



NORTHERN IRELAND
HUMAN RIGHTS
COMMISSION

Submission of the Equality Commission for
Northern Ireland and the
Northern Ireland Human Rights Commission to the
Independent Review of the Windsor Framework

May 2025

Contents

| | |
|--|---|
| 1.0 Introduction..... | 2 |
| 2.0 Windsor Framework Article 2 | 2 |
| 3.0 Scope of the Independent Review..... | 4 |
| 4.0 Implementation of Windsor Framework Article 2..... | 6 |

1.0 Introduction

- 1.1 The Equality Commission for Northern Ireland (ECNI) is an independent public body established under the Northern Ireland Act 1998. Its powers and duties derive from a number of equality statutes providing protection against discrimination on the grounds of age, disability, race, religion and political opinion, sex and sexual orientation. Its remit also includes overseeing the statutory duties on public authorities on the promotion of equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998.
- 1.2 The Northern Ireland Human Rights Commission (the NIHRC), pursuant to section 69(1) the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland (NI).
- 1.3 The NIHRC and ECNI (the Commissions), pursuant to section 78A(1) and 79B(1) of the Northern Ireland Act 1998, respectively, are required to monitor and report on the implementation of Windsor Framework Article 2.¹ In accordance with these functions, the Commissions make this brief submission which we hope will benefit the work of the Independent Review of the Windsor Framework.

2.0 Windsor Framework Article 2

- 2.1 Windsor Framework Article 2 requires the UK Government to ensure that no diminution of rights, safeguards and equality of opportunities contained in the relevant part of the Belfast (Good Friday) Agreement 1998 occurs as a result of the UK's withdrawal from the EU.² This commitment to ensure

¹ The Windsor Framework was formerly known as the Protocol on Ireland/Northern Ireland to the to the Agreement on the Withdrawal of the UK of Great Britain and NI from the EU and the EEAC, 24 January 2020 (UK-EU Withdrawal Agreement). All references to the Protocol in this document have been updated to reflect this change (see 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 Section 7A, EU (Withdrawal) Act 2018 gives effect to all the rights obligations and remedies arising under the UK-EU Withdrawal Agreement without the need for further enactment.

‘no diminution’ is measured by the relevant EU standards as they were on the 31 December 2020.³

- 2.2 The NI Court of Appeal and High Court have handed down rulings interpreting Windsor Framework Article 2, the Belfast (Good Friday) Agreement chapter and the approach to relevant EU law,⁴ with further proceedings expected.⁵
- 2.3 Though some remain subject to appeal, the decisions of the courts have, to date, aligned with the Commissions’ analysis set out in our working paper⁶ and we welcome the recognition by the courts of the value of our submissions.⁷
- 2.4 In addition to the non-diminution commitment, the UK Government has ‘dynamic alignment’ obligations in relation to the six Equality Directives in WF Annex 1⁸, arising out of WF Article 13 (3), relating to WF Article 2(1). This ‘dynamic alignment’ commitment was made by the UK Government to ensure that Northern Ireland did not fall behind minimum European standards in anti-discrimination law.⁹

³ UK Government, ‘UK Government Commitment to No-diminution of Rights, Safeguards and Equality of Opportunity in Northern Ireland’ (NIO, 2020), at para 13.

⁴ See, for example, *Dillon & Ors v Secretary of State for NI* [2024] NICA 59 and *Re NIHRC and JR295* [2024] NIKB 35.

⁵ Jayne McCormack, ‘Criticism of Courts’ decision to allow Legacy Act appeal’, *BBC News*, 10 April 2025.

⁶ 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).

⁷ *Dillon & Ors v SSNI* [2024] NICA 59 at para 112; *Re SPUC Pro-Life Limited Application* [2023] NICA 35 at para 72.

⁸ 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).

⁹ [Explainer: UK Government commitment to no diminution of rights, safeguards and equality of opportunity in Northern Ireland](#), 7 August 2020, para 7, para 12.

3.0 Scope of the Independent Review

- 3.1 The Commissions recall the origins of the Independent Review under the terms of Schedule 6A to the Northern Ireland Act 1998, which deals with democratic consent processes in NI related to EU withdrawal. The Review follows the passing of a consent motion in the NI Assembly by a majority of MLAs voting but not with cross-community support. This consent motion as provided for under the terms of Schedule 6A, applies only to articles 5-10 of the Windsor Framework.
- 3.2 The protection of equality and human rights in Article 2 of the Windsor Framework is outside the scope of Articles 5-10 and not subject to the consent motion. Therefore, it is not relevant for the purposes of Schedule 6A, nor is it specifically included in the Terms of Reference for the Independent Review.
- 3.3 We also note the Review's stated purpose to report on the implications of the WF on social, economic and political life in Northern Ireland, including consideration of any effect of the Windsor Framework on the constitutional status of Northern Ireland.¹⁰
- 3.4 To the extent that the human rights and equality commitment in Article 2 of the Windsor Framework is being considered by the Review, the Commissions draw attention to the following points.
- 3.5 Human rights and equality protections are central to the Belfast (Good Friday) Agreement. The importance of protecting the 1998 Agreement and its human rights and equality commitments was accepted in negotiations leading to the UK's withdrawal from the EU. The commitment to safeguarding equality and human rights protections is reflected in Windsor Framework Article 2.
- 3.6 Due to its constitutional status and the devolution settlement, equality and human rights protections in NI are in many contexts distinct from those in England, Scotland and Wales.¹¹ Nevertheless, human rights and equality

¹⁰ [Independent Review of the Windsor Framework Terms of Reference](#) (Gov.uk, January 2025)

¹¹ See, for example, Northern Ireland Act 1998; Sex Discrimination (NI) Order 1976; Disability Discrimination Act 1995; Race Relations (NI) Order 1997; Equality (Disability, etc.) (NI) Order 2000; Employment Equality (Sexual Orientation) Regulations (NI) 2003; Special Educational Needs and Disability (NI) Order 2005; Disability

protections in NI have often lagged behind developments in other parts of the UK. For example, there is no consolidated, comprehensive equality law in NI, no specific protection against age discrimination in provision of facilities, goods and services in equality law, nor has gender pay gap reporting been implemented in NI.¹² Similarly, developments recognising marriage equality and reproductive rights were implemented in NI a considerable time after comparable developments in Great Britain.¹³

- 3.7 The recitals to the Windsor Framework note that EU law “provided a supporting framework for the provisions on Rights, Safeguards and Equality of Opportunity in the 1998 Agreement”. As noted by the Court of Appeal in NI,

*Article 2(1) is plainly an extremely important provision within the Ireland/Northern Ireland Protocol [Windsor Framework], coming immediately after article 1 which sets out the objectives of the protocol, including that the arrangements set out in the protocol are “necessary... to protect the 1998 Agreement in all its dimensions”.*¹⁴

- 3.8 Article 2 of the Windsor Framework provides a degree of protection in a jurisdiction where human rights and equality remain contested, underpinning Belfast Good Friday Agreement commitments. While important, that protection is limited by the range of relevant EU measures that bound the UK before Brexit.

Discrimination (NI) Order 2006; Employment Equality (Age) Regulations (NI) 2006; Equality Act (Sexual Orientation) Regulations (NI) 2006.

¹² See NI Human Rights Commission, ‘[Annual Statement 2024](#) – Human Rights in NI’ (NIHRC, 2024), NI Human Rights Commission and Equality Commission for NI, ‘[Annual Report on the implementation of Article 2 of the Windsor Framework 2023-2024](#)’ (NIHRC and ECNI, 2024), Equality Commission for NI and NI Human Rights Commission, ‘[Briefing Paper: The EU Pay Transparency Directive: The UK Government’s dynamic alignment obligations relating to Windsor Framework Article 2](#)’ (ECNI and NIHRC, 2024).

¹³ The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019; Abortion (NI) (No 2) Regulations 2020.

¹⁴ *Secretary of State for NI v Dillon* [2024] NICA 59, at para 157.

4.0 Implementation of Windsor Framework Article 2

- 4.1 While entirely outside the democratic consent mechanism and Schedule 6A of the Northern Ireland Act 1998, the effective implementation of Windsor Framework Article 2 is an important part of protecting the human rights and equality commitments in the Belfast (Good Friday) Agreement. The Commissions are therefore not making recommendations to the Independent Review in relation to its implementation but draw the following to the attention of the Review as part of the wider context in which the review is being conducted.
- 4.2 The Commissions consider that clear and visible leadership and commitment at the highest level by government is required to ensure effective implementation of, and compliance with, WF Article 2. This includes as regards the UKG, Whitehall Departments, the NI Executive and NI Departments.
- 4.3 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 compliance considerations have been taken into account when developing legislation.
- 4.4 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 Windsor Framework Article 2 compliance. These materials are essential to parliamentary scrutiny of legislation.
- 4.5 To date, the Commissions have identified three EU Directives within the scope of the ‘dynamic alignment’ obligation, meaning that they must be transposed into NI law by the transposition deadlines.¹⁵ The Commissions’ views on the relevance of the EU Pay Transparency Directive are set out in a joint briefing paper published in March 2024.¹⁶ While it is understood active consideration is being given to transposition

¹⁵ The identified Directives are the two Directives on Standards for Equality Bodies ([Directive \(EU\) 2024/1500](#) and [Directive \(EU\) 2024/1499](#)), and the Pay Transparency Directive ([EU Directive 2023/970](#)).

¹⁶ 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).

of the Directives on Standards for Equality Bodies, there has not been confirmation that the minimum requirements of the EU Pay Transparency Directive will be implemented in NI law.

- 4.6 To date, the decisions of the Northern Ireland High Court and Court of Appeal have aligned with the Commissions’ analysis set out in our working paper on Article 2¹⁷ and we welcome the recognition by the courts of the value of our submissions.¹⁸ We consider it important that these judgments are reflected in the development and scrutiny of government policy and legislation, unless or until there is a contrary ruling.
- 4.7 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.¹⁹
- 4.8. The Review is invited to note the importance of implementing Article 2 in protecting the equality and human rights commitments in the Belfast (Good Friday) Agreement and to distinguish Article 2 from wider recommendations relating to Articles 5 to 10.
- 4.9 In light of this, and in so far as the Review may wish to consider its work in the context of the broader functioning of the WF, including its protection of rights and equalities, we highlight the following resources:
- [Working Paper: The Scope of Article 2\(1\) of the Ireland/Northern Ireland Protocol – \(ECNI and NIHRC, 2022\)](#)
 - [Annual Report on the Implementation of Article 2 of the Windsor Framework \(NIHRC and ECNI, June 2024\)](#)

¹⁷ 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).

¹⁸ [Dillon & Ors v SSNI \[2024\] NICA 59 at \[112\]; Re SPUC Pro-Life Limited Application \[2023\] NICA 35 at \[72\].](#)

¹⁹ 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).

- [Submission of the ECNI and NIHRC to the NI Affairs Committee inquiry on the operation of the Windsor Framework \(January 2025\)](#)

4.10 If it would be of assistance, the Commissions are available to engage with the Review on any of the recommendations raised in these resources.

Contact Us

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