



**Submission of the ECNI and the NIHRC  
to the Northern Ireland Affairs  
Committee inquiry into the operation  
of the Windsor Framework in  
Northern Ireland.**

**January 2025**

## Executive Summary

### Summary of Recommendations

#### **UK Government's commitment to Windsor Framework Article 2**

The Commissions recommend that the Committee seeks clarification from the Secretary of State for NI as to why the Commissions did not receive a response to their 2022/23 Annual Report on the Implementation of WF Article 2, and on the proposed timeline for a response to the Commissions' 2023/24 Annual Report.

#### **Interpretation of WF Article 2 by higher courts in NI**

The Commissions recommend that the Northern Ireland Office, the Cabinet Office and other relevant departments act promptly to ensure that judgments of the Northern Ireland higher courts on WF Article 2 are reflected in the development and scrutiny of policy and legislation, unless or until there is a contrary ruling.

#### **Early consideration of WF Article 2**

The Commissions recommend that the Committee seeks clarification from the Cabinet Office as to whether its Guide to Making Legislation has been updated to include guidance on the approach to considering and ensuring WF Article 2 compliance, and when this Guide will be published.

The Commissions recommend that UK Government and NI departments:

- roll out effective training on WF 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.
- ensure that Explanatory Memoranda /notes and Human Rights Memoranda/impact assessments on Bills and draft statutory instruments that may engage Article 2 set out detailed consideration of compliance.

Aligned to the above recommendations, the Commissions recommend that the Committee seeks clarification from the Secretary of State for Northern Ireland

and from The Executive Office on what further steps will be taken to embed consideration of WF Article 2 compliance into processes and procedures across Whitehall and the NI Civil Service, including the timeline for doing so.

### **Parliamentary scrutiny**

The Commissions recommend that the Committee considers if there are sufficient mechanisms in place to ensure effective Parliamentary scrutiny in terms of WF Article 2 compliance by the UKG, particularly in the absence of the European Scrutiny Committee.

### **Dynamic alignment commitment**

Pursuant to the UK Government's obligations under the Windsor Framework, the Commissions recommend that the UKG, the NI Executive, The Executive Office and other relevant NI Departments, ensure that:

- the relevant provisions of the EU Directives on Standards for Equality Bodies are implemented in NI law by 19 June 2026;
- the relevant provisions of the EU Pay Transparency Directive are implemented in NI law by 7 June 2026.

### **WF Article 2 stakeholder engagement**

The Commissions 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 provide them with the opportunity to highlight in advance any implications of those changes for equality law in NI.
- 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 WF Article 2.

- 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 WF Article 2. This engagement should include with those working on rights and equality on a cross-border basis.

### **WF Article 2 compliance in the absence of NI Assembly**

The Commissions recommend that:

- the UK Government undertakes a review of legislative safeguards in place to ensure compliance with WF Article 2 should the NI Executive or Assembly fail to act as required.
- 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 WF Article 2.

### **Northern Ireland's access to EU funds**

The ECNI recommends that:

- the MHCLG 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.
- 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.
- the Ministry for Housing, Communities and Local Government (MHCLG), 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.

- the Secretary of State for NI, as a matter of priority, designates for the purposes of Section 75 of the NI Act 1998 the Ministry of Housing, Communities, and Local Government.

### **Legislative divergence between Great Britain and Northern Ireland**

The ECNI recommends that:

- the UK Government and the NI Executive Office centrally log and publish areas of regulatory divergence post Brexit relating to equality and human rights in NI. This should include divergence of rights between NI and Great Britain, and on the island of Ireland.
- the NI Executive and relevant NI Departments address those gaps in NI equality law highlighted to date by ECNI, that exist between NI and Great Britain.

### **North/South divergence of rights**

The Commissions recommend that:

- the UK Government, Irish Government, and NI Executive 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.
- 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.

## **Stormont Brake and applicability motion procedures**

The Commissions recommend that:

- the Committee reviews the timelines in which the WFDS Committee can conduct inquiries, in light of concerns that there is insufficient time to respond to inquiries.
- the WFDS Committee undertakes meaningful and timely engagement with equality and human rights groups in NI and the Commissions 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.
- equality and human rights considerations are built into all key stages of the Stormont Brake mechanism, including inquiries by the Windsor Framework Democratic Scrutiny (WFDS) Committee.

## 1. Introduction

- 1.1. Both the Equality Commission for Northern Ireland (ECNI) and the Northern Ireland Human Rights Commission (NIHRC) (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. Pursuant to section 78A(1) and 78B(1) of the Northern Ireland Act 1998, the Commissions are required to monitor the implementation of Article 2(1) of the Windsor Framework<sup>1</sup> ('WF Article 2') to the EU/UK Withdrawal Agreement, the UK Government's commitment to rights and equality in Northern Ireland after UK Withdrawal from the EU.<sup>2</sup>
- 1.3. 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 WF Article 2 which have an island of Ireland dimension.
- 1.4. WF Article 2 states:  
The United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, including in the area of protection against discrimination, as enshrined in the provisions of Union law listed in Annex 1 to this Protocol, and shall implement this paragraph through dedicated mechanisms.

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<sup>1</sup> 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.

<sup>2</sup> Sections [78A\(1\)](#) and [78B\(1\)](#), Northern Ireland Act 1998

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.

- 1.5. The UK Government has ‘dynamic alignment’ obligations arising out of WF Article 13 (3), relating to WF Article 2(1) in relation to the six Equality Directives in WF Annex 1.<sup>3</sup> This ‘dynamic alignment’ commitment was made by the UK Government (UKG) to ensure that Northern Ireland did not fall behind minimum European standards in anti-discrimination law.<sup>4</sup>
- 1.6. We welcome that the Committee is holding this inquiry and the opportunity to provide written evidence. In this submission, the Commissions have focused on addressing only those questions in the Committee’s call for evidence which fall within the scope of our respective roles and remits. While most recommendations are made jointly by the two Commissions, some are made solely by the ECNI aligned to its specific remit.
- 1.7. Further, if it would assist the Committee, we are available to provide an oral briefing, including on our recommendations relating to ensuring the UK Government’s compliance with its WF Article 2 obligations.

## 2. Implementation and scope of the no diminution of rights commitment under Article 2

### Importance of WF Article 2

- 2.1. By way of context in terms of the WF Article 2 commitment and its importance, the Committee will be aware that human rights and equality protections are at the heart of the Belfast (Good Friday) Agreement and

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<sup>3</sup> For further information on the scope of WF Article 2, see ECNI, NIHRC [Working Paper: The Scope of Article 2\(1\) of the Ireland/ Northern Ireland Protocol](#), (ECNI and NIHRC, December 2022).

<sup>4</sup> [Explainer: UK Government commitment to no diminution of rights, safeguards and equality of opportunity in Northern Ireland](#), 7 August 2020, para 7, para 12.



are central to the peace process in NI. EU law has underpinned and contributed to many of those safeguards. In addition, EU free movement law had facilitated the open border between NI and Ireland. The importance of protecting the 1998 Agreement, including its human rights and equality commitments, was accepted in negotiations leading to the UK's withdrawal from the EU and then reflected in the Windsor Framework.

- 2.2. There is evidence that public support in NI for the WF Article 2 commitment is strong. According to a recent survey commissioned by the ECNI, a substantial proportion of respondents (74%) indicated that the inclusion of the equality and human rights protections in the WF was important, or very important to them.<sup>5</sup>

### **UK's commitment to Article 2**

- 2.3. In terms of the UKG's commitment to WF Article 2 we would make the following points.

### **Government's response to Commissions' second Annual Report**

- 2.4. Based on our mandate, since 2022 the Commissions have jointly published an annual report on the implementation of WF Article 2.
- 2.5. Section 78A(3) of the NI Act 1998 in respect of the NIHRC, and Section 78B(3) in respect of the ECNI, 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".
- 2.6. The Commissions sought a reply from the NI Executive Office and the Secretary of State for NI in respect of their second Annual Report 2022-2023.<sup>6</sup> It will however be noted that the UKG did respond to the Commissions' first Annual Report, which we welcome - though no response was received from the Executive Office due to the absence of a NI Executive at that time.

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<sup>5</sup> ECNI, [Public attitudes and awareness of rights after Brexit](#) (November 2024).

<sup>6</sup> 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).

- 2.7. However, **we are disappointed that we did not receive a response in respect of our second Annual Report 2022-2023, from either the Secretary of State for NI or the NI Executive Office**, before the subsequent reporting period concluded, or to date.
- 2.8. The Commissions have written to the Secretary of State for NI and the NI Executive Office to request a response to the recommendations in their most recent third Annual Report 2023-2024.<sup>7</sup>
- 2.9. **We are also concerned that**, whilst a small number of our recommendations in our Annual Reports have been progressed by, **the vast majority of our recommendations have only been partially progressed or not progressed by the UK Government and NI Executive**. We highlight a number of key recommendations that have not been progressed later in this response.

### **Recommendation**

- 2.10. **The Commissions recommend that the Committee seeks clarification from the Secretary of State for NI as to why the Commissions did not receive a response to their 2022/23 Annual Report on the Implementation of WF Article 2, and on the proposed timeline for a response to the Commissions' 2023/24 Annual Report.**

### **Government's approach to scope and implementation**

- 2.11. As regards the scope of Article 2, in 2022 the Commissions published a joint working paper on the scope of WF Article 2, which provides our initial assessment of Article 2, how it is engaged and what rights and safeguards fall within its scope.<sup>8</sup> The Appendix to the paper sets out the EU law which the Commissions had identified, by that date, as falling within the scope of Article 2.
- 2.12. In our Annual Report 2023-2024, we expressed our concerns about the 'roll back' of rights across a range of areas, including the rights of victims

<sup>7</sup> NI Human Right Commission and Equality Commission for NI, ['Annual Report of the Equality Commission for NI and NI Human Right Commission on the implementation of Article 2 of the Windsor Framework 2023-2024'](#) (NIHRC and ECNI, June 2024).

<sup>8</sup> 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).

under the Legacy Act, data protection and the rights of asylum seekers and refugees. In addition, our most recent public awareness survey found that over half of respondents (55%) remain concerned that their equality and human rights could be affected in the future due to Brexit and almost half (47%) believed their rights have already been reduced since the UK left the EU.<sup>9</sup>

### **Interpretation of WF Article 2 by higher courts in Northern Ireland**

- 2.13. As outlined above, analysis of WF Article 2 requires consideration of the Belfast (Good Friday) Agreement chapter on Rights, Safeguards and Equality of Opportunity and the requirements of EU law that underpins those rights and was binding on the UK prior to Brexit.
- 2.14. The NI Court of Appeal and High Court have handed down rulings interpreting WF Article 2, the Belfast (Good Friday) Agreement chapter and the approach to relevant EU law, with further proceedings expected.
- 2.15. Though the Belfast (Good Friday) Agreement was neither drafted for this purpose, nor in tight legal terms, the courts have expressed no difficulty in utilising its content as a signpost to the hard legal requirements of relevant EU law.
- 2.16. In *Dillon*<sup>10</sup>, the NI Court of Appeal considered Article 4 of the UK EU Withdrawal Agreement, section 7A of the EU (Withdrawal) Act 2018 before confirming that:
- WFA2 has direct effect and can be relied on in Court;<sup>11</sup>
  - The rights, safeguards and equality of opportunity chapter in the Belfast (Good Friday) Agreement is not to be narrowly construed or regarded through the lens of the conflict but consists of a ‘broad suite of rights’ and extends ‘further than those rights specifically listed’;<sup>12</sup>
- 2.17. The judgment, which relates to the NI Troubles (Legacy and Reconciliation) Act 2023, also demonstrates the importance of the commitment to “the civil rights...of everyone in the community” at the

<sup>9</sup> ECNI, [Public attitudes and awareness of rights after Brexit](#) (November 2024).

<sup>10</sup> *Dillon & Ors v SSNI* [2024] NICA 59

<sup>11</sup> *Ibid.* at [57], [63]-[72], [83] – [85], [89]

<sup>12</sup> *Ibid.* at [115]

start of the relevant Belfast (Good Friday) Agreement chapter, given the findings that:

- victims' rights fall within 'civil rights' and are given effect by Articles 2, 3, 6 and 14 of the ECHR;<sup>13</sup>
- the EU Victims' Directive underpinned those rights;<sup>14</sup>
- the EU Victims' Directive "is to be interpreted in accordance with the EU Charter and general principles of EU law";<sup>15</sup>
- Disapplication of offending provisions "is the correct remedy" for breach of Windsor Framework Article 2, due to Article 4, UK EU Withdrawal Agreement and section 7A, EU Withdrawal Act 2018;<sup>16</sup>
- "a diminution prohibited by article 2 WF might occur either by reducing the substance of a right (as here) or by reducing the efficacy of available remedies".<sup>17</sup>

2.18. The NIHRC used its own motion powers to challenge the Illegal Migration Act 2023. In a ruling handed down prior to the Court of Appeal judgment above, and consistent with its approach, the NI High Court also considered the personal scope of Article 2 and its application in the field of asylum and human trafficking, confirming that:

- asylum seekers and victims of human trafficking, *as individuals*, are protected by WF Article 2;<sup>18</sup> and that
- *rights particular to* asylum seekers and victims of trafficking fall within the concept of civil rights in the Belfast (Good Friday) Agreement.<sup>19</sup>

2.19. In finding there had been a breach of WF Article 2, the Court of Appeal in *Dillon*, utilised the six-part test set out by the Court of Appeal in *SPUC*<sup>20</sup>

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<sup>13</sup> *Ibid.* at [117]

<sup>14</sup> *Ibid.* at [117], [121]

<sup>15</sup> *Ibid.* at [126]

<sup>16</sup> *Ibid.* at [57], [151]-[158]

<sup>17</sup> *Ibid.* at [149]

<sup>18</sup> *Re: NIHRC and JR295* [2024] NIKB 35 at [68]-[69]

<sup>19</sup> *Ibid.* at [70].

<sup>20</sup> *Re SPUC Pro-Life Limited Application* [2023] NICA 35 at [54].

but found there was “nothing materially contradictory” between 3-part test preferred by the UK Government and the SPUC test, referring to the latter as an “aid not a binding or rigid code.”<sup>21</sup>

- 2.20. These judgments confirm, subject to appeal, that a range of EU measures, beyond those identified by Government, continue to set standards below which the law in NI must not fall. These include parts of the EU asylum acquis to which the UK opted in.
- 2.21. To date, the decisions of the courts have aligned with the Commissions’ analysis set out in our working paper<sup>22</sup> and we welcome the recognition by the courts of the value of our submissions.<sup>23</sup> **Further, in order to mitigate the risk of further litigation, we consider it important that judgments to date of the NI courts on WF Article 2 are reflected in the development and scrutiny of government policy and legislation, unless or until those judgements are overturned by a higher court.**

## Recommendation

- 2.22. **The Commissions recommend that the Northern Ireland Office, the Cabinet Office and other relevant departments act promptly to ensure that judgments of the Northern Ireland higher courts on Windsor Framework Article 2 are reflected in the development and scrutiny of policy and legislation, unless or until there is a contrary ruling.**

## Early consideration of WF Article 2

- 2.23. The Commissions consider that clear and visible leadership and commitment at the highest level by government is required to ensure compliance with WF Article 2. This includes as regards the UKG, Whitehall Departments, the NI Executive and NI Departments.
- 2.24. This leadership and commitment should be evidenced by tangible actions across government, including by ensuring effective guidance and training for relevant officials, embedding early consideration of Article 2 into processes, and being open and transparent in how Article 2

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<sup>21</sup> [Dillon & Ors v SSNI \[2024\] NICA 59 at \[90\] - \[96\]](#).

<sup>22</sup> 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).

<sup>23</sup> [Dillon & Ors v SSNI \[2024\] NICA 59 at \[112\]](#); [Re SPUC Pro-Life Limited Application \[2023\] NICA 35 at \[72\]](#).

compliance considerations have been taken into account when developing legislation.

- 2.25. **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 that there is limited evidence that early consideration of Article 2 has been systematically embedded in policy and legislative development and processes.**
- 2.26. We 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.
- 2.27. In 2021, the Commission published independent research which made a number of recommendations to ensure effective scrutiny of the UK Government's compliance with WF Article 2.<sup>24</sup> The proposed measures included setting out in the Explanatory Memoranda and Human Rights memoranda for new legislation details of the UK Government's consideration of Article 2 compliance. Since then, there has been some but limited progress as outlined below.
- 2.28. In general, the Commissions are concerned there has been very limited or no detail, in Explanatory Memoranda / Human Rights Memoranda and other associated material provided by government on proposed legislation in terms of its consideration of WF Article 2 compliance.
- 2.29. In March 2023, in response to the chairs of four parliamentary Committees,<sup>25</sup> the then 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

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<sup>24</sup> Paul Evans, Alexander Horne, Tasneem Ghazi, '[Legislative Scrutiny and the Dedicated Mechanism for monitoring Article 2 of the Ireland/Northern Ireland Protocol](#)' (ECNI, 2021).

<sup>25</sup> 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.

further advised that the next update of the Guide to Making Legislation<sup>26</sup> would reference the importance of compliance with Article 2.<sup>27</sup>

- 2.30. In January 2024, the Cabinet Office published the aforementioned updated guidance on preparing explanatory memoranda for statutory instruments which advises that where legislation may have interactions with WF Article 2 contact should be made with the Windsor Framework Taskforce in the Cabinet Office.<sup>28</sup> **However, to date, the anticipated update to the Guide to Making Legislation has not been published and the Commissions are not clear as to what degree, if any, it has been updated to include reference to the importance of Article 2 compliance.**
- 2.31. In January, the Home Office 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 WF Article 2 without detailed consideration.<sup>29</sup>
- 2.32. That same month, the UK Government published its Command Paper on Safeguarding the Union, which states that “the Windsor Framework applies only in respect of the trade in goods - the vast majority of public policy is entirely untouched by it”.<sup>30</sup> 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”.<sup>31</sup>
- 2.33. The Committee will be aware that the Windsor Framework does not only apply to trade in goods and that WF Article 2 does, including according to court judgements to date, apply in the context of non-trade issues, including immigration issues, such as treatment of asylum-seekers and potential victims of human trafficking.<sup>32</sup>

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<sup>26</sup> Cabinet Office, ‘Guide to making Legislation’ (CO, 2022).

<sup>27</sup> Letter from Leader of the House of Commons, Penny Mordaunt MP, to Chair of the NI Affairs Committee, Simon Hoare MP, 28 March 2023.

<sup>28</sup> Cabinet Office, ‘Guide to Preparing Explanatory Memoranda (EMs) to Statutory Instruments’ (CO, 2024), at para 6.1.

<sup>29</sup> Home Office, ‘Policy Paper – Safety of Rwanda (Asylum and Immigration) Bill: factsheet’ (HO, 2024).

<sup>30</sup> NI Office, ‘Safeguarding the Union’ (NIO, 2024), at para 46.

<sup>31</sup> Ibid, at para 46.

<sup>32</sup> 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.<sup>32</sup> While the applicant was unsuccessful, the NI High Court rejected the argument that the rights and safeguards in the relevant part of the Belfast (Good Friday) Agreement 1998

- 2.34. **It is also clear that UK Government’s responses to Committee questions relating to WF Article 2 have, on occasion, lacked detail and have not been provided promptly. This has constrained the ability of Committees to properly scrutinise the issues raised by the relevant legislation and WF Article 2.**
- 2.35. For example, in March 2024, the House of Lords Sub-Committee on the WF 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 compliance of the Illegal Migration Act 2023 with WF Article 2.<sup>33</sup>
- 2.36. In addition, 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”.<sup>34</sup>
- 2.37. 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”.<sup>35</sup>
- 2.38. Further, as noted below, the UK Government has, on occasion, not addressed a recommendation by the Sub-Committee - for example, relating to the establishment of a Joint Consultative Working Group subgroup on Article 2 issues.<sup>36</sup>
- 2.39. In terms of the NI Executive embedding consideration of WF Article 2 compliance into processes, there has been some progress. For example, in 2023, the Executive Office published an accompanying WF Article 2 Impact Assessment as part of its consultation on the Draft Strategic

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are frozen in time and limited to the political context of 1998. *In the Matter of an Application by Aman Angesom for Judicial Review* [2023] NIKB 102, para 107.

<sup>33</sup> 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.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> HMG. Government response to the Northern Ireland Protocol Sub-Committee Report on the Windsor Framework. 26 July 2023



Framework to End Violence Against Women and Girls.<sup>37</sup> This was welcomed by the Commissions. However, this approach has not, as yet, been replicated in respect of other consultations and Executive departments.

2.40. Both Commissions have also called for the development and implementation of training and guidance for departmental officials on WF Article 2, including Impact Assessments, to embed consideration of Article 2 throughout legislative and policy processes.<sup>38</sup>

2.41. In 2023, the NI 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.<sup>39</sup>

## **Recommendations**

2.42. **The Commissions recommend that the Committee seeks clarification from the Cabinet Office as to whether its Guide to Making Legislation has been updated to include guidance on the approach to considering and ensuring WF Article 2 compliance, and when this Guide will be published.**

2.43. **The Commissions recommend that UK Government and NI departments:**

- **roll out effective training on WF Article 2 to all relevant officials, and act promptly to ensure UK and NI government guidance on policy and**

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<sup>37</sup> NI Human Rights Commission, 'Submission to the Executive Office's Consultation on the Ending Violence Against Women and Girls Strategic Framework' (NIHRC, 2023).

<sup>38</sup> 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.

<sup>39</sup> Email correspondence from the NI Executive Office to the NI Human Rights Commission, 10 November 2023.

legislative development is updated to include consideration of Article 2.

- ensure that Explanatory Memoranda /notes and Human Rights Memoranda/impact assessments on Bills and draft statutory instruments that may engage Article 2 set out detailed consideration of compliance.

2.44. Aligned to the above recommendations, the Commissions recommend that the Committee seeks clarification from the Secretary of State for Northern Ireland and from The Executive Office on what further steps will be taken to embed consideration of WF Article 2 compliance into processes and procedures across Whitehall and the NI Civil Service, including the timeline for doing so.

### Parliamentary scrutiny

2.45. In relation to the effective parliamentary scrutiny of the WF Article 2 commitment, **the Commissions recognise the important role that a number of Parliamentary Committees have played in this regard.** We consider that the following Committees have a particular scrutiny role; this Committee; the House of Lords European Affairs Committee; the new Northern Ireland Scrutiny Committee; the Joint Committee on Human Rights; and the House of Lords Committee on the Constitution. In addition, Committees, at both Westminster and in the NI Assembly, who are scrutinising specific Bills have a role to play in ensuring WF Article 2 compliance by government.

2.46. **We very much welcome that a number of Committees have raised matters with the UK Government that the Commissions have highlighted to the relevant Committee in terms of WF Article 2 compliance,** including the previous Sub-Committee on the Windsor Framework, the Joint Committee on Human Rights and the European Scrutiny Committee.

2.47. We note that that the European Scrutiny Committee, which conducted in-depth scrutiny of issues relating to the UK's withdrawal from the EU, including matters relating to WF Article 2, has been discontinued.

## **Recommendation**

**2.48. The Commissions recommend that the Committee considers if there are sufficient mechanisms in place to ensure effective Parliamentary scrutiny in terms of WF Article 2 compliance by the UKG, particularly in the absence of the European Scrutiny Committee.**

### **Dynamic alignment commitment - Annex 1 directives**

2.49. As mentioned, and as the Committee will be aware, the UK Government also has ‘dynamic alignment’ obligations arising out of WF Article 13(3), relating to WF Article 2(1), meaning that if the EU decides to amend or replace the rights in the WF Annex 1 Directives the law in Northern Ireland must also develop to take account of this. The UK Government has committed to introduce such changes where they ‘improve’ rights protections.<sup>40</sup>

2.50. To date, the Commissions have identified three EU Directives that amend or replace EU law in WF Annex 1, meaning that we consider that they are within the scope of the ‘dynamic alignment’ obligation, and must be transposed into NI law by the transposition deadlines. The identified Directives are the two Directives on Standards for Equality Bodies<sup>41</sup>, and the Pay Transparency Directive.<sup>42</sup>

2.51. The Commissions welcomed the previous UK Government’s recognition that the Directives on Standards for Equality Bodies, when they were at proposal stage, fell within the scope of Windsor Framework Article 2.<sup>43</sup> Whilst, to date, there has been no further update from either the previous or current UK Government in relation to its position on this

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<sup>40</sup> NIO explainer 2020 Art 2.

<sup>41</sup> [Directive \(EU\) 2024/1500](#) 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 amending Directives 2006/54/EC and 2010/41/EU.

[Directive \(EU\) 2024/1499](#) 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 amending Directives 2000/43/EC and 2004/113/EC.

<sup>42</sup> [EU Directive 2023/970](#) 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

<sup>43</sup> 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.

matter, the Commissions understand that active consideration is currently being given to this matter by a number of NI Departments.

- 2.52. The EU Pay Transparency Directive came into force on 6 June 2023 and must be transposed by Member States by 7 June 2026.<sup>44</sup>
- 2.53. The Commissions' views are set out in a joint briefing paper, published in 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,<sup>45</sup> 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.<sup>46</sup>
- 2.54. 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.<sup>47</sup>
- 2.55. For context, there have been requirements for large employers on gender pay gap reporting in Great Britain since 2017<sup>48</sup> and Ireland has introduced gender pay reporting requirements on certain employers under the Gender Pay Gap Information Act 2021.
- 2.56. In Northern Ireland, 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

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<sup>44</sup> 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.

<sup>45</sup> For example, reporting requirements to the EU Commission.

<sup>46</sup> 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).

<sup>47</sup> The Commissions consider 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 amend and/or replace provisions in the Recast Directive.

<sup>48</sup> 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.

island of Ireland with NI falling behind Ireland, as well as Great Britain, with respect to gender pay transparency.<sup>49</sup>

- 2.57. The NI Department for Communities is currently conducting a public consultation on proposed Gender Pay Gap Information Regulations.<sup>50</sup> However, we are concerned that the consultation makes no reference to proposals to transposing the Pay Transparency Directive into NI law.
- 2.58. **We are concerned that, to date, we have not had confirmation from either the UKG, the NI Executive, The Executive Office or other relevant NI Departments (including the Department for Communities) of their commitment to ensure that the relevant provisions of the EU Pay Transparency Directive are implemented in NI law by 7 June 2026.**

### **Recommendation**

- 2.59. **Pursuant to the UK Government’s obligations under the Windsor Framework, the Commissions recommend that the UKG, the NI Executive, The Executive Office and other relevant NI Departments, ensure that:**
- **the relevant provisions of the EU Directives on Standards for Equality Bodies are implemented in NI law by 19 June 2026;**
  - **the relevant provisions of the EU Pay Transparency Directive are implemented in NI law by 7 June 2026.**

### **Article 2 Stakeholder engagement**

- 2.60. The Committee will be aware that in order to assist the implementation of the WF, the EU and UK set up a number of Committees and Working groups, including the Joint Consultative Working Group (JCWG).
- 2.61. The Commissions have previously highlighted that the establishment of a WF Article 2 ‘structured sub-group’ within the JCWG that focuses on issues relating to WF Article 2 and equality and human rights in NI would

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<sup>49</sup> 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.

<sup>50</sup> Northern Ireland Department for Communities, [Consultation on The Gender Pay Gap Information Regulations](#) (November 2024).

be beneficial.<sup>51</sup> This would help ensure regular and structured engagement and information exchange between the EU and UK 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.

- 2.62. This recommendation was endorsed by the House of Lords Sub-Committee on the WF in its report on the WF.<sup>52</sup> This Committee will note that the UK Government’s response to the Sub-Committee did not address this recommendation relating to a subgroup on Article 2 issues.<sup>53</sup>
- 2.63. When the WF was announced, the Commissions welcomed the introduction of enhanced measures within it to deepen engagement, including with people in NI, and recognition by the EU Commission of the importance of engagement with NI stakeholders.<sup>54</sup>
- 2.64. **However, we reiterate the need for such engagement with the Commissions and NI equality and human rights stakeholders to specifically include a consideration of WF Article 2 issues.** We have also made clear that this engagement should include those working on equality/human rights in the context of cross border issues between Ireland and Northern Ireland.

## Recommendations

### 2.65. The Commissions 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**

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<sup>51</sup> 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).

<sup>52</sup> House of Lords European Affairs Committee. Report from the Sub-Committee on the Protocol on Ireland/Northern Ireland: The Windsor Framework 7<sup>th</sup> Report of Session 2022-23, page 92, para. 298

<sup>53</sup> HMG. Government response to the Northern Ireland Protocol Sub-Committee Report on the Windsor Framework. 26 July 2023

<sup>54</sup> 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).

provide them with the opportunity to highlight in advance any implications of those changes for equality law in NI.

- 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 WF Article 2.
- 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 WF Article 2 . This engagement should include with those working on rights and equality on a cross-border basis.

### **WF Article 2 compliance in the absence of NI Assembly**

- 2.66. **The Commissions consider that the UK Government should ensure that there are robust mechanisms for engaging with compliance issues to avoid a breach of WF Article 2 should the NI Executive be unable to or fail to act in relation to devolved issues.**
- 2.67. 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 WF 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.
- 2.68. 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 WF Article 2.**<sup>55</sup> This could also make explicit

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<sup>55</sup> 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.

commitments on voluntary alignment<sup>56</sup> 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.<sup>57</sup>

2.69. To date the Commissions are not aware that the UKG has committed to undertake a review of legislative safeguards or to establishing such a Memorandum of Understanding.

## Recommendations

2.70. The Commissions recommend that:

- **the UK Government undertakes a review of legislative safeguards in place to ensure compliance with WF Article 2 should the NI Executive or Assembly fail to act as required.**
- **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 WF Article 2.**

## 3. Northern Ireland's access to EU funds

3.1. The ECNI's independent research on the 'Impact of Brexit on Section 75 Equality Groups: EU funding' highlighted that equality of opportunity

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<sup>56</sup> Even where changes to EU law do not amend or replace the WF Annex 1 directives and trigger dynamic alignment obligations, it is within the gift of the NI Assembly to decide to keep pace with any EU laws on a *voluntary* basis. The NI Assembly may wish to do so in instances where EU laws introduced post-EU withdrawal (on or after 1 January 2021) enhance protections and reflect international human rights standards. In instances where such developments will need to be implemented in law in Ireland, but which NI law will not be required to align with pursuant to the WF, there may be cross-border implications. The ECNI in its recent [submission to the NI Assembly Executive Office Committee \(September 2024\)](#) set out examples of some of these EU law developments which have the potential to benefit equality groups, such as women, disabled people, and older people.

<sup>57</sup> 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.



and good relations should be at the heart of government policy making on funding.<sup>58</sup>

### Role of NI departments

- 3.2. This research highlighted 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.<sup>59</sup>
- 3.3. In evidence provided to the then Levelling Up, Housing and Communities Committee on their Inquiry on Funding for Levelling Up (2023), NI departmental officials raised concerns 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.<sup>60</sup>

### Funding shortfalls and ‘cliff edges’

- 3.4. Further, as set out in its policy recommendations,<sup>61</sup> ECNI has highlighted concerns raised by equality stakeholders, including disabled people, women, and young people, that Shared Prosperity Fund replacement funding will not match the level of previous EU funds and that there will be shortfalls in funding.<sup>62</sup> In addition, in March 2023, the ECNI raised concerns with the then 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.<sup>63</sup>
- 3.5. The Committee will be aware that the Government’s Autumn 2024 budget outlined that the Shared Prosperity Fund will be continued ‘at a reduced level for a transition year [from April 2025 to March 2026] by providing £900 million for local authorities to invest in local growth, in advance of wider funding reforms.’ Compared with that year’s allocation

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<sup>58</sup> Rory O’Connell and Tim Cunningham, ‘Impact of Brexit on Section 75 Equality Groups in Northern Ireland: EU Funding’ (ECNI, 2022).

<sup>59</sup> Ibid, at para 2.4.

<sup>60</sup> House of Commons Levelling Up, Housing and Communities Committee, ‘Funding for Levelling Up, Sixth Report of Session 2022-23,’ (HOC, 2023), at para 95.

<sup>61</sup> Equality Commission for NI, ‘Policy Recommendations: Impact of Brexit on Section 75 Equality Groups in Northern Ireland: EU Funding’ (ECNI, 2022)

<sup>62</sup> Ibid, at para 4.24.

<sup>63</sup> Ibid, at para 4.34.

of £1.5bn, this will amount to a reduction of £600m.<sup>64</sup> It is unclear as yet as to what impact this will have in relation to the Shared Prosperity Fund in Northern Ireland.

- 3.6. The ECNI has engaged and consulted with the UK Government including the then Department for Levelling Up, Housing and Communities (now MHCLG) to highlight the relevant findings and recommendations of our research and policy report.
- 3.7. In addition, in March 2024, the ECNI published independent research on the impact of Brexit on women in NI.<sup>65</sup> 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.
- 3.8. 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 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.<sup>66</sup> This research will be available in 2025.
- 3.9. **The ECNI recommends that:**
  - **the MHCLG 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.**
  - **the UK Government should address through future funding arrangements the potential negative impact of the loss of EU funding**

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<sup>64</sup> See: HM Treasury, [Autumn Budget 2024](#), at para 2.81.

<sup>65</sup> Katharine Wright, Ruth McAreavey and Rebecca Donaldson, 'The Impact of Brexit on Women in Northern Ireland' (ECNI, 2024).

<sup>66</sup> Rory O'Connell and Tim Cunningham, 'Impact of Brexit on Section 75 Equality Groups in Northern Ireland: EU Funding' (ECNI, 2022).

**on programmes, including under the European Social Fund, on equality groups, including the impact on the voluntary and community sector.**

- **the Ministry for Housing, Communities and Local Government (MHCLG), 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.**

### **Section 75 Designation of MHCLG**

- 3.10. The ECNI has called on the Secretary of State for NI, to designate for the purposes of Section 75 the UK Government department responsible for the delivery of replacement funding in NI after EU withdrawal: the Shared Prosperity Fund.<sup>67</sup> The responsible department is now the Ministry for Housing, Communities and Local Government (MHCLG), previously the Department for Levelling Up Housing, and Communities (DLUHC).
- 3.11. The Commission wrote to the NI Minister of State in August 2022, and March 2023, requesting that the Secretary of State for NI designate the then Department for Levelling Up, Housing and Communities (now MHCLG) in relation to NI's Section 75 duties.<sup>68</sup> To date, this Department has not yet been designated by the Secretary of State for NI.
- 3.12. The Committee will be aware the implementation of UK Shared Prosperity Fund 2022-24 in Northern Ireland is due to end in March 2025, and we understand that new funding arrangements will be taken forward after that date.
- 3.13. In evidence provided to the then Levelling Up, Housing and Communities Committee on their Inquiry on Funding for Levelling Up (2023), officials from NI departments reiterated the need for designation, noting that it is

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<sup>67</sup> 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.

<sup>68</sup> 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.

“normal practice” for UK Government bodies operating in NI to be designated to ensure their operations in NI adhere to section 75 duties.<sup>69</sup>

- 3.14. In its response to the inquiry, the UK Government noted that “DLUHC 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”.<sup>70</sup>
- 3.15. While we acknowledge that this Department, now MHCLG, is subject to the public sector equality duty under the Equality Act 2010, that duty is not enforceable by an individual in Northern Ireland or by the Commission. The corresponding duty in Northern Ireland, Section 75 of the Northern Ireland Act 1998, which arises from the Belfast (Good Friday) Agreement takes account of the very specific circumstances in Northern Ireland and is enforceable here under the arrangements outlined in Schedule 9 of the 1998 Act.
- 3.16. The MHCLG has significant public functions in Northern Ireland, including being accountable for the overall development and implementation of the EU replacement funds, such as the UK Shared Prosperity Fund and Levelling Up Fund in Northern Ireland , with spending from these funds allocated on matters that lie primarily within areas of devolved responsibility.
- 3.17. Further, we consider that designation is particularly important in light of the significant size and impact of the UK Shared Prosperity Fund on equality groups in Northern Ireland.
- 3.18. ECNI is concerned that that funding of this magnitude and which has had a significant impact on equality groups has been rolled out across Northern Ireland without designation of the MHCLG for the purposes of Section 75. We consider that this lack of accountability and transparency in Northern Ireland is unacceptable.

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<sup>69</sup> House of Commons Levelling Up, Housing and Communities Committee, ‘Funding for Levelling Up, Sixth Report of Session 2022-23,’ (HOC, 2023), at para 93.

<sup>70</sup> 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).

## Recommendation

- 3.19. **ECNI recommends that the Secretary of State for NI, as a matter of priority, designates for the purposes of Section 75 of the NI Act 1998 the Ministry of Housing, Communities, and Local Government.**

## 4. Areas where legislative divergence between Great Britain and Northern Ireland is likely to occur and the mechanisms in place to monitor or manage this.

### Enhance and harmonise rights and log divergence

- 4.1. Prior to 31 December 2020, EU law had facilitated the alignment of many laws on rights and equality between Ireland and NI. In addition, 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.<sup>71</sup> This includes in the areas of gender pay gap reporting, single equality legislation and age discrimination in access to goods, facilities and services.<sup>72</sup>
- 4.2. Therefore prior to Brexit, in some devolved areas, such as equality law, there were already areas of legislative divergence between Northern Ireland and Great Britain-and in some equality areas rights in Northern Ireland were weaker than those in Great Britain.
- 4.3. There is the potential for equality rights to diverge further between NI and Great Britain as a result of the dynamic alignment obligations under the WF, in relation to the equality Directives in WF Annex 1, as referenced earlier. This is also true in the context of the UKG's keeping pace obligations relating to post Brexit Court of Justice of EU (CJEU) case law, including as regards the WF Annex 1 Directives.

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<sup>71</sup> 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).

<sup>72</sup> 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.

- 4.4. **ECNI considers there is value in the UK Government and the Executive Office centrally logging areas of regulatory divergence post Brexit relating to equality and human rights in Northern Ireland and making this information public in an accessible and transparent way.** This should include in the context of divergence of rights between NI and Great Britain, as well as divergence of rights on the island of Ireland. This will increase awareness and understanding of such rights and entitlements in NI post Brexit, and increase accessibility of information, including to equality groups in NI.
- 4.5. In terms of managing the divergence of rights between NI and Great Britain, the ECNI also considers that there are steps the NI Executive and relevant Departments can take to address gaps in protections in equality law that exist between NI and Great Britain. These include, for example, the introduction of single equality legislation, the introduction of legislation prohibiting age discrimination outside employment, and reform of the disability and race equality legislation.

## Recommendations

- 4.6. **The ECNI recommends that:**
- **the UK Government and the NI Executive Office centrally log and publish areas of regulatory divergence post Brexit relating to equality and human rights in NI. This should include divergence of rights between NI and Great Britain, and on the island of Ireland.**
  - **the NI Executive and relevant NI Departments address those gaps in NI equality law highlighted to date by ECNI, that exist between NI and Great Britain.**

## North/South divergence of rights

- 4.7. Whilst the WF requires that NI equality law keeps pace with any EU changes to the Annex 1 equality directives which enhance protections,<sup>73</sup> **there is the potential for equality and human rights on the island of Ireland to diverge after 31 December 2020, with the potential for**

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<sup>73</sup> Article 13, Windsor Framework.

**individuals in Northern Ireland to have fewer rights and protections compared to their cross-border neighbours in Ireland.**

- 4.8. 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) 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.<sup>74</sup>
- 4.9. Where Westminster or the NI Assembly seeks to change legislation in Northern Ireland so as to depart from EU standards that applied prior to Brexit, **there is the potential for such divergence to impact on North - South co-operation.**
- 4.10. The Commissions published separate briefings on the previous Government's Data Protection and Digital Information Bill, which fell before the general elections in 2024, highlighting the potential for the Bill to weaken current data protection rights and safeguards.<sup>75</sup> The NIHRC briefing also cautioned that the Bill had the potential to disrupt the data adequacy agreements between the UK and the EU.<sup>76</sup> 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.<sup>77</sup> The Commissions are considering the Data (Use and Access) Bill currently in passage.
- 4.11. The Commissions have previously urged the UK Government and NI Executive to ensure North-South equivalence of rights, by aligning with

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<sup>74</sup> 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).

<sup>75</sup> 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).

<sup>76</sup> NI Human Rights Commission, 'Briefing on the Data Protection and Digital Information Bill' (NIHRC, 2024), at para 3.10.

<sup>77</sup> 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).

changes to EU equality and human rights law, even where not required to under the WF, that enhance protections and reflect international human rights standards.<sup>78</sup>

- 4.12. 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.
- 4.13. In 2023, independent research published jointly by the ECNI, NIHRC and Irish Human Rights and Equality Commission<sup>79</sup> and the three Commissions subsequent policy recommendations,<sup>80</sup> 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,<sup>81</sup> and the European Accessibility Act.<sup>82</sup> 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.
- 4.14. An update to the three Commissions' research in November 2024 identified the latest EU developments relating to human rights and equality. These primarily relate to the right to health (including the right to a healthy environment), the right to privacy (including the right to data protection), as well as gender discrimination.<sup>83</sup>
- 4.15. 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 and strengthen rights in NI. Specifically, such measures should include the consideration of new EU laws, on a case-by-

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<sup>78</sup> 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).

<sup>79</sup> 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).

<sup>80</sup> 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).

<sup>81</sup> Directive 2019/1158/EU, 'EU Parliament and Council Directive on work-life balance for parents and carers', 20 June 2019.

<sup>82</sup> Directive 2019/882/EU, 'EU Parliament and Council Directive on the accessibility requirements for products and services', 17 April 2019.

<sup>83</sup> Sarah Craig, Claire Lougarre and Rory O'Connell, '[Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland: Update Paper on Developments post January 2022](#)' (October 2024).



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).<sup>84</sup>

## **Recommendations**

### **4.16. The Commissions recommend that:**

- **the UK Government, Irish Government, and NI Executive 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.**
- **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.**

## **5. The operation of the Stormont Brake and applicability motion procedures under Articles 13(3a) and 13(4)**

**5.1. The Commissions welcome that the changes, introduced by the Windsor Framework, to the original Protocol Article 13 (3) do not apply to the Windsor Framework Annex 1 Equality Directives. However, **there is the potential for the ‘Stormont brake’ mechanism, as regards certain EU****

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<sup>84</sup> 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).

**law in Annex 2 of the Windsor Framework, to have implications for equality and human rights in NI and for divergence of rights.<sup>85</sup>**

- 5.2. In particular, a number of EU measures<sup>86</sup> that are listed in Annex 2 of the Windsor Framework, have been identified by the Commissions as falling within scope of the Article 2 ‘non-diminution’ commitment.<sup>87</sup> There is the potential for the ‘Stormont brake’ mechanism to apply to these provisions and for the UK Government subject to a finding of non-compliance by the arbitration panel, the application of an EU rule that amends/ replaces certain EU law within Windsor Framework Annex 2, and the accompanying Court of Justice of the EU (CJEU) interpretation.
- 5.3. The Commissions are concerned that the new mechanism could inhibit changes in NI where these EU laws are amended in ways that could benefit equality groups. This would result in increasing divergence of equality and human rights on the island of Ireland post Brexit.
- 5.4. It is therefore vital that equality and human rights considerations are built into all key stages of the ‘Stormont brake’ mechanism, including inquiries by the Windsor Framework Democratic Scrutiny (WFDS) Committee. It is important that the WFDS Committee undertakes meaningful and timely engagement with the Commissions and equality and human rights groups in Northern Ireland, in relation to a proposed EU measure, or a replacement EU act, to seek their views on the implications for the promotion and protection of equality and human rights in Northern Ireland.
- 5.5. The Commissions have, thus far, not had any substantial engagement with the WFDS Committee as there have, to date, been no inquiries conducted by the Committee relating to new EU acts and replacement EU acts that the Commissions have raised with the Committee as regards the potential to impact on rights or equality.

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<sup>85</sup> Equality Commission for Northern Ireland and Northern Ireland 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).

<sup>86</sup> For example, Article 24 of Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC, amends the law on the manufacture of lifts in relation to access for, and use by, disabled people.

<sup>87</sup> Equality Commission for Northern Ireland and Northern Ireland Human Rights Commission, Working Paper: The Scope of Article 2(1) of the Ireland/ Northern Ireland Protocol, (ECNI and NIHRC, December 2022)

- 5.6. However, the Commissions are aware of concerns regarding the restricted timeframe for the WFDS Committee to conduct an inquiry into relevant EU measures, thus resulting in a very short timeframe for the Committee to consult with relevant stakeholders, including the Commissions and human rights and equality stakeholders, where relevant. We had also highlighted this issue prior to the mechanisms being introduced.

### **Applicability motions**

- 5.7. In addition, the Commissions are concerned that changes introduced, regarding applicability motions, aligned to Article 13(4) of the Windsor Framework, could potentially mean that new procedural hurdles impede the application of a new or amended/replaced EU act that has equality and/or human rights implications.

### **Recommendations**

- 5.8. **The Commissions recommend that:**
- **the Committee reviews the timelines in which the WFDS Committee can conduct inquiries, in light of concerns that there is insufficient time to respond to inquiries.**
  - **the WFDS Committee undertakes meaningful and timely engagement with equality and human rights groups in NI and the Commissions 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.**
  - **equality and human rights considerations are built into all key stages of the Stormont Brake mechanism, including inquiries by the Windsor Framework Democratic Scrutiny (WFDS) Committee.**

## The implementation of commitments contained within the Safeguarding the Union Command Paper.

5.9. As outlined above, the Commissions have expressed their concern regarding the Government's statement in the Safeguarding the Union Command Paper that:

*"The important starting point is that the Windsor Framework applies only in respect of the trade in goods - the vast majority of public policy is entirely untouched by it. This includes important areas like immigration, where the UK's immigration policy and law applies uniformly across the United Kingdom."*

5.10. The Committee will be aware that it the Windsor Framework does not only apply to trade in goods and that Article 2 does, according to court judgements to date, apply in the context of immigration issues such as treatment of asylum-seekers and potential victims of human trafficking.<sup>88</sup>

## 6. Conclusion

5.11. The Commissions welcome the Committee's inquiry on the operation of the Windsor Framework.

5.12. We have also outlined concerns and recommendations regarding the implementation of the WF Article 2 commitment, including the need to embed early and detailed consideration of WF Article 2 compliance into government policy and legislative development and processes; and the need for transposition of relevant provisions of the Pay Transparency Directive into NI law, aligned to the Government's dynamic alignment obligations under WF Article 2.

5.13. The ECNI has outlined a number of pressing concerns and recommendations relating to the loss of EU funding in NI and the current replacement funding arrangements.

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<sup>88</sup>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.<sup>88</sup> While the applicant was unsuccessful, the NI High Court 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. *In the Matter of an Application by Aman Angsom for Judicial Review* [2023] NIKB 102, para 107.

5.14. We would be happy to provide further evidence to the Committee on these issues should it be of use to the Committee.

**31 January 2025**

**ECNI and NIHRC**