under the EU Trafficking Directive,⁵⁰⁴ to protect the rights of potential victims of human trafficking. Both Commissions raised concerns about the Bill's compliance with Windsor Framework Article 2.⁵⁰⁵

and Human Trafficking Strategy' (NIHRC, 2023).

498 NI Human Rights Commission, 'Response to Call for Evidence by the Joint Committee on Human Rights on the Nationality and Borders Bill' (NIHRC, 2021); NI Human Rights Commission and Equality Commission for NI, 'Joint NIHRC/ECNI Briefing Paper on the Modern Slavery and Human Trafficking and Electronic Travel Authorisation Provisions in the Nationality and Borders Bill' (NIHRC and ECNI, 2022); Letter from the NI Human Rights Commission and the Equality Commission for NI to Home Secretary, Priti Patel MP, 9 February 2022; Letter from the NI Human Rights Commission and the Equality Commission for NI to Secretary of State for NI, Brandon Lewis MP, 9 February 2022.

499 Alison Harvey, 'Human Trafficking and Article 2 of the Ireland/NI Protocol' (NIHRC, 2022).

500 Sections 22-29, Illegal Migration Act 2023.

501 NI Human Rights Commission, 'Submission to Joint Committee on Human Rights Inquiry on Illegal Migration Bill' (NIHRC, 2023); NI Human Rights Commission, 'Submission to House of Lords on the Illegal Migration Bill' (NIHRC, 2023).

502 NI Human Rights Commission, 'Submission to House of Lords on the Illegal Migration Bill' (NIHRC, 2023); Equality Commission for NI, 'Submission to the House of Lords on the Illegal Migration Bill' (ECNI, 2023).

503 Sections 22-29, Illegal Migration Act 2023. See NI Human Rights Commission, 'Submission to Joint Committee on Human Rights Inquiry on Illegal Migration Bill' (NIHRC, 2023); NI Human Rights Commission, 'Submission to House of Lords on the Illegal Migration Bill' (NIHRC, 2023).

504 Articles 2, 8 and 11, Directive 2011/36/EU, 'EU Council Directive on preventing and combating trafficking in human beings and protecting its victims', 5 April 2011.

505 For further detail, see NI Human Rights Commission, 'Submission to House of Lords on the Illegal Migration Bill' (NIHRC, 2023).

- 3.265 In September 2023, the NIHRC issued a judicial review against the then Secretary of State for the Home Department and the Secretary of State for NI arguing that the Illegal Migration Act 2023 is not compliant with the ECHR or with Windsor Framework Article 2. In January 2024, the case was heard in the High Court of Justice in NI and as of 31 March 2021 the judgment was awaited.
- 3.266 In February 2024, the NIHRC raised concerns about the compliance of the Illegal Migration Act with Windsor Framework Article 2 and the UK's international human rights obligations in its submission to the UN Human Rights Committee.⁵⁰⁶ In March 2024, the UN Human Rights Committee expressed concerns that the Nationality and Borders Act 2022 and the Illegal Migration Act 2023 make it harder to identify victims of human trafficking and have resulted in the removal of certain protections for potential victims of trafficking. The Committee was particularly concerned that the legislative changes “criminalize victims of human trafficking and will likely result in victims being removed from the State party without fully considering their claim and providing them with the necessary support and protections”.⁵⁰⁷ The UN Committee recommended that the UK Government and NI Executive, “intensify its efforts to provide effective remedies, including protection, rehabilitation and compensation, for all victims of human trafficking and exploitation, no matter their migratory status”.⁵⁰⁸

Recommendations

- 3.267 The Commissions continue to recommend that the Home Office and Department of Justice embed consideration of the EU Trafficking Directive and Windsor Framework Article 2, in the development and drafting of human trafficking legislation and policy, including the Modern Slavery and Human Trafficking Strategy, and establish processes to ensure compliance with this obligation.**
- 3.268 The ECNI continues to recommend that those providing advice and resources make clear to victims of trafficking, the rights of individuals under both equality legislation and in relation to alleging a breach of Windsor Framework Article 2.**
- 3.269 The Commissions recommend that the Home Office embeds consideration of the EU Trafficking Directive and Windsor Framework Article 2 and**

506 NI Human Rights Commission, ‘Submission to the UN Human Rights Committee on the UK’s Eighth Periodic Report on Compliance with the International Covenant on Civil and Political Rights’ (NIHRC, 2024).

507 CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of UK of Great Britain and NI’, 28 March 2024, at para 38.

508 Ibid, at para 39(b).

ensures that the needs of child victims are safeguarded in the subsequent regulations and guidance on the human trafficking resulting from the Nationality and Borders Act 2022.

- 3.270** The Commissions recommend that the Home Office takes steps to immediately amend the Illegal Migration Act 2023 to ensure human rights compliant support and assistance is provided to potential victims of human trafficking and to protect against any diminution of rights in NI law, in breach of Windsor Framework Article 2.
- 3.271** The NIHRC continues to recommend that, in line with international human rights standards and Windsor Framework Article 2, including the EU Trafficking Directive, the Department of Justice provide compulsory, specialised training and guidance to all relevant staff, which is trauma-informed and victim-centred, to ensure victims are accurately identified and supported. This includes ensuring support and services are appropriately tailored to take account of age, gender and culture.
- 3.272** The NIHRC continues to recommend that the Department of Justice promptly introduces legislation providing for Trafficking and Exploitation Risk Orders in NI. In line with international human rights standards and Windsor Framework Article 2, this guidance should require individual assessments of victims to be conducted for the purposes of identifying the necessity and proportionality of a risk order.

Migrants' Rights

- 3.273** In the rights, safeguards and equality of opportunity section of the Belfast (Good Friday) Agreement the parties affirmed their “commitment to ... the civil rights and religious liberties of everyone in the community” before affirming “in particular” a non-exhaustive list of rights and safeguards.⁵⁰⁹ This section is headed ‘Human Rights’ and includes the UK Government’s commitment to the incorporation of the ECHR with direct access to the courts and remedies for breach.⁵¹⁰ The UK Government recognises that Windsor Framework Article 2 applies to “everyone who is subject to NI law – irrespective of whether that law has been passed by the NI legislature or Westminster”.⁵¹¹ In the High Court, the UK Government agreed that the

509 Belfast (Good Friday) Agreement, 10 April 1998, Part 6 on Rights, Safeguards and Equality of Opportunity. See also UK Government, ‘UK Government commitment to no-diminution of rights, safeguards and equality of opportunity in Northern Ireland’ (NIO, 2020); *In the matter of an application by Martina Dillon and others for Judicial Review* [2024] NIKB 11, at para 540.

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

511 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 8.

rights, safeguards and equality of opportunity protections enshrined in the relevant part of the 1998 Agreement do not exclude asylum seekers.⁵¹²

- 3.274 The non-exhaustive list of rights which are “affirmed in particular” in the relevant chapter of the Belfast (Good Friday) Agreement include the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity. The Commissions’ consider that the commitment to civil rights in the relevant chapter embraces a range of civil, political, economic, social and cultural rights and equality of opportunity.⁵¹³ In particular, the Commissions consider that the full range of rights in the ECHR, to the extent that they are underpinned by EU law in force in NI on or before 31 December 2020, fall within the scope of the non-diminution commitment in Windsor Framework Article 2. In February 2024, the NI High Court adopted a ‘generous and purposive’ approach to the interpretation of the relevant chapter of the Belfast (Good Friday) Agreement.⁵¹⁴ The High Court held that, “a narrow interpretation of ‘civil rights’ undermines the forward-facing dimension of the non-diminution commitment in article 2(1)”⁵¹⁵ The decision of the High Court is under appeal.
- 3.275 In addition, the obligation to keep pace in respect of the six Annex 1 equality directives includes the EU Racial Equality Directive, which establishes a framework for combating discrimination on the grounds of racial or ethnic origin,⁵¹⁶ and the EU Gender Equality (Goods and Services) Directive, which prohibits sex discrimination in access to goods and services.⁵¹⁷ The Annex 1 equality directives should be interpreted in line with relevant CJEU case law.⁵¹⁸

Refugees and Asylum Seekers

- 3.276 In the High Court, the UK Government agreed that the rights, safeguards and equality of opportunity protections enshrined in the relevant part of the 1998 Agreement do not exclude asylum seekers.⁵¹⁹ The High Court held that, “a narrow interpretation of ‘civil rights’ undermines the forward-facing dimension of the non-diminution commitment in article 2(1)”⁵²⁰ and rejected

512 *In the Matter of an Application by Aman Angesom for Judicial Review* [2023] NIKB 102, at para 107.

513 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).

514 *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NIKB 11, at para 547.

515 *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NIKB 11, at para 554.

516 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.

517 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.

518 Article 13(2), Windsor Framework.

519 A case involving the removal of an asylum seeker from NI to Scotland. See *In the Matter of an Application by Aman Angesom for Judicial Review* [2023] NIKB 102, at para 107 and 108.

520 *In the matter of an application by Martina Dillon and others for Judicial Review* [2024] NIKB 11, at para 554.

the argument that Belfast (Good Friday) Agreement rights are frozen in time.⁵²¹

- 3.277 In addition to the obligation to ‘keep pace’ with the equality directives listed in Annex 1 of the Windsor Framework, the Commissions have identified other relevant EU laws within the scope of Article 2, which bound the UK before Brexit, and continue to set minimum standards for refugees and people seeking asylum. These measures include the EU Procedures Directive,⁵²² EU Reception Directive,⁵²³ EU Qualification Directive⁵²⁴ and the EU Dublin III Regulation.⁵²⁵
- 3.278 The EU Charter on Fundamental Rights also continues to have relevance in the application and interpretation of those provisions of EU law which fall within the scope of Windsor Framework Article 2 – for example, Article 18 of the Charter specifically protects the Right to Asylum. The NI High Court also affirmed the continued enforceability and of relevance of the EU Charter on Fundamental Rights for Windsor Framework Article 2.⁵²⁶
- 3.279 In June 2023, the ECNI published independent research on the Impact of Brexit on Minority Ethnic and Migrant People in NI.⁵²⁷ The report captured important information and evidence about their experiences in NI.
- 3.280 The research report noted that asylum seekers and refugees often had unique needs and challenges which left them highly vulnerable, including financial poverty and poor quality, insecure accommodation which does not meet their needs.⁵²⁸ The asylum process was described as humiliating and traumatic with the potential to re-traumatise vulnerable people.
- 3.281 The ECNI produced policy recommendations, arising from this research, noting that there have been a number of post Brexit developments which have, or will, directly impact on the treatment of asylum seekers and refugees including, for example, the Illegal Migration Act and the Safety of

521 *In the Matter of an Application by Aman Angesom for Judicial Review* [2023] NIKB 102, at para 107 and 108.

522 Directive 2005/85/EC, ‘EU Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status’, 1 December 2005.

523 Directive 2003/9/EC, ‘EU Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers’, 27 January 2003.

524 Directive 2004/83/EC, ‘EU Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted’, 29 April 2004.

525 Regulation 2013/604/EU, ‘EU Parliament and Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person’, 26 June 2013

526 *In the Matter of an Application by Aman Angesom for Judicial Review* [2023] NIKB 102, at para 93. See also *Secretary of State for Work and Pensions v AT* [2023] EWCA Civ 1307; *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NIKB 11.

527 Pivotal, ‘The Impact of Brexit on Minority Ethnic and Migrant People in Northern Ireland’ (ECNI, 2023).

528 Ibid.

Rwanda Bill.⁵²⁹ The ECNI has previously called for the UK Government and NI Executive to review the asylum system in relation to issues such as quality of accommodation and access to appropriate support systems for asylum seekers and refugees in NI, and to take action to mitigate against the negative impact of the approach of the asylum process and restrictions on asylum seekers.⁵³⁰

- 3.282 In June 2023, the UN CRC Committee recommended that the State amend the Nationality and Borders Act to ensure “that all asylum-seeking and refugee children, including unaccompanied children, are not criminalized and have access to necessary support and services”.⁵³¹ The Committee also recommended that the UK Government ensure that, in the asylum process, children receive age-appropriate information and legal advice, that their best interests are given primary consideration, and that their views are heard, taken into account and given due weight.⁵³²
- 3.283 In respect of unaccompanied children seeking asylum, the UN CRC Committee recommended that the UK Government ends the use of “unreliable and invasive procedures for determining a child’s age”.⁵³³ The UN CRC Committee also reiterated its recommendation that the UK Government “review its system of family reunification involving unaccompanied children, with a view to ensuring that children have an unqualified right to apply for family reunification”.⁵³⁴
- 3.284 In October 2023, an asylum seeker challenged the lawfulness of the decision to remove him from NI to Scotland on several grounds including procedural fairness, Article 8 of the ECHR and Windsor Framework Article 2.⁵³⁵ While the applicant was unsuccessful, the NI High Court confirmed that Article 7 of the EU Reception Directive is capable of falling within the scope of Windsor Framework Article 2, insofar as it seeks to protect the human rights of asylum seekers, which is consistent with the Commissions’ intervention.⁵³⁶
- 3.285 In November 2023, the NIHRC published research which examined the extent to which EU minimum standards for refugees and asylum seekers fall within the scope of Windsor Framework Article 2. The research also looked at a range of developments, including the Nationality and Borders Act 2022 and the Illegal Migration Act 2023, to illustrate the factors that must be taken into

529 Equality Commission for NI, ‘Policy Recommendations: The Impact of Brexit on Minority Ethnic and Migrant People in Northern Ireland’ (ECNI, 2024).

530 Ibid.

531 CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 2 June 2023, at para 50(B).

532 Ibid, at para 50(c).

533 Ibid, at para 50(e).

534 Ibid, at para 50(h).

535 *In the Matter of an Application by Aman Angesom for Judicial Review* [2023] NIKB 102.

536 Ibid, at para 115.

consideration when determining whether there has been a diminution of rights contrary to Windsor Framework Article 2.⁵³⁷

3.286 The NIHRC also published an accompanying briefing note setting out key advice and recommendations including that that rights particular to refugees and asylum-seekers are within the scope of the Rights, Safeguards and Equality of Opportunity chapter of the Belfast (Good Friday) Agreement by virtue, in particular, of the general commitment to civil rights and to the incorporation of the ECHR into domestic law and the relevant EU measures.⁵³⁸

Draft Refugee Integration Strategy

3.287 Despite a commitment within the Racial Equality Strategy 2015-2025,⁵³⁹ NI remains the only part of the UK without a Refugee Integration Strategy.⁵⁴⁰ In 2022, the Commissions responded separately to the Executive Office consultation on its Draft Refugee Integration Strategy. Both Commissions highlighted the Executive Office's obligations in accordance with Windsor Framework Article 2 and identified the relevance of various EU minimum standards.⁵⁴¹ In 2022, the NI Affairs Committee recommended that the final Refugee Integration Strategy be delivered at pace.⁵⁴²

3.288 In May 2023, the NI Refugee and Asylum Forum, convened by the Law Centre NI, identified key challenges for asylum seekers and refugees, highlighting that the lack of strategy is hindering all aspects of integration in NI.⁵⁴³ The Forum proposed recommendations for action and emphasised the need for improved transparency through reliable data and the provision of quality and authoritative information on rights and entitlements of refugees and asylum seekers in NI.⁵⁴⁴

Illegal Migration Act 2023

3.289 In July 2023, the Illegal Migration Act 2023 received Royal Assent. The Act denies access to the UK asylum system to individuals who have arrived

537 Alison Harvey, 'Article 2 of the Windsor Framework and the rights of refugees and persons seeking asylum' (NIHRC, 2023).

538 NI Human Rights Commission, 'Windsor Framework Article 2 and the rights of Refugees and Asylum Seekers – Briefing and Recommendations' (NIHRC, 2023).

539 The Executive Office, 'Racial Equality Strategy 2015-2025' (TEO, 2015).

540 The NIHRC recommends stating early that the strategy is human rights-based, requiring public authorities to adopt this approach and to expand and clarify the list of relevant human rights standards, incorporating EU obligations supporting Windsor Framework Article 2's non-diminution commitment. NI Human Rights Commission, 'Response to Public Consultation on Draft Refugee Integration Strategy' (NIHRC, 2022), at para 2.12 and 2.13.

541 NI Human Rights Commission, 'Response to Public Consultation on Draft Refugee Integration Strategy' (NIHRC, 2022); Equality Commission for NI, 'Response to the consultation by The Executive Office on the draft Refugee Integration Strategy 2022-2027' (ECNI, 2022).

542 House of Commons NI Affairs Committee, 'The Experiences of Minority Ethnic and Migrant People in NI' (HoC, 2022), at para 28.

543 Law Centre NI, 'Refugee and Asylum Forum: Priorities for Action 2023' (LCNI, 2023).

544 Ibid.

through unofficial routes.⁵⁴⁵ It prevents almost all such individuals from presenting claims for protection, no matter how compelling their case may be.⁵⁴⁶ Individuals can face detention before being removed to another country.⁵⁴⁷

3.290 The NIHRC provided initial advice on the then Illegal Migration Bill to the House of Commons and House of Lords Joint Committee on Human Rights.⁵⁴⁸ Both Commissions provided detailed briefings to House of Lords peers which raised concerns about compliance of the Act with the UK's international human rights obligations and Windsor Framework Article 2, relating to limitations on judicial oversight, the removal of support to victims and potential victims of modern slavery and human trafficking, and the weakening of child protection arrangements.⁵⁴⁹ For example, section 5(2) of the 2023 Act places an obligation on the Secretary of State to declare any claim inadmissible where a person enters the UK after 20 July 2023 without leave to enter or remain, or they required an ETA to enter the UK, and they did not come directly from a country where their life or liberty was not threatened by reason of their race, religion, nationality, membership of a particular social group or political opinion. Article 8(2) and Recital 22 of the EU Procedures Directive⁵⁵⁰ and Article 4(3) of the EU Qualification Directive⁵⁵¹ require appropriate examination of the substance for any application for asylum, including an individual assessment of whether the applicant qualifies as a refugee.

3.291 In September 2023, the NIHRC issued a judicial review against the Secretary of State for the Home Department and the Secretary of State for NI arguing that the Illegal Migration Act 2023 is not compliant with the ECHR and Windsor Framework Article 2. In January 2024, the case was heard in the NI High Court and a judgment is awaited.

545 Section 2(2)-(6), Illegal Migration Act 2023 sets out four conditions, which are essentially that the person arrived in the UK irregularly after 20 July 2023 and did not come directly to the UK from a country in which their life and liberty were threatened. There are minor exceptions in Section 2(11).

546 When the conditions in section 2(2)-(6) Illegal Migration Act 2023 apply, any protection claim (section 5(2)) and a human rights claim concerning a country of origin (see section 5(2) and 5(5)) must be declared inadmissible by the Secretary of State, without any individualised assessment. A person may make a 'removal conditions suspensive claim', or 'serious harm suspensive claim' (sections 38-43). A serious harm suspensive claim requires the person to provide "compelling evidence" that the person would, before the end of "the relevant period", face a "real, imminent and foreseeable risk of serious and irreversible harm if removed" to the country specified in the removal notice (sections 39(2-3) and 42(2)). A serious harm suspensive claim applies only to third country removals and not to removal to the country of origin.

547 Sections 11-15, Illegal Migration Act 2023.

548 NI Human Rights Commission, 'Submission to Joint Committee on Human Rights Inquiry on Illegal Migration Bill' (NIHRC, 2023).

549 NI Human Rights Commission, 'Submission to House of Lords on the Illegal Migration Bill' (NIHRC, 2023); Equality Commission for NI 'Submission to the House of Lords on the Illegal Migration Bill' (ECNI, 2023).

550 Directive 2005/85/EC, 'EU Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status', 1 December 2005.

551 Directive 2004/83/EC 'EU Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted', 29 April 2004.

3.292 In June 2023, the UN CRC Committee recommended that the UK Government “urgently amend the Illegal Migration Bill to repeal all draft provisions that would have the effect of violating children’s rights under the Convention and the 1951 Refugee Convention”.⁵⁵²

3.293 In February 2024, the NIHRC raised concerns about the compliance of the Illegal Migration Act with Windsor Framework Article 2 and the UK’s international human rights obligations, in its submission to the UN Human Rights Committee.⁵⁵³ In March 2024, the UN Committee recommended that the UK Government:

swiftly repeal the legislative provisions, including within the Illegal Migration Act 2023, that discriminate against migrants and that seek to limit access to rights for asylum seekers, refugees and migrants in the State party on account of their “illegal entry or presence”, with a view to ensuring its legislation fully complies with the Covenant and relevant international standards.⁵⁵⁴

Rwanda Asylum Proposals

3.294 In 2022, a partnership between the UK and Rwanda was established to relocate migrants who arrived in the UK irregularly to Rwanda.⁵⁵⁵ In June 2022, the first group of people were to be relocated to Rwanda.⁵⁵⁶ However, the initial flight was halted due to the European Court of Human Rights (ECtHR) issuing an interim measure.⁵⁵⁷

3.295 In November 2023, the UK Supreme Court declared that the Rwanda asylum proposals were unlawful as Rwanda was not a safe country.⁵⁵⁸ In December 2023, the UK Government signed a new treaty with Rwanda⁵⁵⁹ and introduced

552 CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 2 June 2023, at paras 50(a).

553 NI Human Rights Commission, ‘Submission to the UN Human Rights Committee on the UK’s Eighth Periodic Report on Compliance with the International Covenant on Civil and Political Rights’ (NIHRC, 2024)

554 CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of UK of Great Britain and NI’, 28 March 2024, at para 41 (a).

555 The Memorandum of Understanding also contained a commitment by the UK and Rwanda to uphold “fundamental human rights and freedoms without discrimination”. It is not binding in international law and compliance with this arrangement is not “justiciable in any court of law by third-parties or individuals”. See Home Office, ‘Press Release: UK and Rwanda migration and economic development partnership’, 14 April 2022; Memorandum of Understanding Between the Government of the UK of Great Britain and NI and the Government of the Republic of Rwanda for the Provision of an Asylum Partnership Arrangement, 13 April 2022.

556 Home Office, ‘Press Release: First migrants set for Rwanda to be given final notice’, 1 June 2022.

557 The ECtHR issued the interim measure to prevent irreversible harm to an applicant challenging the legality of their deportation. See European Court of Human Rights, ‘Press Release: The European Court grants urgent interim measure in case concerning asylum-seeker’s imminent removal from the UK to Rwanda’, 14 June 2022.

558 *AAA and Others Secretary of State for the Home Department* [2023] UKSC 42.

559 Agreement between the Government of the UK of Great Britain and NI and the Government of the Republic of Rwanda for the provision of an asylum partnership to strengthen shared international commitments on the protection of refugees and migrants, 5 December 2023.

the Safety of Rwanda (Asylum and Immigration) Bill, which proposes to declare Rwanda as a safe third country of removal and remove the possibility of challenging this categorisation.⁵⁶⁰

- 3.296 In January 2024, the NIHRC raised concerns about compliance of the Bill with the UK's international human rights obligations and advised that disapplying the interpretative and remedial provisions of the Human Rights Act 1998 while dismantling the guarantees enshrined in Articles 2 and 3 of the ECHR, does not ensure the right to an effective remedy under Article 13, ECHR. The NIHRC also advised that the Bill may be in breach of Windsor Framework Article 2 by diminishing rights previously protected by the EU Temporary Protection Directive;⁵⁶¹ EU Reception Directive;⁵⁶² EU Qualification Directive;⁵⁶³ EU Procedures Directive;⁵⁶⁴ and the EU Dublin III Regulation⁵⁶⁵ and that it needs immediate and thorough reassessment.⁵⁶⁶ For example, clause 4(2) rules out an appeal or a claim based on the risk of refoulement and may diminish a right to an effective remedy under Article 47 of the EU Charter of Fundamental Rights, in relation to minimum standards set out in Article 27(1)(b) of the EU Procedures Directive and Article 21 of the EU Qualification Directive.⁵⁶⁷
- 3.297 In February 2024, the ECNI published a submission on the Safety of Rwanda (Asylum and Immigration) Bill in which it shared many of the above concerns and number of specific concerns relating to the Bill's compliance with Windsor Framework Article 2.⁵⁶⁸ In the context of certain requirements set out in the EU Procedures Directive,⁵⁶⁹ the ECNI raised concerns that the Bill, which required that every decision-maker must conclusively treat Rwanda as a safe

560 The definition of Rwanda as a safe third country is not subject to criteria, such as set out in Article 27 of the EU Procedures Directive, which were reflected in UK law prior to Brexit. The NIHRC considers this may diminish rights contrary to Windsor Framework Article 2. See Home Office, 'UK-Rwanda Treaty: Provision of an Asylum Partnership' (HO, 2023).

561 Directive 2001/55/EC, 'Council Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons', 20 July 2001.

562 Directive 2003/9/EC, 'Council Directive laying down minimum standards for the reception of asylum seekers', 27 January 2003.

563 Directive 2004/83/EC 'Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted', 29 April 2004.

564 Directive 2005/85/EC, 'Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status', 1 December 2005.

565 Regulation 604/2013/EU 'EU Parliament and Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)', 26 June 2013.

566 NI Human Rights Commission, 'Advice on the Safety of Rwanda (Asylum and Immigration) Bill' (NIHRC, 2024).

567 Directive 2005/85/EC, 'Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status', of 1 December 2005. Directive 2004/83/EC 'Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted', 29 April 2004.

568 Equality Commission for NI, 'Submission on the Safety of Rwanda (Asylum and Immigration) Bill' (ECNI, 2024).

569 Directive 2005/85/EC, 'Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status', 1 December 2005.

country, may potentially breach Windsor Framework Article 2. The ECNI also highlighted that the Bill risks undermining the rule of law and the separation of powers principle and concluded that a number of provisions of the Bill may amount to a breach of Windsor Framework Article 2.⁵⁷⁰

3.298 In March 2024, the UN Human Rights Committee recommended that UK Government “withdraw the Safety of Rwanda (Asylum and Immigration) Bill, or repeal the bill if passed, with a view to strictly upholding the principle of non-refoulement in both law and practice.”⁵⁷¹

Recommendations

- 3.299** The Commissions continue to recommend that the NI Executive, and the Executive Office in particular, ensure that at all stages of policy and legislative development and reform in the area of refugee and asylum seeker integration, including the Refugee Integration Strategy, there is consideration of, and compliance with, Windsor Framework Article 2 obligations.
- 3.300** The NIHRC recommends that the Executive Office urgently develops appropriate safeguards through statutory regulations and guidance to mitigate the negative impacts of the Nationality and Borders Act 2022 and the Illegal Migration Act 2023 on existing protections for refugees and people seeking asylum in NI regarding matters of devolved competence. This includes child protection arrangements, age assessments, accommodation and support for unaccompanied children seeking asylum and support to victims and potential victims of modern slavery and human trafficking.
- 3.301** The Commissions recommend that the Home Office takes immediate steps to review and amend the Illegal Migration Act 2023 to ensure compliance with the UK’s international human rights obligations and Windsor Framework Article 2, and that there is no diminution of protection for refugees and people seeking asylum in NI.
- 3.302** The Commissions recommend that the Home Office immediately and thoroughly reassess the Safety of Rwanda (Asylum and Immigration) Bill and amend as required to ensure compliance with the UK’s international human rights obligations and no diminution of rights in NI, contrary to Windsor Framework Article 2.

570 Equality Commission for NI, ‘Submission on the Safety of Rwanda (Asylum and Immigration) Bill’ (ECNI, 2024).
571 CCPR/C/GBR/CO/8, ‘UN Human Rights Committee Concluding Observations Concluding observations on the eighth periodic report of United Kingdom of Great Britain and NI’, 28 March 2024, at para 41(c).

Migrants' Rights – Case Law of the Court of Justice of the EU

- 3.303 In 2022, the Commissions published research highlighting CJEU case law developments after 31 December 2020 related to migrant rights, that go beyond the scope of the Annex 1 equality directives and could potentially result in a divergence of rights on the island of Ireland.⁵⁷²
- 3.304 The research highlighted CJEU judgements relating to the EU Citizens' Rights Directive,⁵⁷³ which the CJEU determined should be interpreted in line with Article 1 of the EU Charter (the right to human dignity)⁵⁷⁴ and as such required the disbursement of benefits required to ensure a dignified standard of living, for example, housing benefit⁵⁷⁵ and subsistence benefits.⁵⁷⁶
- 3.305 The Commissions recommended that the NI Executive and UK Government consider the implications of these recent judgements on the EU Citizen's Rights Directive for migrants in NI, in relation to access to benefits required to have a "minimally dignified standard of living",⁵⁷⁷ in line with Article 1 of the EU Charter of Fundamental Rights.⁵⁷⁸
- 3.306 In November 2023, the NIHRC published a legal analysis of immigration or related rights and equality protections in NI after the withdrawal of the UK from the EU.⁵⁷⁹ This paper explored what immigration/migration or related rights, if any, will be covered by potential future developments of the six EU equality directives listed in Annex 1.

Recommendations

- 3.307 The Commissions continue to recommend that the NI Executive and UK Government review recent CJEU case law on the EU Citizens' Rights Directive and its enduring relevance in NI and consider what legal and policy changes might be made as required by Windsor Framework Article 2 and as a matter of best practice.**

- 572 Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, 'European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC, IHREC, 2022).
- 573 Directive 2004/38/EC, 'Directive of the EU Parliament and the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States,' 29 April 2004.
- 574 Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, 'European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC, IHREC, 2022), at 85.
- 575 For example, *Land Oberösterreich v KV, Casse C-94/20*, 10 June 2021.
- 576 For example, *Universal Credit in CG v The Department for Communities in NI*, Case C-709/20, 15 July 2021.
- 577 Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, 'European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC, IHREC, 2022), at 98.
- 578 Article 1 of the Charter of Fundamental Rights of the European Union states that "human dignity is inviolable. It must be respected and protected."
- 579 Alyson Harvey, 'Legal analysis of immigration or related rights and equality protections in Northern Ireland after Brexit' (NIHRC 2023).

Employment Rights

- 3.308 Windsor Framework Articles 2 and 13 require the law in NI to keep pace with any improvements to minimum standards of equality protection enshrined in six EU directives listed in Annex 1 to the Windsor Framework. The obligation also requires compliance with relevant current and future CJEU case law.⁵⁸⁰ Four of these directives cover the area of employment discrimination on grounds of race and ethnicity, sexual orientation, religion and belief, disability, age and gender.⁵⁸¹
- 3.309 In addition to the Annex 1 equality directives, there are a number of other EU obligations which impact employment and underpin the rights and safeguards in the relevant part of the Belfast (Good Friday) Agreement. For example, the Commissions consider that the EU Parental Leave Directive,⁵⁸² the EU Pregnant Workers Directive⁵⁸³ and other safeguards for part-time⁵⁸⁴ and agency workers⁵⁸⁵ fall within the scope of Windsor Framework Article 2.

Employment Equality

Fair Employment and Treatment (NI) Order 1998

- 3.310 The Fair Employment (School Teachers) Act (NI) 2022 is expected to come into force in May 2024. The Commissions welcomed the legislation as a positive step forward in the development of NI equality law.⁵⁸⁶

Freedom of Religion – Case-Law of the Court of Justice of the EU

- 3.311 In March 2023, the research report on divergence of rights published by the Commissions,⁵⁸⁷ and the Commissions' subsequent recommendations,⁵⁸⁸

580 Article 13(3) and (2), Windsor Framework.

581 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 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.

582 Directive 2010/18/EU, 'Council Directive implementing the revised Framework Agreement on parental leave', 8 March 2010.

583 Directive 92/85/EEC, 'Council Directive on the Introduction of Measures to Encourage Improvements in the Safety and Health at Work of Pregnant Workers and Workers who have Recently Given Birth or are Breastfeeding', 19 October 1992.

584 Directive 97/81/EC, 'Council Directive Concerning the Framework Agreement on Part-time Workers', 15 December 1997.

585 Directive 2008/104/EC, 'EU Parliament and Council Directive on temporary agency work', 19 November 2008.

586 NI Human Rights Commission and Equality Commission for NI, 'Annual Report of the NIHRC and the ECNI on the implementation of Protocol Article 2 2021 – 2022' (NIHRC and ECNI, 2022).

587 Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, 'European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC and IHREC, 2022).

588 Equality Commission for NI, NI Human Rights Commission and Irish Human Rights and Equality Commission, 'Policy Recommendations: European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC and IHREC, 2023).

highlighted developments in CJEU case law in relation to religion as a protected characteristic in the context of the Framework Equality Directive, which is included in Windsor Framework Annex 1.

- 3.312 In the joined cases of *WABE* and *Müller*⁵⁸⁹ the CJEU found that differentiating between religious symbols based on characteristics such as size or scale, amounts to direct discrimination under Article 2(2) of the EU Framework Equality Directive.⁵⁹⁰ The CJEU also ruled that the EU Framework Equality Directive must be interpreted as meaning that a rule prohibiting workers from wearing any visible sign of political, philosophical or religious beliefs in the workplace, does not constitute direct discrimination on the grounds of religion or belief under the Directive, provided that this rule is applied in a general and undifferentiated way.⁵⁹¹
- 3.313 The NIHRC (March 2023) and ECNI (April 2023) responded separately to a call for evidence by the ongoing Joint Committee on Human Rights inquiry on human rights at work. Both Commissions highlighted this case law and recommended that the UK Government monitors case law of the CJEU relevant to the Annex 1 equality directives and ensures that the EU Framework Equality Directive is interpreted in NI, in line with this decision of the CJEU.⁵⁹²
- 3.314 The ECNI has developed guidance on dress codes in the workplace to assist businesses and public authorities and help them to promote good practice in relation to equality employment law. This includes specific guidance on religious beliefs and/or race.⁵⁹³

Recommendations

- 3.315 In accordance with Windsor Framework Articles 2 and 13 the Commissions continue to advise the NI Executive, and relevant NI departments to ensure that the EU Framework Equality Directive is interpreted in line with the decision of the CJEU in the cases of *WABE* and *Müller*.**

589 *IX v WABE eV and MH Müller Handels GmbH v MJ*, Joined Cases C-804/18 and C-341/19, 15 July 2021.

590 Directive 2000/78/EC, 'Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation', 27 November 2000.

591 Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, 'European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC and IHREC, 2022), at 68.

592 NI Human Rights Commission, 'NIHRC Evidence to Joint Committee on Human Rights Inquiry on Human Rights at Work' (NIHRC, 2023).

593 See Equality Commission for NI, 'Dress Code in the workplace guidance'.

Gender Pay Gap

- 3.316 The international human rights oversight bodies have consistently called for the UK Government and NI Executive to adopt effective measures to eliminate the gender pay gap.⁵⁹⁴
- 3.317 Figures from the Annual Survey of Hours and Earnings show that median hourly earnings (excluding overtime) in NI have been consistently lower for women compared to men.⁵⁹⁵ Even though the earning gap between men and women in NI has reduced over the past 20 years, in 2023 women in NI earned 7.8% less in comparison with men.⁵⁹⁶ Moreover, the gender pay gap in NI is affected by the ‘part-time effect’, as part-time employees earn less on average than full-time employees and a higher proportion of part-time employees are women.⁵⁹⁷
- 3.318 The obligation to keep pace with the Annex 1 equality directives pursuant to Articles 2 and 13 of the Windsor Framework, includes the EU Gender Equality (Employment) Directive which protects against discrimination in employment on the grounds of gender.⁵⁹⁸ NI equality law must align with any improvements made by the EU to these rights, on or after 1 January 2021, including complying with relevant current and future CJEU case law.⁵⁹⁹
- 3.319 The ECNI has previously published recommendations for ‘Gender Pay Strategy and Pay Reporting’ which sets out a number of recommendations in relation to strengthening gender pay transparency, including the introduction of requirements on gender pay gap reporting.⁶⁰⁰
- 3.320 In 2021, the Expert Advisory Panel for the Gender Equality Strategy made a number of recommendations on the gender pay gap for the purpose of developing the Gender Equality Strategy.⁶⁰¹ A public consultation on the Gender Equality Strategy which was due to take place in early 2022 has been delayed.⁶⁰² In March 2024, the Department for Communities advised that the Minister was considering the next steps and that final decisions on content

594 E/C.12/GBR/CO/6, ‘UN ICESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 14 July 2016; CEDAW/C/GBR/CO/8, ‘UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 14 March 2019.

595 NI Statistics and Research Agency, ‘Women in Northern Ireland 2020-2021’ (NISRA, 2022).

596 NI Statistics and Research Agency, ‘Annual Survey of Hours and Earnings - Employee earnings in Northern Ireland 2023’ (NISRA, 2023).

597 Ibid.

598 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.

599 Article 13, Windsor Framework.

600 Equality Commission for NI, ‘Gender Pay Strategy and pay Reporting – Summary of policy recommendations’ (ECNI, 2019).

601 Department for Communities, ‘Gender Equality Strategy Expert Advisory Panel Report’ (DfC, 2021).

602 Letter from Department for Communities to NI Human Rights Commission, 18 July 2022.

and timelines for implementation of the strategy will be subject to Executive agreement.⁶⁰³

Pay Transparency

- 3.321 In March 2023, the research report on divergence of rights⁶⁰⁴ published by the Commissions, and the Commissions' subsequent policy recommendations⁶⁰⁵ noted legislative advancements within the EU and Ireland on pay transparency reporting.⁶⁰⁶
- 3.322 There have been requirements on gender pay gap reporting in Great Britain since 2017⁶⁰⁷ and Ireland has enacted the Gender Pay Gap Information Act 2021. Section 19 of the Employment Act (NI) 2016 would implement pay transparency obligations in NI but it has not yet been brought into effect. This has resulted in a divergence of rights across the island of Ireland with NI falling behind Ireland, as well as Great Britain, with respect to gender pay transparency.⁶⁰⁸
- 3.323 The EU Pay Transparency Directive came into force on 6 June 2023 and must be transposed by Member States by 7 June 2026.⁶⁰⁹ The Directive aims to strengthen the existing enforcement tools and procedures in regard to the rights and obligations and equal pay provisions set out in the EU Gender Equality (Employment) Directive (2006/54/EC).⁶¹⁰
- 3.324 The Commissions consider that, for the purposes of Windsor Framework Article 13(3), the EU Pay Transparency Directive amends and/or replaces provisions of the EU Gender Equality (Employment) Directive.
- 3.325 The Commissions views are set out in a joint briefing paper, published in

603 Email correspondence from Department for Communities to NI Human Rights Commission, 25 March 2024.

604 Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, 'European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC and IHREC, 2022).

605 Equality Commission for NI, NI Human Rights Commission and Irish Human Rights and Equality Commission, 'Policy Recommendations: European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC and IHREC, 2023), at para 4.42.

606 Ibid, at paras 4.45-4.46.

607 The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 (SI 2017/172); Regulations came into force on 6 April 2017 and apply to all private and voluntary sector employers with 250 or more employees in England, Wales and Scotland. Public sector employers with 250 or more employees that are listed in The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (SI 2017/353) are also required to publish information on their gender pay gap. These Regulations came into force on 31st March 2017.

608 Equality Commission for NI, NI Human Rights Commission and Irish Human Rights and Equality Commission, 'Policy Recommendations: European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC and IHREC, 2023), at paras 4.45-4.46.

609 Directive 2023/970/EU, 'EU Parliament and Council Directive to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms', 10 May 2023.

610 Directive 2006/54/EC 'EU Parliament and Council Directive on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)', 5 July 2006.

March 2024, which identifies that, apart from a small number of provisions of the EU Pay Transparency Directive that are no longer relevant now that the UK has left the EU,⁶¹¹ all other provisions of the EU Pay Transparency Directive amend and/or replace provisions in the EU Gender Equality (Employment) Directive. This includes changes to substantive rights and procedural rights and rights relating to access to remedies, in this area.⁶¹²

- 3.326 In considering whether the specific provisions of the EU Pay Transparency amend or replace the EU Gender Equality (Employment) Directive, the Commissions considered the legal basis for this new measure; the purpose of the new measure; the degree of overlap on the substance of the rights and safeguards between the new measure and the Annex 1 equality directive, any relevant CJEU case law; and the extent to which the new measure facilitates the implementation and/or enforcement of the Annex 1 equality directive.⁶¹³
- 3.327 Implementing this Directive in NI law would lead to greater accountability and transparency by certain employers on gender pay gaps within their organisations. For example, the EU Pay Transparency Directive introduces new obligations on certain employers in terms of pay reporting and joint pay assessments linked to ensuring compliance with the principle of equal pay.⁶¹⁴ It also introduces enhanced enforcement measures to improve access to justice and enforcement of rights, for example, the right of ‘equality bodies’ to engage in court or administrative procedures in support of workers regarding equal pay discrimination,⁶¹⁵ and strengthened rights relating to compensation.⁶¹⁶
- 3.328 The Commissions consider that, further to the dynamic alignment obligations arising under Windsor Framework Article 13(3), the UK Government and NI Executive must transpose these provisions of the EU Pay Transparency Directive into NI law by 7 June 2026, aligned to the transposition deadline of the Directive by Member States.⁶¹⁷

611 For example, reporting requirements to the EU Commission.

612 Equality Commission for NI and NI Human Rights Commission, ‘ECNI and NIHRC Briefing Paper: The EU Pay Transparency Directive: The UK Government’s dynamic alignment obligations relating to Windsor Framework Article 2’ (ECNI and NIHRC, 2024).

613 Ibid.

614 Article 9 and 10, Directive 2023/970/EU, ‘EU Parliament and Council Directive to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms’ 10 May 2023. This includes that, employers with at least 100 workers must provide and report on the pay gap between female and male workers to a monitoring body, all workers and their representatives and remedy any gender pay differences that are not justified by objective and gender-neutral factors.

615 Article 15, Directive 2023/970/EU, ‘EU Parliament and Council Directive to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms’, 10 May 2023.

616 Article 16, Directive 2023/970/EU, ‘EU Parliament and Council Directive to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms’ 10 May 2023.

617 The Commissions consider that, apart from a small number of provisions of the Pay Transparency Directive that are

- 3.329 Further, the EU Commission has obligations under the Windsor Framework⁶¹⁸ to inform the Joint Consultative Working Group on the Windsor Framework in a timely manner of proposed EU measures within the scope of the Windsor Framework that amend or replace EU law in Annex 1, as well as other Annexes to the Windsor Framework. To date the EU Commission has not informed the Joint Consultative Working Group of the EU Pay Transparency Directive in this context.
- 3.330 In addition to ensuring law in NI is amended to keep pace with any such changes, the Commissions stress that the requirements of the EU Pay Transparency Directive should be considered minimum requirements and we would encourage government to adopt an approach when implementing the Directive that goes beyond these minimum standards where this reflects best practice, including international human rights best practice, and where it seeks to strengthen rights in this area.⁶¹⁹

Recommendations

- 3.331 The Commissions advise the UK Government, the NI Executive, and the NI Department for Communities to ensure that, apart from a small number of provisions of the EU Pay Transparency Directive that are no longer relevant now that the UK has left the EU, all other provisions of the EU Pay Transparency Directive are implemented in NI law by 7 June 2026.**
- 3.332 The Commissions recommend that the EU Commission informs the Joint Consultative Working Group in a timely manner of the EU Pay Transparency Directive as an EU measure that amends or replaces the EU Gender Equality (Employment) Directive.**
- 3.333 In addition to the keeping pace obligation, the Commissions recommend that the Department for Communities, in the development of any legislation introducing requirements relating to strengthening the application of equal pay, ensure that, where necessary, this legislation goes beyond the minimum standards in the EU Pay Transparency Directive, and reflects best practice, including international human rights best practice and standards, so as to ensure robust rights and protections.**

no longer relevant now that the UK has left the EU, all other provisions of the Pay Transparency Directive amend and/or replace provisions in the Recast Directive.

618 Article 15(3), Windsor Framework.

619 For example, the ECNI has called for the power to bring discrimination cases in its own name (own motion powers) which is not envisaged under the Directive. See Equality Commission for NI, 'Consultation Response: The Executive Office: Consultation on the Review of the Race Relations (NI) Order' (ECNI, 2023).

Right to Privacy and Surveillance at Work

- 3.334 In March 2023, the NIHRC responded to the ongoing Joint Committee on Human Rights inquiry on human rights at work. The NIHRC highlighted 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 law, including the right to privacy and data protection.⁶²⁰ The ECtHR has recognised that the protection of personal data is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life and therefore engages Article 8 of the ECHR.⁶²¹ It is well established that EU law recognises the right to privacy and data protection as a fundamental right.⁶²²
- 3.335 The NIHRC is of the view that, to the extent that workplace surveillance engages the EU General Data Protection Regulation, any divergence from those standards is likely to engage Windsor Framework Article 2. The NIHRC is concerned that proposed UK legislation on data protection may result in a divergence in the future. The Commissions are concerned about the potential impact the Data Protection and Digital Information Bill might have on data protection rights in NI.⁶²³
- 3.336 The Commissions will continue to monitor developing data protection legislation in both the UK and the EU for possible areas of divergence of rights.

Recommendations

- 3.337 The NIHRC recommends that particular consideration be given to Windsor Framework Article 2 and the EU General Data Protection Regulations in the development of employment law and practice that may impact on the privacy of workers and surveillance at work.**

Work-Life Balance

- 3.338 In 2019, the EU Parliament adopted the EU Work-Life Balance Directive aimed at parents and carers.⁶²⁴ The Directive aims to improve families' access to family leave and flexible work arrangements, encourage a more equal

620 NI Human Rights Commission, 'NIHRC Evidence to Joint Committee on Human Rights Inquiry on Human Rights at Work' (NIHRC, 2023).

621 See *Satakunnan Markkinapörssi Oy and Satamedia Oy v Finland* (2017) ECHR 607, at para 137.

622 Article 1, Regulation (EU) 2016/679, 'EU Parliament and Council Regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)', 27 April 2016.

623 NI Human Rights Commission, 'Briefing on the Data Protection and Digital Information Bill' (NIHRC, 2024); Equality Commission for NI, 'Submission on the Data Protection and Digital Information Bill' (ECNI, 2024). For further discussion see the Data Protection section of this chapter.

624 Directive 2019/1158/EU 'EU Parliament and Council Directive on work-life balance for parents and carers', 20 June 2019.

sharing of parental leave between men and women, and to address women's underrepresentation in the labour market.

- 3.339 The Commissions have previously noted in their policy recommendations on divergence of rights⁶²⁵ that the EU Work-Life Balance Directive⁶²⁶ repeals and replaces the EU Parental Leave Directive.⁶²⁷ Although this is not a directive listed under Annex 1 Windsor Framework, the Commissions⁶²⁸ and the UK Government⁶²⁹ have identified the EU Parental Leave Directive as falling within the scope of Windsor Framework Article 2.
- 3.340 In March 2023, the research report on divergence of rights⁶³⁰ published by the Commissions, and the Commissions' subsequent policy recommendations⁶³¹ noted legislative developments within the EU, including Ireland, in relation to work-life balance for parents and carers which could potentially lead to a divergence of rights.
- 3.341 In April 2023, Ireland adopted the Work Life Balance and Miscellaneous Provisions Act 2023 to give effect to the EU Work Life Balance Directive. The aim of Act is to recognise the importance of family life and seeks to enhance protection measures to support employees to achieve a better balance between their family lives and work lives, such as providing leave for medical care,⁶³² leave for domestic violence,⁶³³ the right to request flexible working for caring purposes,⁶³⁴ and a right to request remote working.⁶³⁵
- 3.342 The Commissions note that the failure by the NI Assembly to implement in NI law the provisions of the EU Work-Life Balance Directive⁶³⁶ which do not already exist in domestic legislation would result in NI being in the position of continuing to mirror the more limited obligations of the EU Parental Leave

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- 625 Equality Commission for NI, NI Human Rights Commission and Irish Human Rights and Equality Commission, 'Policy Recommendations: European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC and IHREC, 2023), at para 4.69.
- 626 Directive 2019/1158/EU 'EU Parliament and Council Directive on work-life balance for parents and carers', 20 June 2019.
- 627 Directive 2010/18/EU, 'Council Directive implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC', 8 March 2010.
- 628 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).
- 629 NI Office, 'UK Government commitment to no diminution of rights, safeguards and equality of opportunity in Northern Ireland' (NIO, 2020).
- 630 Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, 'European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC, IHREC, 2022).
- 631 Equality Commission for NI, NI Human Rights Commission and Irish Human Rights and Equality Commission, 'Policy Recommendations: European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC and IHREC, 2023), at 40-42.
- 632 Section 6, Work Life Balance and Miscellaneous Provisions Act 2023.
- 633 Section 7, Work Life Balance and Miscellaneous Provisions Act 2023. This provision came into force in November 2023. See Government of Ireland, 'Press release New right to domestic violence leave comes into force', 27 November 2023.
- 634 Section 8, Work Life Balance and Miscellaneous Provisions Act 2023.
- 635 Section 20, Work Life Balance and Miscellaneous Provisions Act 2023.
- 636 Directive 2019/1158/EU 'EU Parliament and Council Directive on work-life balance for parents and carers', 20 June 2019.

Directive,⁶³⁷ even though it has been replaced by the EU Work-Life Balance Directive.

3.343 It is the view of the Commissions that implementing provisions of the Directive, such as those on non-transferable parental leave, would avoid a potential divergence of rights on the island of Ireland and could positively contribute to addressing some of the key barriers to the full and equal participation of women in employment by encouraging an equal sharing of parental leave.⁶³⁸

Recommendations

3.344 The Commissions continue to recommend that the NI Executive and relevant NI departments, including the Department for the Economy, voluntarily ensure that NI law aligns with those provisions of the EU Work-Life Balance Directive that enhance equality and human rights protections and align with international human rights standards and best practice.

Democratic Rights

Elections Act 2022

3.345 The Elections Act 2022 makes provision about the administration and conduct of elections, including about voting and candidacy rights of certain EU citizens in relation to local elections in NI.⁶³⁹

3.346 The Commissions are concerned that provisions of the Act may amount to a breach of Windsor Framework Article 2 and set out their views to the UK Government during the parliamentary passage of the Act.⁶⁴⁰ While the UK Government accepted that certain EU Citizens who arrived before the end of December 2020 will maintain voting and candidacy rights, they do not accept that those arriving after the end of the Brexit transition period are entitled to these rights unless there is a reciprocal arrangement in place since, in their view, these rights are not protected by Windsor Framework Article 2.⁶⁴¹

637 Directive 2010/18/EU, 'Council Directive implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC', 8 March 2010.

638 Equality Commission for NI, NI Human Rights Commission and Irish Human Rights and Equality Commission, 'Policy Recommendations: European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC and IHREC, 2023), at 40-42.

639 Elections Bill 2021- 2022 as introduced in the House of Commons on 5 July 2021 (Bill 138).

640 Equality Commission for NI and NI Human Rights Commission, 'Joint ECNI / NIHRC Briefing on the provisions on Voting/ Candidacy Rights of EU citizens in Northern Ireland in the Elections Bill' (ECNI and NIHRC, 2022).

641 Letter from Minister of State for NI, Steve Baker MP, to the Equality Commission for NI and NI Human Rights Commission, 1 December 2022 on the Annual Report of the Dedicated Mechanism on the implementation of Protocol Article 2 2021-2022.

- 3.347 The UK Government has set out its view that voting and candidacy rights were conferred by Article 22 of the Treaty on the Functioning of European Union, and that it was not intended that these rights would apply to EU citizens resident in NI, after the UK had left the EU.⁶⁴² The Commissions have previously made clear that these arguments are irrelevant for the purposes of deciding whether Windsor Framework Article 2 is now engaged.⁶⁴³
- 3.348 The Commissions will continue to engage with the UK Government and monitor developments in this area.

Recommendations

- 3.349 The Commissions continue to recommend that the Cabinet Office ensures there is no reduction of the rights of certain EU citizens who arrive in NI after the end of the Brexit transition in terms of their voting/candidacy rights in local elections in NI.**
- 3.350 The Commissions continue to recommend that the UK Government repeals the relevant provisions of Schedule 8 of the Elections Act 2022 to ensure compatibility with Windsor Framework Article 2.**

Right to Education

Migrant and Minority Ethnic Children

- 3.351 Windsor Framework Article 2 provides specific protection against discrimination enshrined in six EU equality directives, listed in Annex 1, including the Racial Equality Directive which protects against discrimination on the grounds of race and ethnicity in the area of education.⁶⁴⁴ NI equality law must keep pace with any changes made by the EU to these rights to improve the minimum levels of protection available, on or after 1 January 2021, including relevant current and future CJEU case law.⁶⁴⁵ The CJEU has affirmed that this EU Directive cannot be interpreted restrictively in light of its objective of promoting equality in respect of racial and ethnic origin, including in education.⁶⁴⁶ For example, the CJEU found that access to education should be considered an essential aspect of education and that “costs related to the participation in a research project or in an educational programme must

642 Ibid.

643 Letter from the Equality Commission for NI and NI Human Rights Commission to Minister of State NI Conor Burns, 11 April 2022 on the NI Protocol and Voting Rights

644 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.

645 Article 13, Windsor Framework.

646 *Heiko Jonny Maniero*, C-457/17, 15 November 2018, at para 36.

be considered to be part of the components of access to education.”⁶⁴⁷ In 2022, the Commissions responded⁶⁴⁸ separately to a consultation by the EU Commission on gaps in the EU Racial Equality Directive.⁶⁴⁹ A response by the EU Commission to the consultation is awaited.

- 3.352 In 2022, both Commissions raised concerns with the Advisory Committee on the Framework Convention for the protection of National Minorities in relation to the inequalities experienced by minority ethnic and migrant children, including children from Traveller communities, children from the Roma community and refugee children.⁶⁵⁰ In May 2023, the CoE Advisory Committee on the Framework Convention for the Protection of National Minorities recommended that the UK Government and NI Executive explore “possibilities for sharing education data between the UK and Ireland, in order to ensure continuity in access to education for Gypsies, Roma and Travellers across jurisdictions”.⁶⁵¹ In July 2023, the Committee of Ministers recommended that the UK Government “take priority measures to tackle racist bullying in schools, in particular against Gypsies, Roma and Travellers”.⁶⁵²
- 3.353 In June 2023, the UN CRC Committee called on the UK Government and NI Executive to strengthen measures to address inequalities in educational attainment and improve educational outcomes for children, including ethnic minority children and asylum-seeking, refugee and migrant children. This should include collecting and analysing data disaggregated by ethnic origin, educational outcomes and other relevant indicators.⁶⁵³
- 3.354 In June 2023, research published by Queen’s University Belfast reported on the challenges within education that remain distinctive to minority ethnic and migrant families, including individuals who seeking sanctuary in NI.⁶⁵⁴
- 3.355 In 2021, the Expert Panel on Educational Underachievement highlighted that children from the Traveller community, Roma children and looked after

647 Ibid, at paras 37-38.

648 NI Human Rights Commission, ‘Response to the European Commission Consultation on the Racial Equality Directive (Directive 2000/43/EC)’ (NIHRC, 2022); Equality Commission for NI, ‘Response to European Commission - Addressing possible gaps in the Racial Equality Directive’ (ECNI, 2022).

649 EU Commission, ‘Addressing possible gaps in the Racial Equality Directive – Public Consultation’ (EU, 2022).

650 NI Human Rights Commission, ‘Submission to the Advisory Committee on the Framework Convention for the protection of National Minorities – Parallel Report to the Advisory Committee on the Fifth Monitoring Report of the UK’ (NIHRC, 2022), at para 11.3-11.5; Equality Commissions for NI, ‘Shadow Report from the Equality Commission for Northern Ireland to the Advisory Committee for the Framework Convention for the Protection of National Minorities on the Fifth Monitoring Report of the United Kingdom’ (ECNI, 2022).

651 ACFC/OP/V, ‘CoE Advisory Committee on the Framework Convention for the Protection of National Minorities’, 25 May 2023, at para 195.

652 CM/ResCMN(2023)7, ‘Committee of Minister resolution on the implementation of the Framework Convention for the Protection of National Minorities by the UK’, 12 July 2023.

653 CRC/C/GBR/CO/6-7, ‘UN CRC Committee Concluding Observations on the Sixth and Seventh Periodic Reports of the UK of Great Britain and NI’, 2 June 2023, at para 47(a).

654 Rebecca Loader, Erica Jiminez, Aisling O’Boyle and Joanne Hughes, ‘Experiences of Education Among Minority Ethnic Groups in NI’ (QUB, 2023).

children, have some of the lowest levels of attainment of all equality groups.⁶⁵⁵ The final report and accompanying action plan contain 47 actions to address educational underachievement at all levels.⁶⁵⁶ In June 2023, the Department of Education advised that 67 per cent of the Expert Panel’s actions are underway, but that budget cuts “will invariably have a significant limiting impact on the scale and pace of change that can be achieved”.⁶⁵⁷

3.356 In December 2023, the Independent Review of Education published a three-volume report.⁶⁵⁸ The report’s key recommendations to combat disadvantage are the full implementation of the Fair Start Programme and the provision of accurate and reliable data for the early Key Stages.⁶⁵⁹

3.357 In 2019, the Department of Education consulted on the effectiveness of its policy for supporting children of migrants.⁶⁶⁰ The Department has advised that in 2022 work recommenced with policy proposals prepared for consideration of an incoming Minister. These proposals are currently under review to take account of current context, but no timeline has been provided.⁶⁶¹

Recommendations

3.358 The Commissions continue to recommend that the Department of Education monitor and comply with any proposed changes by the EU to the EU Racial Equality Directive, including relevant case law of the CJEU.

3.359 The NIHRC recommends that the Department of Education develop, implement and monitor a revised policy for children of migrant families, including an action plan that will guide its effective implementation. This should take a human rights-based approach in line with international human rights standards and Windsor Framework Article 2. It should also include reconsidering the use of the term ‘newcomer pupils’.

3.360 The ECNI recommend that the NI Executive and Department of Education work with the Intercultural Education Service to understand and improve the experiences of and outcomes for newcomer (including Roma and asylum seeker) children and minority ethnic pupils.

655 Expert Panel on Educational Underachievement, ‘A Fair Start: Final Report and Action Plan’ (DE, 2021).

656 Department of Education, ‘Expert Panel on Educational Underachievement: A Fair Start - Final Report and Action Plan’ (DE, 2021).

657 Department of Education, ‘A Fair Start Progress Report: Actions to Support Educational Underachievement’ (DE, 2023), at 5. Due to budget cuts, the Department of Education was only able to allocate £2.5 million of the recommended £21 million funding for the second year of the action plan.

658 Independent Review of Education, ‘Investing in a better future’ (IRE, 2023).

659 Ibid, at para 2.149.

660 Department of Education, ‘Supporting Newcomer Pupils – Public Consultation’ (DoE, 2019).

661 Email correspondence to the NI Human Rights Commission from the Department of Education, 7 May 2024.

Environmental Rights

- 3.361 In the rights, safeguards and equality of opportunity section of the Belfast (Good Friday) Agreement the parties affirmed their “commitment to ... the civil rights and religious liberties of everyone in the community” before affirming “in particular” a non-exhaustive list of rights and safeguards.⁶⁶² This section is headed ‘Human Rights’ and includes the UK Government’s commitment to the incorporation of the ECHR with direct access to the courts and remedies for breach.⁶⁶³
- 3.362 The Commissions consider that the commitment to civil rights in the relevant chapter embraces a range of civil, political, economic, social and cultural rights and equality of opportunity.⁶⁶⁴ In February 2024, the NI High Court adopted a ‘generous and purposive’ approach to interpretation of the relevant chapter of the Belfast (Good Friday) Agreement.⁶⁶⁵ The High Court held that, “a narrow interpretation of ‘civil rights’ undermines the forward-facing dimension of the non-diminution commitment in [Windsor Framework] Article 2(1)”.⁶⁶⁶ In particular, the Commissions consider that the full range of rights in the ECHR, to the extent that they are underpinned by EU law in force in NI on or before 31 December 2020, fall within the scope of the non-diminution commitment in Windsor Framework Article 2. The ECtHR has found that the right to respect for private and family life in Article 8, ECHR encompasses a right to effective protection by the State authorities from the serious adverse effects of climate change on lives, health, well-being and quality of life.⁶⁶⁷
- 3.363 In addition, NI law must keep pace with any EU changes to rights that amend or replace the six Annex 1 equality directives. These include the EU Racial Equality Directive, which establishes a framework for combating discrimination on the grounds of racial or ethnic origin,⁶⁶⁸ and the EU Gender Equality (Goods and Services) Directive, which prohibits sex discrimination in access to goods and services.⁶⁶⁹ These directives continue to be relevant in the delivery of services relating to the environment. In addition, the Annex 1 equality directives should be interpreted in line with relevant CJEU case law.⁶⁷⁰

662 Belfast (Good Friday) Agreement, 10 April 1998, Part 6 on Rights, Safeguards and Equality of Opportunity. See also UK Government, ‘UK Government commitment to no-diminution of rights, safeguards and equality of opportunity in Northern Ireland’ (NIO, 2020); In the matter of an application by Martina Dillon and others for Judicial Review [2024] NIKB 11, at para 540.

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

664 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).

665 *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NIKB 11, at para 547.

666 *Ibid*, at para 554.

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

668 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.

669 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.

670 Article 13(2), Windsor Framework.

- 3.364 The EU Charter on Fundamental Rights also continues to have relevance in the application and interpretation of those provisions of EU law which are relevant to the application of Windsor Framework Article 2. The NI High Court also affirmed the continued enforceability and relevance of the EU Charter for Windsor Framework Article 2.⁶⁷¹ Article 37 of the EU Charter on Fundamental Rights requires environmental protections to be integrated into policies of the EU.⁶⁷²
- 3.365 Before the UK's withdrawal from the EU, EU environmental law and governance mechanisms were embedded in NI governance, including in relation to the environment. Article 5(4) of the Windsor Framework has preserved some of these protections and provides for the continued application of EU law and governance mechanisms in some areas of environmental regulation relating to trade set out in Annex 2 of the Windsor Framework, with the potential to provide for further protections if deemed necessary. However, it largely omits other key conservation areas.⁶⁷³
- 3.366 In 2023, a report on air pollution found that “some pollutants in some parts of NI continue to exceed air quality objectives”.⁶⁷⁴ In March 2023, further research estimated that air pollution was attributable to 900 premature deaths annually in NI.⁶⁷⁵ In April 2023, the UK's Climate Change Committee said that planning for climate change in NI “remains at an early stage” with very limited evidence of delivery and implementation.⁶⁷⁶
- 3.367 In 2023, the Department of Agriculture, Environment and Rural Affairs consulted on ways to become net zero in NI.⁶⁷⁷ The NIHRC provided a response which highlighted that all decisions taken by NI departments in relation to climate action should be informed by international human rights standards.⁶⁷⁸ The NIHRC also underlined the need to give consideration to Windsor Framework Article 2.⁶⁷⁹ During 2023, the outcome of the consultation could not progress without a functioning NI Executive and NI Assembly.

671 *In the Matter of an Application by Aman Angesom for Judicial Review* [2023] NIKB 102, at para 93. See also *Secretary of State for Work and Pensions v AT* [2023] EWCA Civ 1307; *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NIKB 11.

672 Article 37, EU Charter of Fundamental Rights 2009.

673 Mary Dobbs and Viviane Gravey, ‘Environment and Trade’, in Chris McCrudden, *The Law and Practice of the Ireland-NI Protocol* (CUP, 2020), at 247.

674 Department for Agriculture, Environment and Rural Affairs, ‘Air Pollution in NI: 2021’ (DAERA, 2022).

675 Queen's University Belfast and Technology University Dublin ‘Air Pollution and Mortality on the Island of Ireland’ (QUB and TUD, 2023).

676 UK Climate Change Committee, ‘Adapting to Climate Change: Progress in NI’ (UKCC, 2023).

677 Department of Agriculture, Environment and Rural Affairs, ‘Consultation on NI's 2030 and 2040 Emissions Reduction Targets and First Three Carbon Budgets and Seeking Views on Climate Change Committee Advice Report: The Path to a Net Zero NI’ (DAERA, 2023).

678 Letter from the NI Human Rights Commission to the Department for Agriculture, Environment, and Rural Affairs, 11 October 2023.

679 Ibid.

- 3.368 In July 2023, the Department for Agriculture, Environment, and Rural Affairs missed the deadline for publishing its first Environmental Improvement Plan, a statutory requirement under the UK Environment Act 2021. In March 2024, the Department confirmed that a draft of the Environmental Improvement Plan has been approved by the Minister of Agriculture, Environment and Rural Affairs and that the Minister intends to seek the Executive's approval of the draft Plan at the earliest opportunity.⁶⁸⁰
- 3.369 The NIHRC has commissioned research into the environment, human rights and Windsor Framework Article 2, which is due to be published in late 2024.

Recommendations

- 3.370 The NIHRC recommends that any legislative or policy decisions by the Department of Environment, Agriculture and Rural Affairs made in relation to climate change and environmental regulation consider the interplay of the ECHR, the EU Charter of Fundamental Rights and Windsor Framework Article 2.**

Administration of Justice

Access to Justice

- 3.371 In 2017, the UN CRPD Committee recommended that the UK Government and NI Executive ensure that “all persons with disabilities are provided with the right and adequate procedural accommodation within the justice system” and in addition “enable in particular deaf persons through the use of sign language interpreters to fully and equally participate as jurors in court proceedings”.⁶⁸¹
- 3.372 The EU Victims' Directive includes the right of victims to understand and be understood in the context of criminal proceedings and for the right to interpretation and translation services, to that end.⁶⁸² In addition, the EU Interpretation Directive establishes minimum protections for suspected or accused persons who do not speak or understand the language of the criminal proceedings and facilitates the application of Article 6 ECHR.⁶⁸³

680 Email correspondence from the Department for Agriculture, Environment, and Rural Affairs, 25 March 2024.

681 CRPD/C/GBR/CO/1, 'UN CRPD Committee Concluding Observations on the Initial Report of the UK of Great Britain and NI', 3 October 2017, at para 33.

682 Directive 2012/29/EU, 'EU Parliament and Council Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

683 Recital 14, Directive 2010/64/EU, 'EU Parliament and Council Directive on the Right to Interpretation and Translation in Criminal Proceedings', 20 October 2010. Article 6(3)(e) of the ECHR states that everyone charged with a criminal offence has the right “to have the free assistance of an interpreter if he cannot understand or speak the language used in court”.

Live Links

- 3.373 In 2020 and 2022, the Department of Justice consulted on the use of new technologies by the Police Service of NI and NI Court and Tribunals Service.⁶⁸⁴ In response, the NIHRC highlighted that the adoption of new technologies and ways of working should not inadvertently hinder access to justice for individuals with specific needs, including children, persons with disabilities and unrepresented litigants.⁶⁸⁵ The NIHRC also highlighted the relevance of Windsor Framework Article 2 and advised the Department of Justice to carefully consider the provisions of the EU Victims' Directive⁶⁸⁶ and the EU Interpretation Directive⁶⁸⁷ in respect of the person suspected or accused, victims with disabilities and people who do not speak English as a first language.⁶⁸⁸
- 3.374 In September 2023, the Department of Justice introduced a Belfast Remote Evidence Centre.⁶⁸⁹ It provides a space for witnesses to give evidence via video link and to have direct access to support from Victims Support and the Young Witness Service.⁶⁹⁰
- 3.375 In February 2024, the NIHRC wrote to the Minister for Justice reiterating concerns about the extension of live links technology without undertaking specific research to determine whether the use of live links had any adverse consequences for court users with disabilities and/or those for whom English is not their first language.⁶⁹¹ The NIHRC also advised the Department to consider Windsor Framework Article 2 within its current impact assessment framework, including Human Rights Impact Assessments, to ensure the continued protection of human rights and equality. In March 2024, the Minister responded stating she considered that courts are able to conduct case-by-case consideration of the individual needs of people with disabilities or for whom English is not their first language when determining whether it is in the interests of justice to use live links.⁶⁹²

684 Department of Justice, 'Consultation on Proposals on the Use of Live Links for Police Detention/Interviews' (DoJ, 2020); Department of Justice, 'Consultation on Use of Live Links for Courts and Tribunals' (DoJ, 2022). This work is linked to implementing the Gillen review's recommendations on improving law and procedures regarding serious sexual offences in NI. Sir John Gillen, 'Report into the Law and Procedures in Serious Sexual Offences in NI: Recommendations' (DoJ, 2019).

685 NI Human Rights Commission, 'Consultation on Proposals on the Use of Live Links for Police Detention/Interviews' (DoJ, 2020); NI Human Rights Commission, 'Response to the Department of Justice's Consultation on Audio and Video Links for NI Court and Tribunal Hearings' (NIHRC, 2022).

686 Directive 2012/29/EU, 'EU Parliament and Council Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

687 Recital 14, Directive 2010/64/EU, 'EU Parliament and Council Directive on the Right to Interpretation and Translation in Criminal Proceedings', 20 October 2010.

688 NI Human Rights Commission, 'Response to the Department of Justice's Consultation on Audio and Video Links for NI Court and Tribunal Hearings' (NIHRC, 2022).

689 Department of Justice, 'Press Release: Official opening of Belfast Remote Evidence Centre', 28 September 2023.

690 Ibid.

691 Letter from the NI Human Rights Commission to the Minister of Justice, Naomi Long MLA, 26 February 2024.

692 Letter from the Minister of Justice, Naomi Long MLA, to the NI Human Rights Commission, 7 March 2024.

3.376 In March 2024, the Department of Justice laid regulations extending the provisions relating to live links for courts and tribunals for a further six months.⁶⁹³

Recommendations

3.377 The NIHRC recommends that the Department of Justice, in line with international human rights standards and Windsor Framework Article 2, including the EU Victims’ Directive and the EU Interpretation Directive, continues to monitor the use of live links to identify individuals for whom it is not suitable, particularly in the context of reviews, hearings or police interviews.

3.378 The NIHRC continues to recommend that the Department of Justice issue clear guidance on the circumstances in which live links can be used and the safeguards that should be in place to ensure such technology is accessible and used appropriately.

Freedom of Expression

Defamation (NI) Act 2022

3.379 In 2008, the UN Human Rights Committee raised concerns that defamation laws in the UK were “unduly restrictive”, noting the potential chilling effect on freedom of expression regarding matters of public interest.⁶⁹⁴ The Defamation Act 2013, which does not extend to NI, addressed the UN Committee’s recommendation. In 2016 and 2017, the Department of Finance⁶⁹⁵ and Sir John Gillen⁶⁹⁶ recommended that a similar approach was taken in NI.

3.380 In 2021, Mike Nesbitt MLA introduced a Private Member’s Bill before the NI Assembly to replicate provisions in the Defamation Act 2013.⁶⁹⁷ However, some provisions were removed from the Bill as it made its way through the Assembly, most notably the serious harm test. This amendment ensured defamation cases could still be taken in NI even if no ‘serious harm’ is evidenced. In 2022, the Defamation (NI) Act 2022 received Royal Assent.

693 The Coronavirus Act 2020 (Extension of Provisions Relating to Live Links for Courts and Tribunals) (No 2) Order (NI) 2023.
694 CCPR/C/GBR/CO/6 ‘Concluding Observations of the UN Human Rights Committee on Sixth Periodic Report Submitted by the UK’, 30 July 2008.

695 Andrew Scott, ‘Reform of Defamation Law in NI: Recommendations to the Department of Finance’ (DoF, 2016).
696 Office of the Lord Chief Justice, ‘Reform of Civil and Family Justice in NI: Review Group’s Report on Civil Justice’ (OLCJ, 2017).

697 NI Assembly, ‘Defamation Bill – Bill 25/17-22’ (NIA, 2021).

- 3.381 In November 2023, the Department of Finance consulted on how the 2022 Act was operating. In February 2024, the NIHRC response expressed concern regarding the balance struck between freedom of expression and respect for private and family life, the lack of a serious harm threshold test, the potential for an increase in libel tourism and strategic lawsuits against public participation.⁶⁹⁸
- 3.382 The NIHRC also noted EU proposals for a new EU directive to protect individuals and organisations targeted by strategic lawsuits against public participation.⁶⁹⁹ The proposed EU Directive aims to strengthen media pluralism in the EU and protect human rights defenders.⁷⁰⁰ Given NI's unique position in the UK of sharing a land-border with Ireland, an EU member state, the NIHRC highlighted the potential for a divergence of rights across the island of Ireland. The NIHRC noted that the NI Assembly could voluntarily choose to align with EU developments, even where it is not required to do so under the Windsor Framework, to strengthen protections and to ensure equivalence of rights on the island.⁷⁰¹

Recommendations

- 3.383 The NIHRC recommends that the Department of Finance works with the NI Executive and NI Assembly to introduce legislation to tackle strategic lawsuits against public participation in line with its obligations under international human rights law.**
- 3.384 The NIHRC further recommends that the Department of Finance, as a matter of good practice, monitor any enhancement to human rights pursuant to the proposed EU directive on strategic lawsuits against public participation and, if adopted, ensure NI law aligns on a voluntary basis with such changes where this strengthens protections and aligns with international human rights standards.**

698 NI Human Rights Commission, 'Response to the Department of Finance Consultation on the Review of Defamation Law in NI' (NIHRC, 2024).

699 EU Commission, 'Press Release: Commission welcomes political agreement on countering abusive lawsuits against public participation (SLAPPs)', 30 November 2023.

700 EU Commission, 'Proposal for a Directive of the European Parliament and of the Council on Protecting Persons who Engage in public participation from Manifestly Unfounded or Abusive Court Proceedings ("Strategic Lawsuits against Public Participation") - COM(2022) 177' (EU Commission, 2022).

701 Equality Commission for NI, NI Human Rights Commission and Irish Human Rights and Equality Commission, 'Policy Recommendations: European Union developments in Equality and Human Rights: The Impact of Brexit on the divergence of rights and best practice on the island of Ireland' (ECNI, NIHRC and IHREC, 2023).

Data Protection

- 3.385 In the rights, safeguards and equality of opportunity section of the Belfast (Good Friday) Agreement the parties affirmed their “commitment to ... the civil rights and religious liberties of everyone in the community”.⁷⁰² In February 2024, the High Court adopted a ‘generous and purposive’ approach to the interpretation of the relevant chapter of the Belfast (Good Friday) Agreement.⁷⁰³ The High Court held that, “a narrow interpretation of ‘civil rights’ undermines the forward-facing dimension of the non-diminution commitment in [Windsor Framework] Article 2(1)”.⁷⁰⁴
- 3.386 In particular, the Commissions consider that the full range of rights in the ECHR, to the extent that they are underpinned by EU law in force in NI on or before 31 December 2020, fall within the scope of the non-diminution commitment in Windsor Framework Article 2. The ECtHR has recognised that the protection of personal data is of fundamental importance to a person’s enjoyment of her or his right to respect for private and family life in Article 8 of the ECHR.⁷⁰⁵
- 3.387 The EU Charter of Fundamental Rights also continues to have relevance in the application and interpretation of those provisions of EU law which are relevant to the application of Windsor Framework Article 2. The NI High Court also affirmed the continued enforceability and relevance of the EU Charter for Windsor Framework Article 2.⁷⁰⁶ The EU Charter guarantees the right to respect for private life in Article 7 and the protection of personal data in Article 8. The Commissions have identified that the right to data protection falls within the scope of the non-diminution commitment in Windsor Framework Article 2.⁷⁰⁷
- 3.388 Data protection is given effect across a number of EU measures including the EU GDPR, which is clear that “the protection of natural persons in relation to the processing of personal data is a fundamental right”.⁷⁰⁸ As a Regulation, the EU GDPR is a binding legislative act that must be applied in its entirety across

702 Belfast (Good Friday) Agreement, 10 April 1998, Part 6 on Rights, Safeguards and Equality of Opportunity. See also UK Government, ‘UK Government commitment to no-diminution of rights, safeguards and equality of opportunity in Northern Ireland’ (NIO, 2020); *In the matter of an application by Martina Dillon and others for Judicial Review* [2024] NIKB 11, at para 540.

703 *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NIKB 11, at para 547.

704 *Ibid*, at para 554.

705 *Z v Finland* (1997) ECHR 10; *Satakunnan Markkinapörssi Oy and Satamedia Oy v Finland* (2015) ECHR 713.

706 *In the Matter of an Application by Aman Angesom for Judicial Review* [2023] NIKB 102, at para 93. See also *Secretary of State for Work and Pensions v AT* [2023] EWCA Civ 1307; *In the Matter of an Application by Martina Dillon and Others for Judicial Review* [2024] NIKB 11.

707 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 13.

708 Recital 1, Regulation 2016/679/EU, ‘EU Parliament and Council Regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data’, 27 April 2016.

the EU in all Member States. The UK further implemented the EU GDPR in domestic law with the Data Protection Act 2018.

3.389 The UK High Court has confirmed that the UK GDPR is the retained version of the EU GDPR with amendments made to secure its political effectiveness,⁷⁰⁹ read together with the Data Protection Act 2018.⁷¹⁰ Currently, the UK GDPR aligns with the EU GDPR.

3.390 After the UK's exit from the EU, two data adequacy decisions⁷¹¹ by the EU Commission recognise the “essentially equivalent level of protection” in the UK and the EU guarantee the free flow of data between both jurisdictions.⁷¹²

Data Protection and Digital Information Bill⁷¹³

3.391 In 2022, the UK Government introduced the Data Protection and Digital Information Bill. The Bill aims to simplify and update current UK data protection framework whilst maintaining data protection standards.⁷¹⁴

3.392 In Part 1 (Data Protection), the Bill proposes changes to the UK GDPR, and to the Data Protection Act 2018 that aim to offer organisations greater flexibility on how to comply with certain aspects of the data protection legislation and improve the clarity of the legal framework on data protection.⁷¹⁵ The Bill is also proposing amendments to Part 3 and 4 of the Data Protection Act 2018, which further enforced the EU GDPR in UK domestic law. These amendments concern the rules on law enforcement processing and intelligence service processing.⁷¹⁶

3.393 In 2024, the Commissions published separate briefings highlighting the potential for the Bill to weaken current data protection rights and safeguards.⁷¹⁷

709 Data Protection, Privacy and Electronic Communications (Amendments, etc) (EU Exit) Regulations 2019.

710 *The 3million & Open Rights Group v Secretary of State for the Home Department* [2023] EWHC 713 (Admin), at para 9.

711 Commission Implementing Decision (EU) 2021/1772, pursuant to Regulation (EU) 2016/679 of the EU Parliament and of the Council on the adequate protection of personal data by the United Kingdom, 28 June 2021. Commission Implementing Decision (EU) 2021/1773, pursuant to Directive (EU) 2016/680 of the EU Parliament and of the Council on the adequate protection of personal data by the United Kingdom, 28 June 2021.

712 Ibid; EU Commission ‘Press Release: Data protection: Commission adopts adequacy decisions for the UK’, 28 June 2021.

713 All references to the Data Protection and Digital Information Bill relate to the version as presented in the House of Lords in December 2023 - HL Bill 30 (as brought from the Commons).

714 Department of Science, Innovation and Technology, ‘Data Protection and Digital Information (No 2) Bill - Explanatory Notes’ (DSIT, 2023), at para 1.

715 Ibid, at para 2.

716 Clause 21 (Law enforcement processing and codes of conduct) and Clause 27 (Joint processing by intelligence services and competent authorities), Data Protection and Digital Information Bill.

717 NI Human Rights Commission, ‘Briefing on the Data Protection and Digital Information Bill’ (NIHRC, 2024), at para 3.9; Equality Commission for NI, ‘Submission on the Data Protection and Digital Information Bill’ (ECNI, 2024).

- 3.394 The NIHRC briefing also cautions that the Bill has the potential to disrupt the data adequacy agreements between the UK and the EU.⁷¹⁸ The data adequacy decisions are vital for ensuring that data can continue to flow freely between the UK and the EU. This is particularly important for the purposes of facilitating the cross-border and all-island aspects of health, education, justice, policing, and environmental protection on the island of Ireland.⁷¹⁹
- 3.395 In light of the breadth of the Data Protection and Digital Information Bill, the NIHRC identified some key areas of concern, including automated decision-making (Clause 14); the transfer of data to third countries (Clause 25 and Schedule 5); and the processing of personal data for the purposes of research (Clauses 2, 5 and 6).⁷²⁰ The ECNI in its submission made clear it supported these concerns raised by NIHRC and also raised concerns with regard to subject access requests (Clause 9); the requirement to produce data impact assessments (Clauses 20 and 21); and the power of the Department of Work and Pensions to access the bank accounts of benefit claimants (Clause 128 and Schedule 11).⁷²¹ The Commissions were of the view that, should the Bill be passed into law in its current form, it may result in a diminution of rights contrary to Windsor Framework Article 2.
- 3.396 For example, automated decision-making is the process of making a decision solely by automated means, without any human involvement.⁷²² The provisions of UK GDPR and EU GDPR currently align in recognising the right of data subjects not to be subject to a decision based solely on automated processing, including profiling, which produces a legal effect concerning the data subject or has a similarly significant effect on the data subject.⁷²³ Further, UK GDPR currently protects individuals from automated decision-making based on the processing of all types of data, not just personal or sensitive data.
- 3.397 The Bill intends to replace current rules with new provisions allowing fully automated decision-making based on the processing of the broader category of personal data. Automated decision-making based on the narrower special

718 NI Human Rights Commission, 'Briefing on the Data Protection and Digital Information Bill' (NIHRC, 2024), at para 3.10.

719 The NIHRC has commissioned several research projects that describe the challenges and complexities of shared services, facilities and resources on the island of Ireland for health, justice and workers' rights, among other issues. The free flow of data is a key condition underpinning the all-island aspects of life in NI. See NIHRC, 'Brexit and the Implications for Justice Co-operation' (NIHRC, 2019); Tamara Hervey, 'Brexit, Health and its potential impact on Article 2 of the Ireland/Northern Ireland Protocol' (NIHRC, 2022); Sylvia de Mars and Charolotte O'Brien, 'Frontier workers and their Families: Rights after Brexit' (NIHRC, 2023).

720 NI Human Rights Commission, 'Briefing on the Data Protection and Digital Information Bill' (NIHRC, 2024).

721 Equality Commission for NI, 'Submission on the Data Protection and Digital Information Bill' (ECNI, 2024).

722 EU GDPR provides a definition of automated decision-making in Article 22 (Automated individual decision making, including profiling). See Article 22(1), Regulation 2016/679/EU, 'Protection of natural persons with regard to the processing of personal data and on the free movement of such data (EU GDPR)', 27 April 2016.

723 Article 22 (1), Regulation 2016/679/EU, 'EU Parliament and Council Regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data', 27 April 2016.

categories of personal data is still restricted.⁷²⁴ Of particular concern is that, although subject to some safeguards, this provision would make changes to generally allow automated decision-making, including profiling, and may result in unfair and discriminatory outcomes of decisions as a result of there being no meaningful human oversight. The Commissions are concerned that this change essentially limits some of the important protections data subjects currently enjoy, albeit retaining some of the safeguards.

3.398 Given the considerations outlined above, the Commissions are concerned that neither the Explanatory Notes nor the Human Rights Memorandum to the Bill made any reference to consideration of Windsor Framework Article 2 compliance.⁷²⁵

3.399 The Commissions will continue monitoring the progress of the Bill and the possibility of any diminution of data protection rights.

Data Protection (Fundamental Rights and Freedoms) (Amendment) Regulations 2023

3.400 The ECNI has highlighted its concerns regarding Regulations passed by the Department for Science, Innovation and Technology in the data protection field in 2023, which extend to NI.⁷²⁶ The Data Protection (Fundamental Rights and Freedoms) (Amendment) Regulations 2023, which came into force on 31 December 2023, amended the definition of fundamental rights and freedoms in the UK GDPR and the Data Protection Act 2018 to refer to those set out under the ECHR as opposed to the EU Charter of Fundamental Rights.

3.401 The EU Charter contains a specific right that governs the use of personal data and the EU GDPR was promulgated under Article 8, EU Charter. The ECNI therefore considers that removing the EU Charter from the range of applicable fundamental rights in the Data Protection Act 2018 may diminish the rights protection provided on or before the end of the Brexit transition period. The ECNI considers there may also be a diminution of rights protections in the fact that an individual could not now rely on case law of the CJEU in relation to those rights. The ECNI therefore considers that these Regulations amount to a potential breach of Windsor Framework Article 2.

724 Clause 14, Data Protection and Digital Information Bill. Currently the rules in UK GDPR and EU GDPR are in substance identical – see Commission Implementing Decision (EU) 2021/1772, pursuant to Regulation (EU) 2016/679 of the EU Parliament and the Council on the adequate protection of personal data by the United Kingdom, 28 June 2021, at para 75.

725 NI Human Rights Commission, 'Briefing on the Data Protection and Digital Information Bill' (NIHRC, 2024), at para 3.13; Equality Commission for NI, 'Submission on the Data Protection and Digital Information Bill' (ECNI, 2024).

726 Equality Commission for NI, 'Submission on the Data Protection and Digital Information Bill' (ECNI, 2024), at 14.

Recommendations

- 3.402** The Commissions recommends that the Secretary of State for Science, Innovation and Technology amends the Human Rights Memorandum to set out in detail an assessment of the compliance of the Bill with Windsor Framework Article 2, including all relevant EU data protection laws, which continue to set standards in NI.
- 3.403** The Commissions recommend that the Secretary of State for Science, Innovation and Technology brings forward amendments required to the Data Protection and Digital Information Bill to ensure that none of the data protection rights contained in EU GDPR and other relevant EU data protection law are weakened or removed, contrary to Windsor Framework Article 2.
- 3.404** In particular, the Commissions recommend that the Secretary of State for Science, Innovation and Technology brings forward amendments as required to ensure compliance with Windsor Framework Article 2 and no diminution of rights in NI measured against relevant EU GDPR standards relating to:
- automated decision-making (Clause 14);
 - data transfer to third countries (Schedule 5);
 - the processing of personal data for scientific purposes (Clause 2);
 - subject access requirements (Clause 9);
 - data impact assessments (Clause 20 and 21); and
 - power of the Department of Work and Pensions to access the bank accounts of benefit claimants (Clause 128 and Schedule 11).
- 3.405** The NIHRC recommends that the Secretary of State for Science, Innovation and Technology reviews the provisions of the Bill and brings forward amendments as required to avoid a divergence of data protection standards between the UK and the EU that might result in the free flow of data between the UK and the EU being compromised.
- 3.406** The Commissions recommend that the Secretary of State for Science, Innovation and Technology makes all required amendments to the Data Protection (Fundamental Rights and Freedoms) (Amendment) Regulations 2023 so as to ensure compliance with Windsor Framework Article 2.

4.0 Human Rights and Equality after Brexit: Article 2 and Beyond

4.1 The UK’s withdrawal from the EU has implications for human rights and equality that are not fully encompassed by Windsor Framework Article 2 but are connected to the work of the Dedicated Mechanism. The Commissions have set out below their recommendations on the wider impact of Brexit on the equalities and human rights landscape in NI, aligned to their respective remits and statutory roles.

Birthright

4.2 Recognition in the Belfast (Good Friday) Agreement, of the “birthright of all the people of NI to identify themselves and be accepted as Irish or British, or both”, has attracted renewed focus in the context of EU withdrawal, due to the implications for access to EU free movement rights. In accordance with Section 1 of the British Nationality Act 1981, anyone born in the UK to a British, Irish, or settled parent, is deemed British.

4.3 In 2022, the NI Court of Appeal found that the appellant’s case in *Ní Chuinneagain* failed to identify any consequences of the operation of 1981 Act or arbitrariness in its provisions which constituted an interference with her private and family life as protected by Article 8 of the ECHR.⁷²⁷ The court noted that Section 1 of the British Nationality Act 1981 was compatible with the UK’s international obligation to protect individuals against statelessness and that the Section 12 of the Act provides for a right to renounce one’s citizenship.⁷²⁸

4.4 In 2020, the Joint Committee of the NIHRC and the Irish Human Rights and Equality Commission published a legal analysis and proposals for reform to enshrine the commitment in domestic law.⁷²⁹ In 2020, following a commitment in New Decade, New Approach agreement,⁷³⁰ temporary changes came into force to allow for a “relevant person of NI” to access EU free movement law protections.⁷³¹ This scheme closed on 30 June 2021 in line with the EU Settlement Scheme.⁷³²

727 *In the Matter of Ní Chuinneagain* [2022] NICA 56, at paras 92-93.

728 *Ibid*, at paras 75-76. In 2019 and 2021, unsuccessful attempts were made to challenge these provisions before the Upper Immigration and Asylum Tribunal and NI High Court. See *De Souza (Good Friday Agreement: Nationality)* [2019] UKUT 355, at para 54-57; *In the Matter of Ní Chuinneagain* [2021] NIQB 79, at para 17.

729 Alison Harvey, ‘A Legal Analysis of Incorporating into UK Law the Birthright Commitment under the Belfast (Good Friday) Agreement 1998’ (NIHRC and IHREC, 2020).

730 NI Office, ‘New Decade, New Approach’ (NIO, 2020), at 48.

731 Home Office, ‘Statement of Changes in Immigration Rules CP232’ (HO, 2020), at 10. A relevant person of NI was defined as someone who is a British citizen, an Irish citizen, or both British and Irish, and was born in NI to a parent who was British, Irish, or both, or otherwise entitled to reside in NI without any restriction on their period of residence.

732 NI Human Rights Commission, ‘EU Settlement Scheme extended to the people of Northern Ireland: what does it mean for

- 4.5 In 2021, following written and oral evidence from the NIHRC,⁷³³ the NI Affairs Committee further called on the UK Government to “clarify the meaning of the phrase ‘to be accepted as’ in Article 1(vi) of the Agreement, including how it is respected and upheld in the [UK] Government’s approach towards the birthright provisions for the people of NI”.⁷³⁴ In its response to the Committee, the UK Government restated its view that “UK nationality legislation - including the British Nationality Act 1981 - is compliant with the agreed text of the Belfast (Good Friday) Agreement”.⁷³⁵
- 4.6 In 2021, the NIHRC recommended that the then Nationality and Borders Bill be amended to recognise the birthright commitment.⁷³⁶ In 2022, the UK Government confirmed its view that the birthright provisions were already clear and that further legislation stipulating a particular view of identity would risk impinging upon the freedom of the people of NI to choose what their identity means to them.⁷³⁷ The Nationality and Borders Act 2022 became law without addressing the issue of birthright.

Recommendations

- 4.7 The NIHRC continues to recommend that the Home Office amend nationality and immigration laws to reflect the commitment under the Belfast (Good Friday) Agreement 1998, that it is the birthright of all the people of NI to identify, and be accepted, as Irish or British or both, without any loss of rights or entitlements.**

Common Travel Area

- 4.8 Article 3 of the Windsor Framework recognises that the UK and Ireland “may continue to make arrangements between themselves relating to the movement of persons between their territories”, subject to Ireland’s obligations under EU law. The UK Government advised Irish nationals that they need not apply for the EU Settlement Scheme and that their rights were

me?’ (NIHRC, 2020).

- 733 NI Human Rights Commission, ‘Submission to the NI Affairs Committee Inquiry into Citizenship and Passport Processes’ (NIHRC, 2021); UK Parliament Hansard, ‘NI Affairs Committee Inquiry into Citizenship and Passport Processes in NI - NI Human Rights Commission’, 10 March 2021; NI Human Rights Commission, ‘NI Affairs Committee Inquiry into Citizenship and Passport Processes in NI: NIHRC Commentary on the NI Office/Home Office Submission to the Committee’ (NIHRC, 2021).
- 734 NI Affairs Committee, ‘First Report of Session 2021/2022 on Citizenship and Passport Processes relating to NI’ (HoC, 2021), at para 14.
- 735 NI Affairs Committee, ‘Second Special Report of Session 2021/2022 on Citizenship and Passport Processes relating to NI: Government Response to the Committee’s First Report of Session 2021-2’ (HoC, 2022), at paras 12 and 16.
- 736 NI Human Rights Commission, ‘Response to Call for Evidence by the Joint Committee on Human Rights on the Nationality and Borders Bill’ (NIHRC, 2021), at paras 3.1-3.4.
- 737 UK Parliament Hansard, ‘House of Lords: Nationality and Borders Bill (Committee Stage) – Lord Sharpe of Epsom – Column 1937’, 10 February 2022.

protected through the Common Travel Area arrangements.⁷³⁸ The NIHRC has long-standing concerns about rights protections under the Common Travel Area. Research published by NIHRC and Irish Human Rights and Equality Commission found that what limited legal underpinning it had was largely dependent on EU rights.⁷³⁹ Rights under the EU Settlement Scheme are, by contrast, anchored in an international treaty, incorporated into domestic law.

- 4.9 Since 2021, travellers into Great Britain from Ireland need not show a passport to a Border Force officer but may be asked to show a document confirming their identity and nationality.⁷⁴⁰ European Economic Area and Swiss citizens may be asked to show their passport or identity card to enter Great Britain when travelling from Ireland if they are encountered by Border Force.
- 4.10 Following research published in 2022 which identified a range of significant concerns,⁷⁴¹ in September 2023, the NIHRC published a briefing on access to healthcare in NI and on the island of Ireland after the UK's withdrawal from the EU.⁷⁴² The NIHRC made several recommendations, including that the Common Travel Area and associated rights are enshrined in law by a comprehensive bilateral treaty and incorporated into domestic legislation; and that the residency requirements for Common Travel Area entitlements relating to cross-border and all-island healthcare are reviewed to ensure that the rights of access are clear, comprehensible and generous.⁷⁴³

Electronic Travel Authorisations

- 4.11 The Nationality and Borders Act provided for Electronic Travel Authorisations, which will be required for all non-British citizens who require leave to enter the UK when travelling from Ireland to the UK. Irish citizens are excluded as individuals not requiring leave to enter the UK.⁷⁴⁴ The permission of British and Irish citizens to travel “will be their nationality, demonstrated by their passports”.⁷⁴⁵
- 4.12 In 2021, the NIHRC wrote to the Home Secretary, to raise concerns about proposals to introduce Electronic Travel Authorisations.⁷⁴⁶ The letter advised

738 Home Office, ‘Common Travel Area Guidance’ (HO, 2021), at section 8A.

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

740 Cabinet Office and Home Office, ‘Common Travel Area Guidance’ (CO and HO, 2021).

741 Tamara Hervey, ‘Brexit, Health and Its Potential Impact on Article 2 of the Ireland/Northern Ireland Protocol’ (NIHRC, 2022).

742 NI Human Rights Commission, ‘Briefing Paper and Recommendations on Brexit, Health and Its Potential Impact on Article 2 of the Windsor Framework’ (NIHRC, 2023).

743 Ibid.

744 Section 3ZA, Immigration Act 1971.

745 Explanatory Notes to the Nationality and Borders Act 2022, at para 720.

746 Letter from NI Human Rights Commission to Priti Patel MP, Home Secretary, 20 December 2021.

that the imposition of restrictions engages Article 8 of the ECHR and that related checks raised the risk of racial profiling.⁷⁴⁷

- 4.13 In 2022, the Commissions called for all journeys to NI from Ireland be exempt from Electronic Travel Authorisation requirements and outlined potential Windsor Framework Article 2 concerns with Electronic Travel Authorisations with the UK and Irish Governments.⁷⁴⁸
- 4.14 In 2022, the Home Office Minister stated that exemptions for journeys into NI from Ireland would pose too much of a risk to UK border control and to efforts to strengthen borders and advised the UK would not operate routine immigration controls on journeys from within the Common Travel Area, with no immigration controls whatsoever on the Ireland-NI land border.⁷⁴⁹ In March 2023, the UK Government updated its guidance on Electronic Travel Authorisations confirming that third country nationals, who are resident in Ireland and from a nationality that does not usually require a visa to visit the UK, are exempt from requiring an Electronic Travel Authorisation to enter the UK. This partially addressed the NIHRC's concerns, however, individuals not resident in Ireland will still need to apply for an Electronic Travel Authorisation when travelling from Ireland to NI.⁷⁵⁰
- 4.15 In October 2023, the Sovereign Affairs Committee to the British Irish Parliamentary Assembly raised concerns about the incompatibility of the Electronic Travel Authorisation system with tourism on the island of Ireland and recommended that all permanent residents in NI or Ireland be exempt from the requirement to obtain a visa for short visits to other jurisdictions.⁷⁵¹

Racial Profiling and Immigration Control

- 4.16 The Commissions have raised concerns about the risk of racial profiling in the context of additional checks arising from EU exit, including in relation to changes to Home Office Guidance on the Common Travel Area,⁷⁵² the introduction of Electronic Travel Authorisations and the use of 'intelligence-led' immigration checks.

747 Under the Windsor Framework, the UK Government committed to avoiding a hard border, including related checks and controls, and gave undertakings in respect of protecting North-South co-operation and the Common Travel Area.

748 NI Human Rights Commission and Equality Commission for NI, 'Joint NI Human Rights Commission/Equality Commission for NI Briefing Paper in the Modern Slavery and Human Trafficking and Electronic Travel Authorisation Provisions in the Nationality and Borders Bill' (NIHRC and ECNI, 2022), at 13-14. Letter from NI Human Rights Commission and Equality Commission for NI to Home Office, 9 February 2022; Letter from NI Human Rights Commission and Equality Commission for NI to NI Office, 9 February 2022.

749 Letter from Minister for the Home Office, Baroness Williams of Trafford, to the Chair of the Protocol on Ireland/NI Sub-Committee, Lord Jay of Ewelme, 1 April 2022. In response to Letter from Chair of the Protocol on Ireland/NI Sub-Committee, Lord Jay of Ewelme, to Minister for the Home Office, Baroness Williams of Trafford, 3 March 2022.

750 Home Office, 'Statement of changes to the immigration rules - HC 1160', 9 March 2023.

751 Sovereign Affairs Committee (Committee A) of the British Irish Parliamentary Assembly, 'Protecting the Common Travel Area in the Post-Brexit Era' (BIPA, 2023).

752 Home Office, 'Common Travel Area (Immigration Staff Guidance) – Version 12.0' (HO, 2022).

- 4.17 In 2021/2022, the Commissions wrote separately to the Secretary of State for the Home Department to raise their concerns.⁷⁵³ In 2022, the Home Office responded to the NIHRC and the ECNI correspondence.⁷⁵⁴ The Home Office reiterated its position that intelligence-led checks were conducted under Common Travel Area guidance on journeys between Ireland and the UK, to identify people who need permission to enter the UK and to identify anyone attempting to circumvent UK immigration controls. However, the Home Office confirmed that it does not operate routine immigration controls on journeys from within the Common Travel Area and that there are no immigration controls whatsoever on the Ireland-NI border.⁷⁵⁵
- 4.18 The Home Office advised that officials are strictly prohibited from using racial profiling and that all staff undergo mandatory training to ensure that they comply with human rights and equality legislation.⁷⁵⁶ The reason for all examinations of members of the public are recorded in officers' notebooks, but that the Home Office does not record racial profiles. It also confirmed that officers do not record racial profiles in the reasons for examination of members of the public.⁷⁵⁷ The Home Office also stated that racial profiling, or any profiling using protected characteristics, does not and would not form any part of their intelligence-led checks.⁷⁵⁸
- 4.19 The Home Office also stated that it considered the Electronic Travel Authorisation scheme to be compliant with its obligations under the ECHR and the Windsor Framework. In addition, the letter highlighted that the UK and Ireland had agreed to work together to establish whether there is scope for a workable UK/Ireland data-sharing solution to determine whether a person is a lawful resident of Ireland and could therefore be exempt from the Electronic Travel Authorisation requirement for travel to the UK.⁷⁵⁹
- 4.20 In March 2023, the UK Government announced that third country nationals who are resident in Ireland and from a nationality that does not usually require a visa to visit the UK, would be exempt from requiring an Electronic Travel Authorisation to enter the UK, which partially addresses the NIHRC's recommendation. However, individuals not resident in Ireland will still need

753 Letter from the NI Human Rights Commission to the Secretary of State for the Home Department, Priti Patel MP, 20 December 2021; Letter from the Equality Commission for NI to the Secretary of State for the Home Department, Priti Patel MP, 26 January 2022.

754 Letter from the Home Office to the NI Human Rights Commission, 5 July 2022; Letter from the Home Office to the Equality Commission for NI, 16 May 2022.

755 This was further confirmed in correspondence with the House of Lords Sub-Committee on the Protocol. See Letter from Chair of the Protocol on Ireland/NI Sub-Committee, Lord Jay of Ewelme, to Minister for the Home Office, Baroness Williams of Trafford, 1 April 2022. See also Letter from Chair of the Protocol on Ireland/NI Sub-Committee, Lord Jay of Ewelme, to Minister for the Home Office, Baroness Williams of Trafford, 3 March 2022.

756 Letter from the Home Office to the NI Human Rights Commission, 5 July 2022.

757 Ibid.

758 Letter from the Home Office to the Equality Commission for NI, 16 May 2022.

759 Ibid.

to apply for an Electronic Travel Authorisation when traveling from Ireland to NI.⁷⁶⁰

- 4.21 In June 2023, the ECNI published its independently commissioned research report on the ‘Impact of Brexit on minority ethnic and migrant people in Northern Ireland’.⁷⁶¹ The research report noted experiences by research participants of what they considered to be racial profiling by the Borders and Immigration Agency and by the Police Service of NI. Examples included singling out black people at airports and on cross-border bus journeys.⁷⁶² In addition, concerns have been raised by the North West Migrants Forum, the Committee on the Administration of Justice and others regarding racial profiling on cross-border transport, and airport buses in particular.⁷⁶³

Recommendations

- 4.22 **The Commissions continue to recommend that the Home Office enforce the prohibition on racial profiling and ensure it does not occur in the implementation of the revised guidance on the Common Travel Area and the Electronic Travel Authorisation requirements, including at entry to NI at ports and airports and in the context of cross-border travel. This should include effective monitoring of training for enforcement officers, so as to avoid racial profiling. It should also include the collection, monitoring, and evaluation of appropriate data, including disaggregated ethnic data, to ensure effective policy / service development and delivery.**
- 4.23 **The NIHRC continues to recommend that the Common Travel Area and associated rights are enshrined in law by agreeing a comprehensive bilateral treaty between the UK and Irish governments. The NIHRC further recommends that this agreement codifies reciprocal free movement rights and rights to employment, education, health care and justice and security to maintain the same level of protection as existed on 31 December 2020 and that it is incorporated into domestic legislation.**
- 4.24 **The NIHRC continues to recommend that all journeys into NI that originate from Ireland should be exempt from Electronic Travel Authorisation requirements.**

760 Home Office, ‘Statement of changes to the immigration rules - HC 1160’ (HO, 2023).

761 Pivotal, ‘Impact of Brexit on Minority Ethnic People in NI’ (ECNI, 2023).

762 See *Ibid.*

763 As noted in Equality Commission for NI, ‘Policy Recommendations: The Impact of Brexit on Minority Ethnic and Migrant People in NI’ (ECNI, 2024).

Cross-Border Justice Arrangements

Policing, Security and Criminal Justice

- 4.25 The UK-EU Trade and Cooperation Agreement provides that criminal justice cooperation is based on respect for democracy, the rule of law and the protection of fundamental rights and freedoms of individuals, including as set out in the Universal Declaration of Human Rights and in the ECHR.⁷⁶⁴ The Agreement established a fast-track system which enables the extradition of either UK or EU nationals.⁷⁶⁵
- 4.26 After the UK's exit from the EU, the free flow of data between the EU and the UK is currently made possible by two data adequacy decisions by the EU which recognise the "essentially equivalent level of protection" of personal data in the UK and the EU.⁷⁶⁶ The data adequacy decisions are under the EU GDPR⁷⁶⁷ and the EU Data Protection Law Enforcement Directive respectively.⁷⁶⁸ The NIHRC welcomes the EU's data adequacy decisions in respect of the UK,⁷⁶⁹ which allow for the sharing of some information but regrets that access to information sharing tools such as Schengen Information System II has been lost.⁷⁷⁰
- 4.27 In 2019, the NIHRC and the Irish Human Rights and Equality Commission published independent research on post-Brexit justice arrangements which emphasised that "data sharing has become an essential tool for justice and security cooperation between the EU and UK."⁷⁷¹ The ability to share information in relation to crime prevention and criminal cases is an important component of protecting and promoting human rights in NI and to ensure justice is not unduly delayed for suspects or victims of crime.⁷⁷² Where delays result in a diminution of the current levels of protection for victims, these have the potential to engage Windsor Framework Article 2.

764 Article 524, UK-EU Trade and Cooperation Agreement 2020.

765 Article 596-632, UK-EU Trade and Cooperation Agreement 2020. See Section 12, European Union (Future Relationship) Act 2020 has repealed Sections 64 and 65, Extradition Act 2003 which previously contained a waiver in relation to the requirement of dual criminality.

766 EU Commission, 'Press Release: Data protection: Commission adopts adequacy decisions for the UK', 28 June 2021.

767 Commission Implementing Decision (EU) 2021/1772, pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council on the adequate protection of personal data by the United Kingdom, 28 June 2021.

768 Commission Implementing Decision (EU) 2021/1773, pursuant to Directive (EU) 2016/680 of the European Parliament and of the Council on the adequate protection of personal data by the United Kingdom, 28 June 2021.

769 Commission Implementing Decision pursuant to Regulation (EU) 2016/679 on the adequate protection of personal data by the United Kingdom, C(2001) 4800, 28 June 2021; and Commission Implementing Decision pursuant to Regulation (EU) 2016/680 on the adequate protection of personal data by the United Kingdom, C(2001) 4801, 28 June 2021.

770 Schengen Information System (SIS II) is a European database, which provides alerts on the movement of people or objects of interest as they cross EU borders. Regulation 1987/2006, 'EU Parliament and Council Regulation on the Establishment, Operation and Use of the Second Generation Schengen Information System (SIS II)', 28 December 2006.

771 Amanda Kramer, Rachael Dickson and Anni Pues, 'Evolving Justice Arrangements Post-Brexit' (IHREC and NIHRC, 2019).

772 NI Human Rights Commission, 'Brexit and the Implications for Justice Co-operation' (NIHRC, 2019).

- 4.28 In the absence of access to Schengen Information System II,⁷⁷³ the UK Government has indicated its intention to work with EU and Irish law enforcement partners to strengthen international law enforcement cooperation⁷⁷⁴ and, specifically, to improve the exchange of alert data, between the UK, EU and third countries through the International Law Enforcement Alert Platform (I-LEAP).⁷⁷⁵ In February 2023, the Home Office indicated that co-operation with the EU under I-LEAP would not complete until 2027/8.⁷⁷⁶
- 4.29 In separate briefings on the Data Protection and Digital Information Bill, the Commissions advised that any right to personal data protection afforded by EU law, by which the UK was bound on 31 December 2020, falls within the scope of the non-diminution commitment in Windsor Framework Article 2.⁷⁷⁷ The NIHRC also raised concerns that changes to the UK data protection regime pursuant to the Bill could lead to divergences in the level of data protection rights in the UK and the EU. Where such a divergence results in a lowering of data protection, this could impact on the data adequacy decisions.⁷⁷⁸ Any resulting disruption to cross-border data sharing could have a detrimental effect on NI, particularly in the area of cross border cooperation on policing and justice.

773 Schengen Information System (SIS II) is a European database, which provides alerts on the movement of people or objects of interest as they cross EU borders. Regulation 1987/2006, 'EU Parliament and Council Regulation on the Establishment, Operation and Use of the Second Generation Schengen Information System (SIS II)', 28 December 2006.

774 NI Affairs Committee, 'Cross-border co-operation on policing, security and criminal justice after Brexit: Government Response to the Committee's Fourth Report of Session 2019–21' (NIAC, 2021).

775 House of Lords European Union Committee 'Beyond Brexit: policing, law enforcement and security', 25th Report of Session 2019–21 (European Union Committee, 2021) at para 74.

776 Home Office, '24 February 2023: International Law Enforcement Alerts Platform (I-LEAP) Programme accounting officer assessment' (HO, 2023)

777 NI Human Rights Commission, 'NIHRC Briefing on the Data Protection and Digital Information Bill' (NIHRC, 2024); Equality Commission for NI, 'Submission on the Data Protection and Digital Information Bill' (ECNI, 2024). Relevant EU law includes, EU GDPR (Regulation 2016/679/EU, 'EU Parliament and Council Regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data', 27 April 2016); EU Data Protection Law Enforcement (Directive 2016/680/EU, 'EU Parliament and Council Regulation on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data', 27 April 2016); EU E-Privacy Directive (Directive 2009/136/EC, 'EU Parliament and Council Directive amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws', 25 November 2009); and rules regarding the processing of personal data by EU bodies and institutions (Regulation 2018/1725/EU, 'EU Parliament and Council Regulation on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data', 23 October 2018). Further discussion on data protection is available in Chapter 3.

778 NI Human Rights Commission, 'NIHRC Briefing on the Data Protection and Digital Information Bill' (NIHRC, 2023).

Recommendations

- 4.30** The NIHRC continues to recommend that the highest standards of victims' rights and rights of accused persons are central to cross-border criminal justice cooperation.
- 4.31** The NIHRC continues to recommend that, in the absence of CJEU oversight of the extradition process, the UK and EU establish clear safeguards within the Trade and Cooperation Agreement oversight mechanisms to ensure robust human rights and legal safeguards for accused persons and for victims of crimes.
- 4.32** The Commissions recommends that the Secretary of State for Science, Innovation and Technology review and table amendments as required to ensure that none of the data protection rights contained in EU GDPR, the EU Data Protection Law Enforcement Directive and the EU E-Privacy Directive are weakened or removed via the Data Protection and Digital Information Bill, contrary to Windsor Framework Article 2.
- 4.33** The Commissions recommend that the Secretary of State reviews the provisions of Data Protection and Digital Information Bill and brings forward amendments as required to avoid a divergence of data protection standards between the UK and the EU that might result in the free flow of data between the UK and the EU being compromised, which could have a detrimental effect on cross-border justice in NI.
- 4.34** The NIHRC recommends that the UK and the EU ensure that information sharing arrangements are sufficient to ensure investigations and proceedings are conducted in an efficient manner, in full compliance with the ECHR and EU Victims' Directive.

Racial Profiling and Policing: Stop and Search

- 4.35** In June 2023, the UN CRC Committee raised concerns about the continued used of “unnecessary stop-and-search checks on children and the fact that the majority of them are conducted on children belonging to ethnic minority group” and urged the state to improve monitoring of such checks though the collection and publication of disaggregated data.⁷⁷⁹ In March 2024, the

⁷⁷⁹ CRC/C/GBR/CO/6-7, 'UN CRC Committee Concluding Observations on the Sixth and Seven Periodic Report of the UK of Great Britain and NI', 2 June 2023, at paras 12(c) and 28(c). See also NI Human Rights Commission, 'Submission to the UN Committee on the Rights of the Child – Parallel Report to the Pre-Session on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI' (NIHRC, 2023); NI Human Rights Commission, 'Annual Statement 2023 – Human Rights in NI' (NIHRC, 2023) and NI Human Rights Commission, 'Annual Statement 2022 – Human Rights in NI' (NIHRC, 2022).

UN Human Rights Committee called on the UK Government to, “redouble its efforts to prevent, combat and eradicate all forms of racial and ethnic discrimination... in the criminal justice system, stop and search powers, and public services, including by monitoring and assessing legislative and policy measures on racism and non-discrimination”.⁷⁸⁰

- 4.36 The ECNI commissioned research report into the impact of Brexit on minority ethnic and migrant people in NI (2023) highlighted that NI has very high levels of Stop and Search which are carried out disproportionately on minority ethnic people, with Irish Travellers the ethnic group most likely to be affected, followed by Black and ‘other ethnic’ groups.⁷⁸¹ In light of this, the ECNI has highlighted the need for the PSNI to take effective actions to ensure racial profiling does not occur during Stop and Search. These actions include the robust collection, analysis, and regular publication of Stop and Search data on minority ethnic groups to increase transparency and accountability and identify trends resulting from Brexit. It called for effective action to be taken to address any identified impact of Brexit on levels of Stop and Search on minority ethnic people in NI.⁷⁸²
- 4.37 The ECNI has previously called for measures to be taken to implement guidance and training for criminal justice agencies, including the PSNI, which should include training on equality rights, awareness of the particular needs of equality groups, and on tackling prejudicial attitudes. Further to that, the ECNI consider it important that the PSNI ensures regular and effective training, supported by guidance, including for frontline officers who are carrying out Stop and Search, so as to prevent any racial profiling.⁷⁸³
- 4.38 In December 2023, the ECNI responded to the NI Office consultation on an updated Code of Practice on the exercise of stop and search powers in relation to the Terrorism Act 2000. In its response, the ECNI reinforced the need for the PSNI to take action to ensure that individuals are not subjected to racial profiling when officers are carrying out Stop and Search functions.⁷⁸⁴

780 CCPR/C/GBR/CO/8, ‘Concluding observations on the eighth periodic report of UK of Great Britain and NI’, 28 March 2024, at para 15. See also NI Human Rights Commission, ‘Submission to the UN Human Rights Committee on the United Kingdom’s Eighth Periodic Report on Compliance with the International Covenant on Civil and Political Rights’ (NIHRC, 2024).

781 Pivotal, ‘Impact of Brexit on Minority Ethnic People in NI’ (ECNI, 2023).

782 Equality Commission for NI, ‘Policy Recommendations: The Impact of Brexit on Minority Ethnic and Migrant People in NI’ (ECNI, 2024).

783 Ibid, at 46-48.

784 Equality Commission for NI, ‘Response to the consultation by the Northern Ireland Office: Update of the Code of Practice (Northern Ireland) for the Authorisation and Exercise of Stop and search Powers relating to Sections, 43, 43A, and 47A of, and Schedule 6B to, the Terrorism Act 2000’ (ECNI, 2024), at 8 and 1.

Recommendations

4.39 The ECNI recommends the Police Service of NI consider any impact of Brexit on levels of Stop and Search on minority ethnic people and take effective action to address any identified impact. The Police Service of NI should also ensure the robust collection and analysis, and regular publication, of Stop and Search data on minority ethnic people and effective training and guidance, including for officers carrying out stop and search, on anti-racism and cultural diversity so as to prevent any racial profiling in Stop and Search.

EU Settlement Scheme

- 4.40 The EU Settlement Scheme is relevant to the Commissions' role under Windsor Framework Article 2 as it concerns the rights of EU nationals living in NI prior to 1 January 2021 and therefore interacts with the 'no diminution' commitment. The Independent Monitoring Authority has responsibility for monitoring the EU Settlement Scheme.
- 4.41 The EU Settlement Scheme gives effect to the Citizens' Rights provisions in the UK-EU Withdrawal Agreement and protects the rights of EU and European Economic Area (EEA) citizens and their family members already living in the UK prior to 1 January 2021.⁷⁸⁵ Applicants and their families can be granted either settled status (indefinite leave to remain) or pre-settled status (temporary right to reside for five years). EU, EEA and Swiss citizens who come to the UK from 1 January 2021 are subject to the UK's points-based immigration system.
- 4.42 In July 2023, the Home Office announced several further changes to the EU Settlement Scheme application process.⁷⁸⁶ From August 2023, the Home Office closed the Family Member and the Qualifying British Citizen routes for applications to the EU Settlement Scheme, on the basis that they were temporary measures.⁷⁸⁷
- 4.43 NI civil society organisations continue to raise issues with the implementation of the EU Settlement Scheme, including proving the length of residence required to secure permanent residence; challenges with the digital immigration status, including technical issues;⁷⁸⁸ anecdotal evidence that it is

785 Part 2, UK-EU Withdrawal Agreement 2020.

786 Home Office, 'Statement of Changes in Immigration Rules', 17 July 2023.

787 Ibid.

788 Work Rights Centre and the 3million, 'Letter to The Rt Hon Mel Stride MP – Secretary of State for Work and Pensions, The Rt Hon Robert Jenrick MP – Minister for Immigration, Lord Murray of Blidworth – Parliamentary Under Secretary of State at the Home Office', 22 March 2023.

increasingly not accepted as proof of immigration status;⁷⁸⁹ and reintroduction of banking checks making it more difficult for individuals to access financial service.⁷⁹⁰ NI civil society organisations have also raised concerns regarding EU citizens with a pending application for pre-settled and settled status being charged for NHS treatment whilst awaiting decision and in case of an unsuccessful application.⁷⁹¹ In December 2023, the Independent Monitoring Authority published the findings of their third annual survey, which found the top three areas where citizens continued to experience difficulties accessing their rights were employment, travel and healthcare.⁷⁹²

- 4.44 In June 2023, the Independent Monitoring Authority's inquiry into EU Settlement Scheme Certificates of Application found that in some cases the Home Office failed to comply with the obligation under the UK-EU Withdrawal Agreement to issue a Certificate of Application immediately.⁷⁹³ Obtaining a Certificate of Application protects the applicant's rights pending a decision on their status.⁷⁹⁴ In September 2023, the UK Government published a response to the report accepting some of the recommendations and agreeing to consider whether the extraction of meaningful data from systems would enhance the ability to monitor and manage the process for issuing Certificates of Application.⁷⁹⁵
- 4.45 In September 2023, the Independent Monitoring Authority responded to the UK Government, reiterating its view that establishing a timescale for issuing Certificates of Application would be helpful as it would provide clarity for applicants.⁷⁹⁶ The Independent Monitoring Authority launched a further inquiry to investigate EU Settlement Scheme application delays.⁷⁹⁷
- 4.46 In June 2023, the ECNI published independent research on the impact of Brexit on minority ethnic and migrant people in NI, which includes consideration of the experiences of applicants to the EU Settlement Scheme. The Commission published its policy recommendations in 2024.⁷⁹⁸

789 Committee on Administration of Justice, 'Frontline Lessons for the Future Collaborative research on the impact of immigration law and policy in post-Brexit Northern Ireland' (CAJ, 2022), at page 46.

790 The Rt Hon Robert Jenrick MP, 'Press release: New crackdown to prevent illegal migrants accessing bank accounts', Home Office, 6 April 2023.

791 Committee on Administration of Justice, 'Frontline Lessons for the Future Collaborative research on the impact of immigration law and policy in post-Brexit Northern Ireland' (CAJ, 2022), at page 49.

792 Independent Monitoring Authority, 'Press release: IMA survey identifies concerns about current and future protection of citizens' rights', 15 December 2023.

793 Independent Monitoring Authority for the Citizens' Rights Agreements, 'An Inquiry by the Independent Monitoring Authority for the Citizens' Rights Agreements into Certificates of Application' (IMA, 2023).

794 UK Government, 'Guidance: Apply to the EU Settlement Scheme (Settled and Pre-settled Status)'.

795 Home Office, 'Response to the Independent Monitoring Authority for the Citizens' Rights Agreements Report: An Inquiry by the Independent Monitoring Authority into Certificates of Application' (HO, 2023).

796 Independent Monitoring Authority, 'Press Release: Independent Monitoring Authority issues statement following Home Office response to inquiry findings', 6 September 2023.

797 Ibid

798 Pivotal, 'Impact of Brexit on minority ethnic and migrant people in Northern Ireland' (ECNI, 2023).

- 4.47 Research participants experienced a range of issues regarding the EUSS, including difficulty in navigating the scheme, language and literacy issues and lack of digital access capabilities. Participants also reported that the lack of clear information on the EU Settlement Scheme and the application process had led to misinformation and, in some instances, exploitation. The report noted that particular issues with the Scheme were experienced by women, victims of domestic violence, Roma and older people.⁷⁹⁹
- 4.48 Service providers reported that they were continuing to provide support to individuals affected by on-going problems with the EU Settlement Scheme, despite not being funded to do so.⁸⁰⁰ For further recommendations relating to the funding of third sector organisations who provide advice and support to migrant groups see the Racial Equality section in Chapter 3.
- 4.49 The research identified issues with obtaining digital proof of settled or pre-settled status.⁸⁰¹ The ECNI considers there is value in the Home Office providing an option for EU citizens to obtain physical proof of pre-settled or settled status. It will be noted that ‘the3million’ campaign called for measures to secure an offline and/or physical back up proof of status for the digitally excluded or for instances when online Home Office systems fail.⁸⁰²
- 4.50 In light of the significant barriers identified by applicants, as captured in the research report, the ECNI also considers that there is an urgent need for the Home Office to review the operation of EU Settlement Scheme in NI.

Pre-Settled Status

- 4.51 Pre-settled status under the EU Settlement Scheme is limited leave to remain. Under the Universal Credit Regulations, access to this benefit is limited to applicants who are habitually resident in the UK and this excluded people with pre-settled status from this benefit.⁸⁰³ In 2021 CJEU found that applications for Universal Credit by applicants with pre-settled status can only be refused if the claimants and their dependents would not be exposed to “an actual and current risk of violation of their fundamental rights”.⁸⁰⁴

799 Ibid, at 68-75.

800 Equality Commission for NI, ‘Policy Recommendations. Impact of Brexit on minority ethnic and migrant people in Northern Ireland’ (ECNI, 2024), at 61.

801 Pivotal, ‘Impact of Brexit on minority ethnic and migrant people in Northern Ireland’ (ECNI, 2023), at 74.

802 The3million, ‘Briefing calling on the Government to give everyone with pre-settled status access to welfare support, provide’ (The3million, 2023), at 3. See also: The3million, ‘Reply to Home Office regarding online-only immigration status and discussions around alternative solutions’ (The3million, 2023).

803 Regulation 9(3)(d), Universal Credit Regulations (NI) 2016.

804 *CG v Department for Communities*, Case C-709/20, 15 July 2021, at para 93.

- 4.52 In May 2023, in line with this case, a new interim policy was introduced by the Department of Work and Pensions, which allows any EU citizen in NI with pre-settled status, who is unable to work, to be assessed individually to establish whether they, or their children, are living in hardship and unable to meet their most basic needs and if so, then they will be entitled to Universal Credit.⁸⁰⁵ In November 2023, the requirement to undertake an individual assessment for EU citizens with pre-settled status who apply for Universal Credit was upheld by the England and Wales Court of Appeal.⁸⁰⁶
- 4.53 In 2022, the High Court confirmed that applicants with pre-settled status have the right to reside permanently in the UK after they have resided there for the required five-year period.⁸⁰⁷ In July 2023, the Home Office updated the guidance on the EU Settlement Scheme and confirmed that people with pre-settled status under the EU Settlement Scheme will automatically have their status extended by two years before it expires.⁸⁰⁸ This extension will be automated, the applicant will be notified and it will be reflected on their digital status. In addition, from 2024, the Home Office has committed to automatically convert applicants from pre-settled to settled status, if they are eligible.⁸⁰⁹ The Independent Monitoring Authority expressed concern about the implementation of the High Court's judgment and will continue to seek assurance from the Home Office that action will be taken.⁸¹⁰

Late Applications

- 4.54 The deadline for applications to the EU Settlement Scheme was 30 June 2021. The UK Government confirmed that late applications would be accepted where there are reasonable grounds for failing to meet the deadline.⁸¹¹ In July 2023, the Home Office announced changes to the EU Settlement Scheme application process regarding late applications. The new guidelines stipulate that previously accepted reasonable grounds for late applications, such as serious illness or undergoing significant medical treatment, will no longer be considered.⁸¹² Further, an applicant who has had an in-time application refused will not be able to make a late application based on reasonable grounds for delay.⁸¹³

805 Law Centre NI, 'Press release: Positive change in social security policy', 25 May 2023.

806 *Secretary of State for Work and Pensions v AT* [2023] EWCA Civ 1307.

807 *R (Independent Monitoring Authority for the Citizens' Rights) v Secretary of State for the Home Department* [2022] EWHC 3274 (Admin), 192.

808 Home Office, 'News release: EU Settlement Scheme enhancements confirmed', 17 July 2023.

809 Ibid.

810 Independent Monitoring Authority, 'Press release: Citizens' Rights Watchdog Gives Update on Judicial Review', 17 January 2024. See also: Independent Monitoring Authority, 'Press release: Citizens' Rights' Watchdog Calls For Resolution On Landmark High Court Case Implementation', 30 April 2024.

811 Home Office, 'EU Settlement Scheme: EU, Other EEA and Swiss Citizens and their Family Members' (HO, 2021), at 31-34.

812 Home Office, 'EU Settlement Scheme: EU, Other EEA and Swiss Citizens and their Family Members. Version 20.0' (HO, 2023), at 38.

813 Ibid, at 39.

- 4.55 Despite the deadline for applications to the Settlement Scheme ending on 31 December 2020 the scheme is still active and late applications are still being processed. As of 31 December 2023, 2,660 applications were still awaiting an outcome; and 144, 890 were refused, invalid, void or withdrawn, which means some of the applicants could apply again.⁸¹⁴
- 4.56 The Commissions will continue to monitor the application process under the EU Settlement Scheme and its implementation.

Recommendations

- 4.57 The Commissions welcome the Home Office proposals to automatically transition all eligible EU citizens with pre-settled status to the EU Settlement Scheme and recommends that appropriate monitoring and safeguards are in place to ensure that no eligible EU citizens experience a loss of rights or entitlements.**
- 4.58 The NIHRC continues to recommend that the Home Office ensure that all eligible vulnerable individuals, who had not applied to the EU Settlement Scheme by 30 June 2021, are supported to regularise their status in an efficient and timely way.**
- 4.59 The NIHRC continues to recommend that the Home Office takes immediate action to resolve all outstanding applications under the EU Settlement Scheme and ensures that no one is left without the ability to prove their right to live and work in the UK on the basis of pending minor criminal prosecutions that would otherwise not meet the threshold for refusal.**
- 4.60 The ECNI recommends that the Home Office should urgently review the operation of EU Settlement Scheme in NI in light of the significant barriers identified by applicants, and ensure lessons are learnt and reflected in current and future schemes or processes relating to the EU Settlement Scheme. This should include a review of the barriers experienced by women, older people and children, and disabled people when applying; and barriers to accessing support, lack of clear and accessible information by applicants, as well as relating to English language proficiency, literacy, and digital skills.**
- 4.61 The ECNI recommends the Home Office should review the barriers faced by those experiencing domestic abuse, including women, whose pre-settled status precludes them from accessing the public funds they may need to secure alternative accommodation or refuges for victims of domestic violence.**

814 Home Office, 'Official Statistics EU Settlement Scheme quarterly statistics, December 2023' (HO, 2023).

- 4.62 The Commissions recommend that the Home Office ensure the provision of an option for EU citizens to obtain physical proof of pre-settled or settled status.**
- 4.63 The Commissions recommend that the Home Office take immediate action to resolve any outstanding applications under the EU Settlement Scheme in NI and ensure all future applications are dealt with promptly and effectively.**

EU Citizenship and Workers' Rights

- 4.64 Under Article 26 of the UK-EU Withdrawal Agreement, frontier workers are entitled to be issued with appropriate documentation which certifies their rights as frontier workers.⁸¹⁵ In practical terms, this means that Irish, British and EU citizens who commenced a cross-border job on or before 31 December 2020 will benefit from the UK-EU Withdrawal Agreement.
- 4.65 The Frontier Workers Permit Scheme was established by the UK Government to ensure that EU citizens living in Ireland but working in NI on or after 1 July 2021 can prove their right to work in the UK.⁸¹⁶ Any EU citizens wishing to come to the UK to work on or after 1 January 2021 have to apply through the new points-based immigration system.
- 4.66 EU citizens, including Irish citizens, living in NI and working in Ireland on or after 1 January 2021 do not have to apply to a similar scheme as they maintain their right to work in the EU as an EU citizen. Similarly, British citizens living in NI and working in Ireland will have their right to work protected under the reciprocal guarantees associated with the Common Travel Area.⁸¹⁷
- 4.67 Following earlier research in October 2023,⁸¹⁸ the NIHRC published research on Windsor Framework Article 2 and the rights of frontier workers and their families.⁸¹⁹ The report highlights the complex, layered way in which rights of frontier workers are protected following UK withdrawal from the EU, and the pre-existing and current gaps in the legal framework, including potential diminutions under Windsor Framework Article 2.⁸²⁰ The research recommends several changes to clarify and implement rights including through a new,

815 Article 10(1)(c), UK-EU Withdrawal Agreement extends the rights set out in Part Two of the treaty, to “Union citizens who exercised their right as frontier workers in the UK in accordance with Union law before the end of the transition period and continue to do so thereafter”.

816 Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020.

817 Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland concerning the Common Travel Area and associated reciprocal rights and privileges, 8 May 2019.

818 Tamara Hervey, 'Brexit, Health and Its Potential Impact on Article 2 of the Ireland/NI Protocol' (NIHRC, 2022).

819 Sylvia de Mars and Charlotte O'Brien, 'Frontier Workers and Their Families: Rights After Brexit' (NIHRC, 2023).

820 Ibid, at 78.

domestically enforceable, UK-Ireland bilateral treaty on the Common Travel Area, better guidance directed at frontier workers and advisers and definitions of different categories of frontier workers.⁸²¹

- 4.68 The ECNI's independent research report on the impact of Brexit on minority ethnic and migrant people in NI highlighted serious concerns raised by service providers regarding the impact of Brexit on cross-border workers, who they felt had been unsupported through the process of the Brexit transition. They reported that there was no funding provided for support organisations to provide assistance to clients who were applying for the Frontier Worker scheme and very limited information available on the scheme with which to advise their clients.⁸²²
- 4.69 Further, research participants expressed their concern that as a result of the lack of information and support regarding the Frontier Worker scheme, there were likely to be many cross-border workers who will have 'fallen through the cracks'.⁸²³ The ECNI has highlighted the need for clearer guidance from the UK Government on the rights and entitlements of frontier workers, post Brexit, as well as for measures to raise awareness of those rights and entitlements amongst frontier workers and their families.

Recommendations

- 4.70 The NIHRC advises that people living and working across the border are in a particularly vulnerable situation and recommends that the Home Office adopts a flexible approach to late applications to the Frontier Workers Scheme.**
- 4.71 The Commissions recommend that the Home Office ensure that that no one is deprived of frontier worker status in NI in breach of Windsor Framework Article 2.**
- 4.72 The Commissions recommend that the UK Government, and the Home Office, ensure there is no reduction of the rights of frontier workers in NI due to Brexit, including no breach of Windsor Framework Article 2.**
- 4.73 The Commissions recommend that the UK Government, and the Home Office, clarify and raise awareness of rules and entitlements relating to frontier workers and their families, particularly as regards changes that have occurred as a result of Brexit.**

821 Sylvia de Mars and Charlotte O'Brien, 'Frontier Workers and Their Families: Rights After Brexit' (NIHRC, 2023).

822 Pivotal, 'Impact of Brexit on Minority Ethnic and Migrant People in Northern Ireland' (ECNI, 2023), at 103.

823 Ibid, at 103. See Chapter 1 for ECNI recommendations regarding the need for adequate funding to meet additional advice and support needs for EU nationals and frontier workers that have occurred as a result of Brexit.

- 4.74 The NIHRC recommends that the Home Office, clarify the relationship between the Frontier Workers’ Permit Scheme and the Common Travel Area rules that govern access to healthcare for frontier workers and ensure that those who are not obliged to apply for the Scheme are still able enjoy the same right to healthcare in their place of residence and their place of work as before Brexit.**

Migrant Workers

Recognition of Qualifications

- 4.75 Prior to Brexit, the EU Recognition of Qualifications Directive provided for the recognition of professional qualifications for people who qualified in one Member State and moved to another.⁸²⁴ Under the Directive, EU citizens have the right to pursue a regulated profession, on an employed or self-employed basis, in an EU country other than the one in which they obtained their qualification. In that context, EU nationals have specific procedural and substantive rights regarding the recognition of their qualifications by an EU country different from the one where they acquired their qualifications.
- 4.76 Since 1 January 2021 the EU Recognition of Qualifications Directive no longer applies in the UK.⁸²⁵ While the qualifications of EU professionals who had been working in the UK prior to 1 January 2021 are officially recognised and remain valid, EU migrants arriving after the end of the Brexit transition period will need to have their professional qualification officially recognised if they want to work in a profession that is regulated in the UK.⁸²⁶
- 4.77 As noted in independent research commissioned by ECNI, the UK has not yet created a comprehensive system for recognition of qualifications after Brexit.⁸²⁷ While the UK-EU Trade and Cooperation Agreement sets up a framework for the mutual recognition of qualifications, this relies on bilateral agreements between industry regulators rather than a formalised comprehensive framework.⁸²⁸
- 4.78 The UK Government has said that Scotland, Wales and NI can specify priority professions where their regulation is within their legislative competence.⁸²⁹

824 Pivotal, ‘Impact of Brexit on Minority Ethnic and Migrant People in Northern Ireland’ (ECNI, 2023), at 18.

825 Department for Business and Trade, ‘Guidance on Recognition of professional qualifications in the UK’.

826 Ibid.

827 Equality Commission for NI, ‘Policy Recommendations: Impact of Brexit on Minority Ethnic and Migrant People’ (ECNI 2024), at 81.

828 Jozepa, Ilze, ‘UK-EU Trade and Cooperation agreement: professional qualifications - House of Commons Library Briefing Paper Number 9172’ (HOC, 2021).

829 Department for Business, Energy and Industrial Strategy, ‘The Recognition of Professional Qualifications and Regulation of Professions: policy statement’ (DBEIS, 2021).

However, the NI Executive has not to date, and since Brexit, published any information regarding the post-Brexit system of recognising qualifications.⁸³⁰

- 4.79 The ECNI has previously identified the recognition of qualifications as a key barrier to employment for migrant workers and refugees.⁸³¹ Independent research commissioned by ECNI recognised that the lack of a framework for recognition of qualifications may deter migrants moving to NI.⁸³² Research participants reported that issues regarding recognition of their non-UK qualifications had impacted on their ability to access employment and expressed concern that this could be used intentionally or unintentionally to exclude a candidate who is a non-UK applicant.⁸³³

Hiring of Migrant Workers

- 4.80 The ECNI's policy recommendations on the impact of Brexit on minority ethnic and migrant people in NI (2024) highlighted concerns raised by the Migrant Centre NI regarding insufficient awareness among employers of their obligations or of the procedures necessary to hire an EU national with EU Settled Status. It argued that this has created the potential for employers to discriminate against EU migrants in their hiring practices by rejecting an applicant due to their lack of understanding of the applicant's immigration status and their eligibility to work.
- 4.81 The Commissions have previously raised concerns with the Independent Monitoring Authority about individuals being denied employment, despite being able to prove that they had applied for settled status.⁸³⁴

Exploitation of Migrant Workers

- 4.82 In 2024, the ECNI's commissioned research on the Impact of Brexit on Women in NI identified that a lack of reliable information and sometimes deliberate misinformation on Brexit has had implications on day-to-day life, particularly for migrant women for whom English is a second language.⁸³⁵ Service providers reported that a core part of their work has been countering

830 Equality Commission for NI, 'Policy Recommendations: Impact of Brexit on Minority Ethnic and Migrant People in Northern Ireland' (ECNI 2024).

831 Equality Commission for NI, 'Shadow Report from the ECNI to the Advisory Committee for the Framework Convention for the Protection of National Minorities on the Fifth Monitoring Report of the UK' (ECNI, 2022).

832 Pivotal, 'Impact of Brexit on Minority Ethnic and Migrant People in Northern Ireland' (ECNI, 2023).

833 Ibid, at 51.

834 NI Human Rights Commission and Equality Commission for NI, 'Annual Report of the NIHRC and the ECNI on the implementation of Protocol Article 2 2021 – 2022' (NIHRC and ECNI, 2022), at para 5.56.

835 Katharine Wright, Ruth McAreavey and Rebecca Donaldson 'The Impact of Brexit on Women in Northern Ireland' (ECNI, 2024), at 46-48

misinformation.⁸³⁶ In addition, misinformation has often resulted in migrant workers being left particularly vulnerable to exploitation.

- 4.83 Participants at ECNI engagement events outlined a number of common areas of exploitation experienced by migrant workers, including being charged extortionate amounts for P45 forms or denied access to P60 forms, sick pay or general human resources support, with instances of employers taking advantage of language barriers. One participant gave an account of recruitment agencies falsely treating the EU Settlement Scheme application process as a work visa, leaving migrant workers vulnerable to homelessness and destitution in the case of a failed application.⁸³⁷
- 4.84 Trade union representatives pointed to a lack of English language skills as a significant barrier to vulnerable workers exercising their rights, highlighting that the Department for the Economy has previously committed to review funding for English for speakers of other languages classes for minority ethnic and migrant workers.⁸³⁸
- 4.85 Service providers who participated in the research report into the impact of Brexit on minority ethnic and migrant people in NI (2023) reported negative experiences of some workers who were employed through a sponsorship arrangement. These workers were often unable to leave their employment due to repayment clauses in their contracts and had experienced poor employment conditions.⁸³⁹
- 4.86 Concerns have also been raised with the ECNI by trade unions assisting migrant workers experiencing issues with repayment clauses. The unions reported potentially low levels of awareness of the codes of practice governing such clauses within the health and social care sector.⁸⁴⁰
- 4.87 The ECNI's research report notes that there was no clear evidence of issues relating to repayment clauses having been directly affected by Brexit.⁸⁴¹ However, evidence from some participants at ECNI engagement events has indicated that given the loss of free movement due to Brexit, the number of non-EU migrant workers being sought to fill skilled and critical posts, and who could potentially be impacted by sponsorship arrangements, has risen.

836 Ibid, at 47

837 Ibid, at 86.

838 Ibid, at 88.

839 Pivotal, 'Impact of Brexit on Minority Ethnic and Migrant People in Northern Ireland' (ECNI, 2023), at 105.

840 Specifically, the Commission was made aware of a low level of awareness within the private health and social care sector of the Department of Health Code of Practice for the International Recruitment of Health and Social Care Personnel as it pertains to repayment clauses.

841 Pivotal, 'Impact of Brexit on Minority Ethnic and Migrant People in Northern Ireland' (ECNI, 2023), at 105.

- 4.88 The research also notes that new national insurance registrations by overseas EU nationals have fallen sharply since 2017, suggesting that Brexit has had an impact on the attractiveness of NI for EU migration.⁸⁴² Further, an analysis of new national insurance number registrations⁸⁴³ by Ulster University (2023) shows that NI migration patterns post-Brexit have shifted from EU migrants to non-EU migrants.⁸⁴⁴
- 4.89 Without further research it is not clear how much of the recent fall in EU migrants arriving in NI is due to Brexit or to other factors such as the Covid pandemic.⁸⁴⁵

Recommendations

- 4.90 The ECNI recommends that the Department for the Economy, and other relevant NI departments, should ensure there is an effective system to recognise qualifications to help address any barriers to migrant workers accessing employment in NI, including in areas where there are labour shortfalls, due to Brexit.
- 4.91 The ECNI recommends that the UK Government, the Department for the Economy and other relevant NI departments take additional measures to raise awareness amongst employers in NI of the rights of EU migrant workers, in terms of the process for hiring workers after Brexit, including so as to avoid racial discrimination.
- 4.92 The ECNI recommends that the Department of Justice, and other relevant NI departments, should consider what additional steps can be taken to address the exploitation experienced by migrant workers, and take appropriate action to address the issues identified.
- 4.93 The ECNI recommends that the Department of Justice, and other relevant NI departments commission research to assess any impact of Brexit on the exploitation of migrant workers and address any negative impact identified.
- 4.94 The ECNI recommends support for initiatives aimed at raising awareness of the rights of migrant workers as well as to improve access to appropriate employment support, including childcare and English for speakers of other languages.

842 Equality Commission for NI, 'Policy Recommendations: The Impact of Brexit on Minority Ethnic and Migrant People in Northern Ireland' (ECNI, 2024).

843 New national insurance registrations to adult overseas nationals are one way to estimate migration flow.

844 John Campbell, 'Northern Ireland migration patterns 'shifting outside EU'', *BBC News*, 10 March 2023.

845 Equality Commission for NI, 'Policy Recommendations: The Impact of Brexit on Minority Ethnic and Migrant People in Northern Ireland' (ECNI, 2024), at 83.

- 4.95** The ECNI recommends that the Department of Health undertakes research into the degree to which Brexit has impacted on migrant workers who have been sponsored to work in health and social care in NI, including employers' awareness of, and compliance with, the code of practice governing repayment clauses relating to such migrant workers, and takes effective measures to address issues identified.
- 4.96** The ECNI recommends that the Department for Economy should commission research to provide a clearer understanding of the impact of Brexit on the flow of EU migrants into and from NI, so as to inform the identification and addressing of barriers, including in the context of accessing and remaining in employment.

Right to Health

- 4.97** The right to the highest attainable standard to health is protected under the UN ICESCR, UN CRC and UN CRPD.⁸⁴⁶ As a minimum, respect for the right to health includes the prohibition of unlawful discrimination in access to health services. As noted above, the obligation to keep pace in respect of the six Annex 1 equality directives includes the EU Racial Equality Directive⁸⁴⁷ and the EU Gender Equality (Goods and Services) Directive,⁸⁴⁸ which prohibit discrimination in access to goods and services on grounds of race and ethnic origin and on grounds of sex respectively.
- 4.98** In 2022, the NIHRC published research on the implications of UK withdrawal from the EU on access to healthcare on the island of Ireland, which examined the interaction of various international commitments including Citizens' rights provisions of the UK-EU Withdrawal Agreement, Windsor Framework Article 2 and the Common Travel Area. The NIHRC also wished to explore arrangements for continuing access to cross-border and all-island services. The research found that in a number of cases, current access to healthcare could amount to a diminution of rights.⁸⁴⁹
- 4.99** The ECNI's independent research⁸⁵⁰ and policy recommendations⁸⁵¹ on the impact of Brexit on minority ethnic and migrant people in NI, explores issues

846 Article 12, UN International Covenant of Economic, Social and Cultural Rights; Article 24, UN Convention on the Rights of the Child; and Article 25, UN Convention on the Rights of People with Disabilities.

847 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.

848 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.

849 Tamara Hervey, 'Brexit, Health and its potential impact on Article 2 of the Ireland/NI Protocol' (NIHRC, 2022).

850 Pivotal, 'The Impact of Brexit on Minority Ethnic and Migrant People in Northern Ireland' (ECNI, 2023).

851 Equality Commission for NI, 'Policy Recommendations: The Impact of Brexit on Minority Ethnic and Migrant People in Northern Ireland' (ECNI, 2024).

relating to access to public services including health. In addition, similar issues were raised in the ECNI's commissioned research, published in March 2024, on the impact of Brexit on women in NI.⁸⁵² This research highlighted specific issues in accessing public services, including healthcare services, which have disproportionately impacted on women.

Access to Healthcare for Migrants

- 4.100 Everyone in NI is entitled to free emergency healthcare at the point of service, including irregular migrants. It is important that information regarding the right to emergency healthcare is communicated to irregular migrants to ensure they can access this type of healthcare when they need it.
- 4.101 The Commissions have received reports that there are several barriers to migrants, including irregular migrants, accessing healthcare and there have been reports of a lack of access to translation and interpretation services⁸⁵³ and questions about immigration status.⁸⁵⁴ EU, EEA and Swiss citizens living in the UK prior to EU withdrawal are required to apply to the EU Settlement Scheme to demonstrate they have leave to remain in the UK.⁸⁵⁵ NIHRC health research demonstrated that frontline health staff currently lack clear information about the applicable law for patients accessing healthcare post-Brexit.⁸⁵⁶
- 4.102 In addition, evidence from ECNI's research⁸⁵⁷ and policy recommendations⁸⁵⁸ on the impact of Brexit on minority ethnic and migrant people identified a perception that some staff in public services were not trained to deal with the new categories of rights holders. Moreover, they did not appear to understand the different statuses that resulted from the EU Settlement Scheme process or what the implications of those different statuses were for rights and entitlements to public services. Research participants reported having to repeatedly prove their status to access public services due to a lack

852 Katharine Wright, Ruth McAreavey and Rebecca Donaldson, 'The Impact of Brexit on Women in Northern Ireland' (ECNI, 2024).

853 NI Human Rights Commission, 'Submission to the NI Affairs Committee Inquiry into the Experience of Minority Ethnic and Migrant People in NI' (NIHRC, 2021); Equality Commissions for NI, 'Shadow Report from the Equality Commission for Northern Ireland to the Advisory Committee for the Framework Convention for the Protection of National Minorities on the Fifth Monitoring Report of the United Kingdom' (ECNI, 2022); Equality Commission for NI, 'Policy Recommendations: The Impact of Brexit on Minority Ethnic and Migrant People in Northern Ireland' (ECNI, 2024), at 67.

854 Roundtable on Access to Healthcare and Protocol Article 2 hosted by the NI Human Rights Commission, 6 June 2022. See also Pivotal, 'The Impact of Brexit on Minority Ethnic and Migrant People in Northern Ireland' (ECNI, 2023); Katharine Wright, Ruth McAreavey and Rebecca Donaldson 'The Impact of Brexit on Women in Northern Ireland' (ECNI, 2024); Equality Commission for NI, 'Policy Recommendations: The Impact of Brexit on Minority Ethnic and Migrant People in Northern Ireland' (ECNI, 2024).

855 UK Government, 'Stay in the UK ('settled status'): Step by Step'.

856 Tamara Hervey, 'Brexit, Health and its potential impact on Article 2 of the Ireland/NI Protocol' (NIHRC, 2022).

857 Pivotal, 'The Impact of Brexit on Minority Ethnic and Migrant People in Northern Ireland' (ECNI, 2023).

858 Equality Commission for NI, 'Policy Recommendations: The Impact of Brexit on Minority Ethnic and Migrant People in Northern Ireland' (ECNI, 2024).

of proactive or systematic approach to information sharing between public service providers.⁸⁵⁹

- 4.103 The ECNI’s research on the impact of Brexit on women also identified a lack of information on Brexit and its implications for day-to-day life in NI, with research participants reporting that some migrant women had been given incorrect advice on eligibility for healthcare and that this extended to minority ethnic women too.⁸⁶⁰ The report notes “the disproportionate impact on women of the changing health policy context as a result of Brexit has meant that women with different types of immigration status, who are eligible for healthcare, do not have guaranteed access to that care”.⁸⁶¹
- 4.104 The ECNI’s research on the impact of Brexit on minority ethnic and migrant people demonstrated examples of EU migrants with settled or pre-settled status being incorrectly refused access to healthcare because their residency information had not been updated⁸⁶² or there were issues with proving residency, which disproportionately impacted on women, young people and older people.⁸⁶³ This included people who were charged for healthcare services, despite being exempt from charges, including for maternity and neonatal care.⁸⁶⁴ In addition, the Independent Monitoring Authority have raised concerns regarding EU citizens with a pending application for pre-settled and settled status being charged for NHS treatment whilst awaiting a decision and in case of an unsuccessful application.⁸⁶⁵
- 4.105 In June 2023, the Independent Monitoring Authority published the findings of an inquiry which concluded that the Home Office failed in its duty to provide a Certificate of Application immediately to some EU Settlement Scheme applicants and that delay would put the applicant at risk of not being able to receive free healthcare.⁸⁶⁶
- 4.106 In August 2023, the Home Office published guidelines which include a further restriction on what will be accepted as reasonable grounds for a late application to the EU Settlement Scheme.⁸⁶⁷ There are concerns that this

859 Pivotal, ‘The Impact of Brexit on Minority Ethnic and Migrant People in Northern Ireland’ (ECNI, 2023), at 73.

860 Katharine Wright, Ruth McAreavey and Rebecca Donaldson, ‘The Impact of Brexit on Women in Northern Ireland’ (ECNI, 2024), at 48.

861 Katharine Wright, Ruth McAreavey and Rebecca Donaldson, ‘The Impact of Brexit on Women in Northern Ireland’ (ECNI, 2024), at 14.

862 Pivotal, ‘The Impact of Brexit on Minority Ethnic and Migrant People in Northern Ireland’ (ECNI, 2023), at 85.

863 Ibid, at 72.

864 Ibid, at 85.

865 Independent Monitoring Authority, ‘Press Release: EU citizens may have been wrongfully charged for NHS treatment, IMA finds’, 10 May 2023.

866 Independent Monitoring Authority, ‘An Inquiry by the Independent Monitoring Authority for the Citizens’ Rights Agreements into Certificates of Application’ (IMA, 2023), at 3 and para 117.

867 Home Office, ‘EU Settlement Scheme: EU, Other EEA and Swiss Citizens and their Family Members. Version 20.0’ (HO, 2023).

change might lead to further delays in issuing a Certificate of Application and further inhibit access to healthcare for applicants.⁸⁶⁸

- 4.107 From September 2023, people with pre-settled status will automatically have their status extended by two years before it expires.⁸⁶⁹ In January 2024, the Independent Monitoring Authority raised concerns that despite the automatic renewal citizens may still face challenges in accessing services, due to the temporary nature of pre-settled status being reflected on official documents.⁸⁷⁰ Access to health care continues to be in the top three areas where EU citizens experience difficulties, along with employment and travel.⁸⁷¹
- 4.108 In September 2023, the NIHRC published a briefing which sets out next steps in ensuring that access to healthcare is protected in NI and on the island of Ireland after the UK's withdrawal from the EU.⁸⁷² The NIHRC made several recommendations, including on clarification of the rights of frontier workers and existing rules on access to cross-border and all-island health services for EU and other migrant people living in NI and ensuring there are no immigration or visa recognition barriers impeding access to these services for refugees, people seeking asylum, and migrant people.⁸⁷³
- 4.109 The ECNI's policy recommendations on the impact of Brexit on minority ethnic and migrant people has also noted concerns raised with the Commissions relating to accessing cross-border healthcare, including those raised by non-EU migrants.⁸⁷⁴ The ECNI has also called for clarity on rules and entitlements relating to the access of EU and non-EU nationals living in NI to cross-border and all-island health care services and has highlighted the need to address barriers that have arisen due Brexit.⁸⁷⁵
- 4.110 In November 2023, the NIHRC published research on the importance of Article 2 Windsor Framework for the rights of refugees and asylum seekers in NI.⁸⁷⁶ The research concluded that certain EU Directives, such as the EU Reception

868 Engagement meeting with the Home Office Future Borders and Immigration System Advisory Group, 18 July 2023.

869 Home Office, 'Press Release: EU Settlement Scheme enhancements confirmed', 17 July 2023.

870 Independent Monitoring Authority, 'Press Release: Citizens Rights Watchdog Gives Update on Judicial Review', 17 January 2024.

871 Independent Monitoring Authority, 'IMA survey identifies concerns about current and future protection of citizens' rights', 15 December 2023.

872 NI Human Rights Commission, 'Briefing Paper and Recommendations on Brexit, Health and Its Potential Impact on Article 2 of the Windsor Framework' (NIHRC, 2023). See also Tamara Hervey, 'Brexit, Health and its potential impact on Article 2 of the Ireland/NI Protocol' (NIHRC, 2022).

873 NI Human Rights Commission, 'Briefing Paper and Recommendations on Brexit, Health and Its Potential Impact on Article 2 of the Windsor Framework' (NIHRC, 2023). See also sections in this chapter relating to the Common Travel Area and EU citizenship and workers' rights.

874 Equality Commission for NI, 'Policy Recommendations: The Impact of Brexit on Minority Ethnic and Migrant People in Northern Ireland' (ECNI, 2024)

875 Ibid.

876 Alison Harvey BL, 'Article 2 of the Windsor Framework and the rights of refugees and persons seeking asylum' (NIHRC, 2023).

Directive, continue to set minimum standards in respect of the rights of refugees and people seeking asylum, including in relation to healthcare.⁸⁷⁷

Recommendations

- 4.111** The NIHRC continues to recommend that the Home Office provide further guidance on the rights of people with pending and late applications to the EU Settlement Scheme, to applicants to the Scheme and to healthcare professionals, to ensure no diminution of provision and to protect the right to the highest attainable standard of healthcare.
- 4.112** The Commissions recommend that, in terms of EU citizens and other migrants in NI, the UK and Irish governments, and Department of Health should:
- clarify and communicate rules and entitlements relating to their access to cross-border and all-island health care services, particularly any changes due to Brexit; and
 - raise awareness of these rules and entitlements in terms of their access to cross-border and all-island health care services amongst relevant health professionals, including through training and guidance.
- 4.113** The Commissions recommend that the UK Government, the NI Executive, the Department of Health, and other relevant departments, should take appropriate and effective steps to address the barriers experienced by minority ethnic and migrant people in NI in accessing healthcare after Brexit, including cross-border and all-island health care services.
- 4.114** The ECNI recommends that the UK Government, the NI Executive, and relevant NI departments should carry out research to assess any impact of Brexit on the provision of interpreters, including in health provision, and take steps to address any impact identified.

EU Loss of Funding

- 4.115** The ECNI's independent research on the "Impact of Brexit on Section 75 Equality Groups: EU funding" highlighted that equality of opportunity and good relations should be at the heart of government policy making on funding.⁸⁷⁸ The ECNI has called on the Secretary of State for NI, to

⁸⁷⁷ Alison Harvey BL, 'Article 2 of the Windsor Framework and the rights of refugees and persons seeking asylum' (NIHRC, 2023), at 3.17.

⁸⁷⁸ Rory O'Connell and Tim Cunningham, 'Impact of Brexit on Section 75 Equality Groups in Northern Ireland: EU Funding' (ECNI, 2022).

designate for the purposes of Section 75 the UK Government department(s) responsible for the delivery of Shared Prosperity Fund funding in NI (that is, the Department for Levelling Up Housing, and Communities).⁸⁷⁹ It further highlighted its concerns that the NI Executive/departments have not been assigned a more significant role in the design and implementation of the NI Shared Prosperity Fund investment plan.⁸⁸⁰

4.116 The ECNI has expressed concerns raised by equality stakeholders including disabled people that Shared Prosperity Fund replacement funding will not match the level of EU funds and that there will be possible shortfalls in funding.⁸⁸¹ In addition, in March 2023, the ECNI raised concerns with the Department for Levelling up, Housing and Communities and the Secretary of State for NI regarding gaps in funding which may lead to a financial ‘cliff-edge’ for community and voluntary organisations which may impact on services provided to Section 75 equality groups in NI.⁸⁸²

4.117 The ECNI also highlighted the role of NI departments, aligned with their Section 75 equality duties, to continue to support the needs of people from different equality groups, who have been supported by EU funding. This should include actions to address any shortfalls and gaps in funding that may impact negatively on these groups.⁸⁸³

4.118 Following the publication of the research and policy recommendations, the ECNI engaged and consulted with the UK Government including the Department for Levelling Up, Housing and Communities, relevant NI departments and impacted Section 75 groups to highlight the relevant key findings and recommendations aligned to ECNI policy recommendations.

4.119 Further, in March 2024, the ECNI published their independent research on the impact of Brexit on women in NI.⁸⁸⁴ It found that participants of the research from the women’s sector had expressed difficulties in securing replacement EU funding and as a consequence this had negatively impacted their ability to continue to provide services, particularly in the area of securing the employment of staff.

4.120 The ECNI is continuing to explore the extent of the impact of the loss of EU funding, and has commissioned an update to its previous research, which

879 Equality Commission for NI, ‘Policy Recommendations: Impact of Brexit on Section 75 Equality Groups in Northern Ireland: EU Funding’ (ECNI, 2022), at para 2.13.

880 Ibid, at para 2.4.

881 Ibid, at para 4.24.

882 Ibid, at para 4.34.

883 Ibid, at 50-51.

884 Katharine Wright, Ruth McAreavey and Rebecca Donaldson, ‘The Impact of Brexit on Women in Northern Ireland’ (ECNI, 2024).

will specifically examine the transition from EU funding to the replacement funding of the UK Shared Prosperity Fund, on Section 75 equality groups in NI.⁸⁸⁵ This research will be available in 2025.

- 4.121 As previously reported, the ECNI wrote to the NI Minister of State in August 2022 and March 2023, requesting that the Secretary of State for NI designate the Department for Levelling Up, Housing and Communities in relation to NI's Section 75 duties.⁸⁸⁶ As of March 2024, the Department has not yet been designated.
- 4.122 In evidence provided to the Levelling Up, Housing and Communities Committee on their Inquiry on Funding for Levelling Up, officials from NI departments reiterated the need for designation, noting that it is “normal practice” for UK Government bodies operating in NI to be designated to ensure their operations in NI adhere to section 75 duties.⁸⁸⁷ The Inquiry also highlighted concerns raised by NI Officials in relation to the continued lack of consultation, collaboration and timely delivery of Shared Prosperity Fund to services in NI, which have had an impact on the operation of services
- 4.123 In its response to the inquiry, the UK Government noted that “DLUHC [Department for Levelling Up, Housing and Communities] recognises the importance of giving due regard to the equalities considerations that apply in Northern Ireland. In designing funds and in making selection decisions, DLUHC have considered our public sector equality duties including relevant section 75 factors specific to Northern Ireland”.⁸⁸⁸

Recommendations

- 4.124 The ECNI continues to recommend that the UK Government should address through future funding arrangements the potential negative impact of the loss of EU funding on programmes, including under the European Social Fund, on equality groups, including the impact on the voluntary and community sector.**
- 4.125 The ECNI continues to recommend that the Secretary of State for NI should designate for the purposes of Section 75 the Department for Levelling Up, Housing and Communities.**

885 Rory O'Connell and Tim Cunningham, 'Impact of Brexit on Section 75 Equality Groups in Northern Ireland: EU Funding' (ECNI, 2022).

886 Equality Commission for NI and NI Human Rights Commission, 'Annual Report of the Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission on the Implementation of Article 2 of the Windsor Framework 2022–2023' (ECNI and NIHRC, 2023), at para 5.82.

887 House of Commons Levelling Up, Housing and Communities Committee, 'Funding for Levelling Up, Sixth Report of Session 2022–23,' (HOC, 2023), at para 93.

888 Department for Levelling Up, Housing and Communities, 'Policy Paper: Government response to the Levelling Up, Housing and Communities Select Committee report on Funding for Levelling Up' (DLUHC, 2023).

- 4.126** The ECNI continues to recommend that the Department for Levelling Up, Housing and Communities and the UK Government should put in place formal structures for collaboration with relevant government departments in NI and follow best practice, with regards to the promotion of equality of opportunity and good relations, in the allocation and monitoring of funding and to identify and address any gaps in vital services that promote equality.
- 4.127** The ECNI continues to recommend that the NI Executive and NI departments should clarify how the needs of people from different equality groups, who have been supported through European funding, particularly European Social Fund, will be supported by the Executive in the future; address any potential shortfall in funding; and incorporate ‘lessons learnt’ into future funding programmes.
- 4.128** The ECNI continues to recommend that the Department for Levelling Up, Housing and Communities, in delivering future Shared Prosperity Fund funding programmes in NI, should continue to ensure effective partnership working and engagement with key stakeholders, including with equality stakeholders and groups in NI and follow best practice in terms of engagement with equality groups.
- 4.129** The ECNI continues to recommend that the Department for Levelling Up, Housing and Communities, in delivering Shared Prosperity Fund funding, should ensure the collection and monitoring of robust equality data across all Section 75 groups, including disaggregated data, as well as ensuring the effective monitoring of outcomes related to equality and good relations.
- 4.130** The ECNI continues to recommend that the NI Executive and relevant NI departments should develop and implement wider strategies to address structural barriers to equality (for example, lack of affordable, quality childcare) experienced by Section 75 groups.
- 4.131** The ECNI continues to recommend there should be ongoing evaluation of the Levelling Up Fund to include details on how equality of opportunity and good relations have been considered and promoted and which Section 75 groups have benefitted.

Tackling Racism and Prejudicial Attitudes

- 4.132 In 2023, the ECNI commissioned research report on the impact of Brexit on minority ethnic and migrant people in NI highlighted a widespread perception amongst research participants that Brexit had led to an increase in the expression of racism, with participants reporting that they felt that Brexit had ‘legitimised racism and anti-immigration [sentiment]’.⁸⁸⁹ Participants said that they felt that racism was a normal part of their day-to-day life in NI with some reporting concern that what they perceived as a rise in racial bias since the Brexit referendum had impacted on their ability to access services and to secure employment. Some research participants said that they felt ‘unsupported by authorities’ whom they perceived to be ‘indifferent to racism’.⁸⁹⁰
- 4.133 Female participants in the research felt that they had disproportionately been the focus of racism more than their male counterparts due to being at the ‘frontline of community interactions’.⁸⁹¹ Participants felt that this was because minority ethnic women tended to be exposed to racism in the exercising of their caring responsibilities ‘at the school gates’⁸⁹² and when working in low paid jobs.⁸⁹³
- 4.134 Examples of racism experienced and/or witnessed by participants in the research included verbal and physical abuse, damage to property and school-bullying.⁸⁹⁴ At events organised by the ECNI for stakeholders to engage with the research findings, a number of participants shared their view that racist bullying in schools had increased because of Brexit.
- 4.135 In 2023, the ECNI commissioned a Public Awareness Survey of equality and human rights protections in NI after Brexit, including questions relating to attitudes towards minority ethnic people, migrant workers, refugees, and asylum seekers due to Brexit.⁸⁹⁵
- 4.136 The ECNI survey found that a substantial proportion of respondents thought that attitudes to minority ethnic people were worse as a result of Brexit and a similar proportion thought that attitudes were ‘about the same’ as they were before Brexit (46% and 45% respectively).

889 Pivotal, ‘The Impact of Brexit on Minority Ethnic and Migrant People in Northern Ireland’ (ECNI, 2023), at 48.

890 Ibid, at 48.

891 Ibid, at 50.

892 Ibid, at 50.

893 Ibid, at 50.

894 Ibid, at 50.

895 Equality Commission for NI, ‘Press Release: Survey results capture attitudes to equality and human rights protection post Brexit’, 26 September 2023.

4.137 Almost half of respondents (47%) thought that attitudes to migrant workers were about the same as they were before Brexit, with a slightly smaller proportion (44%) believing that attitudes had gotten worse.

4.138 Just over half of all respondents (51%) thought that attitudes to refugees and asylum seekers were worse as a result of Brexit, with around 40% of all respondents thinking that attitudes were about the same.⁸⁹⁶

4.139 Although the ECNI's research provides a valuable source of data on these attitudes post Brexit, further data is needed. The collection of this data on racial attitudes will assist with identifying further Government action, including by the Executive Office and the Department of Justice to combat racism and race hate crime.

Recommendations

4.140 The ECNI recommends that the NI Executive, relevant NI departments, including the Executive Office, and others, take effective measures to:

- **improve data collection on racial attitudes arising as a result of Brexit;**
- **assess the impact of Brexit on levels and forms of racism, including any specific impact on minority ethnic women, on institutional racism, and on racist bullying in schools, and to take effective action to address any impact identified.**

Engagement with Equality/Human Rights Groups

4.141 In 2024, the ECNI's independent research on the Impact of Brexit on Women in NI identified that there was a perception by research participants that there has been a marginalisation of women from discussions on Brexit and in the Brexit negotiations.⁸⁹⁷

4.142 In addition, it noted that there was a perception amongst some women that they are not able to speak about Brexit publicly. It highlighted that a key obstacle to women speaking on Brexit had been the level of abuse and intimidation, including on social media, directed towards those in the public sphere. The report noted that such abuse can be invisible, operating below the law, but yet is strongly felt by women in their day-to-day lives in NI. The absence of women's voices was noted to be a key concern and contributed to the side-lining of both women's expertise and expertise on the impact of Brexit on women.⁸⁹⁸

⁸⁹⁶ Pivotal, 'The Impact of Brexit on Minority Ethnic and Migrant People in Northern Ireland' (ECNI, 2023), at 50.

⁸⁹⁷ Katharine Wright, Ruth McAreavey and Rebecca Donaldson, 'The Impact of Brexit on Women in Northern Ireland' (ECNI, 2024), at 32-33.

⁸⁹⁸ Ibid, at 33-36.

- 4.143 Further, the research report noted that there was a perception amongst research participants that the rhetoric around Brexit and targeted propaganda increased racism, leading to a sense of marginalisation.⁸⁹⁹ The ECNI's independent research on the Impact of Brexit on minority ethnic and migrant people also reported a sense of marginalisation, with minority ethnic and migrant groups that participated in the research feeling that they are not a priority in NI and that there was little focus from government or statutory services on the challenges that minority ethnic and migrant people experience as a result of Brexit.⁹⁰⁰ The perceived lack of government focus left some participants feeling devalued, with some participants interpreting this as a reflection of the unimportance of ethnic minority and migrant people in NI.
- 4.144 In Chapter 2, the Commissions highlighted the importance of engagement by the UK Government, EU Commission and NI Executive with civil society, and particularly with equality and human rights stakeholders. This should include the women's sector and representative organisations on race equality and migrant groups in NI who perceive they have been marginalised in Brexit debates.
- 4.145 This is critical to help the UK Government, EU Commission and NI Executive to identify the impacts of the implementation of the Windsor Framework on minority ethnic people and other equality groups living in NI in relation to human rights and equality considerations. We have also made clear that this engagement should include those working on equality/human rights in the context of cross border issues. In Chapter 2 of this report, the Commissions welcomed steps being taken to ensure greater engagement with equality and human rights stakeholders in NI. The Commissions are keeping the matter under review.

Recommendations

- 4.146 The Commissions continue to recommend that the UK Government, relevant NI departments and EU officials ensure ongoing, timely and structured engagement with NI civil society, including representative organisations on race and gender equality and other equality and human rights stakeholders.**

899 Ibid, at 35.

900 Pivotal, 'Impact of Brexit on Minority Ethnic and Migrant People in Northern Ireland' (ECNI, 2023), at 32.

Appendix 1: About us

The NIHRC and the ECNI are mandated in accordance with Article 2(1) of the Windsor Framework to the UK-EU Withdrawal Agreement⁹⁰¹ to oversee the UK Government's commitment on rights and equality in NI after EU withdrawal.

The Commissions' functions for this purpose, set out in Sections 78A-78E of the Northern Ireland Act 1998, are:

- monitoring the implementation of Article 2 (rights of individuals);
- reporting to the Secretary of State for NI and the NI Executive Office on the implementation of Article 2;
- advising the Secretary of State for NI and the NI Executive of legislative and other measures which ought to be taken to implement Article 2;
- advising the NI Assembly (or a committee of the Assembly) whether a Bill is compatible with Article 2;
- promoting understanding and awareness of the importance of Article 2, including undertaking, commissioning or providing financial or other assistance for research and educational activities;
- bringing any appropriate matters of relevance to Article 2 to the attention of the Specialised Committee on the Protocol;
- taking judicial review proceedings in respect of an alleged breach (or potential future breach) of Article 2;
- assisting persons in legal proceedings or proposed proceedings in respect of an alleged breach (or potential future breach) of Article 2; and
- intervening in legal proceedings in so far as they relate to an alleged breach (or potential future breach) of Article 2.

NIHRC

The NIHRC was established as a result of the Belfast (Good Friday) Agreement 1998. The NIHRC's governing legislation is the Northern Ireland Act 1998, as amended by the Justice and Security (Northern Ireland) Act 2007 and the European Union (Withdrawal Agreement) Act 2020.

The NIHRC is a National Human Rights Institution with 'A status' accreditation from the United Nations. This recognition means that the organisation operates

901 Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, 24 January 2020.

independently in full accordance with the UN General Assembly Resolution 48/134 (the Paris Principles) reporting to UN treaty bodies and exercising speaking rights before the UN Human Rights Council.

The NIHRC is also a non-departmental public body and receives grant-in-aid from the UK Government through the NI Office. We report to Parliament through the Secretary of State for NI.

The NIHRC also has additional functions, as set out in the Northern Ireland Act 1998, to:

- keep under review the adequacy and effectiveness in NI of law and practice relating to the protection of human rights;
- advise the Secretary of State for NI and the NI Executive of legislative and other measures which ought to be taken to protect human rights;
- advise the NI Assembly whether proposed legislation is compatible with human rights standards;
- promote understanding and awareness of the importance of human rights in NI, for example, by undertaking or commissioning or otherwise assisting research and educational activities;
- give assistance to individuals who apply to it for help in relation to proceedings involving law or practice concerning the protection of human rights;
- bring proceedings involving law or practice concerning the protection of human rights;
- intervene in legal proceedings concerning human rights where it need not be a victim or potential victim of the unlawful act to which the proceedings relate;
- conduct investigations;
- require a person to provide information and documents in their possession, and to give oral evidence, in respect of an investigation;
- enter a specified place of detention in NI, in respect of an investigation; and
- publish its advice and the outcome of its research and investigations.

ECNI

The ECNI is an executive non-departmental public body sponsored by the Executive Office (TEO). The ECNI, established on 1 October 1999 under the Northern Ireland Act 1998, assumed, along with the responsibilities for statutory equality duties and new disability matters, the duties and responsibilities of four former organisations:

- The Commission for Racial Equality for Northern Ireland;
- The Equal Opportunities Commission for Northern Ireland;
- The Fair Employment Commission for Northern Ireland; and
- The Northern Ireland Disability Council.

Since October 1999, additional duties and responsibilities with respect to age, disability, sexual orientation and special educational needs have also been assumed.

During 2009, jointly with the NIHRC, the ECNI was designated as the independent mechanism for NI of the UN Convention on the Rights of Persons with Disabilities (UN CRPD) with the role of promoting, protecting and monitoring the implementation of the Convention.

The main pieces of legislation from which the Commission derives its duties and powers are:

- Sex Discrimination (NI) Order 1976, as amended;
- Disability Discrimination Act 1995, as amended;
- Race Relations (NI) Order 1997, as amended;
- Fair Employment and Treatment (NI) Order 1998, as amended;
- Northern Ireland Act 1998, as amended;
- Equality (Disability, etc.) (NI) Order 2000;
- Employment Equality (Sexual Orientation) Regulations (NI) 2003, as amended;
- Special Educational Needs and Disability (NI) Order 2005, as amended;
- Disability Discrimination (NI) Order 2006;
- Employment Equality (Age) Regulations (NI) 2006, as amended; and
- Equality Act (Sexual Orientation) Regulations (NI) 2006, as amended.

Appendix 2: List of Submissions

Joint Submissions

Equality Commission for NI and NI Human Right Commission, '[Annual Report of the Equality Commission for NI and NI Human Right Commission on the Implementation of Article 2 of the Windsor Framework 2022-2023](#)' (ECNI and NIHRC, 2023).

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