



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Submission the Northern Ireland Scrutiny
Committee Inquiry on Article 2 of the
Protocol/Windsor Framework**

July 2026

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Summary of Advice and Recommendations

The Northern Ireland Human Rights Commission recommends that:

- 3.7 the Committee affirm that human rights and equality were central to the Belfast (Good Friday) Agreement; that human rights and equality standards in NI lagged behind Great Britain and Ireland before Brexit and continue to do so; that EU law underpinned most of what limited progress was made on human rights and equality in NI since 1998; that this is the context that resulted in the negotiation of Windsor Framework Article 2; and that it was designed to protect the Belfast (Good Friday) Agreement by preventing a reduction in EU-derived human rights and equality standards in NI.**
- 4.39 the Committee explore the ambit of the Rights, Safeguards and Equality of Opportunity chapter of the Belfast (Good Friday) Agreement and how it is understood by the two Governments.**
- 4.40 the Committee explore the risk of inferring from ambiguous references in the Dillon judgment that the Rights, Safeguards and Equality of Opportunity chapter of the Belfast (Good Friday) Agreement should be interpreted in a manner that confines the rights and safeguards to those concerned with ending the communal/ sectarian conflict.**
- 4.41 the Committee ask the Secretary of State for NI on what basis, and at what point, the UK Government decided to interpret the rights protected by Windsor Framework Article 2 as confined to those concerned with ending the sectarian conflict. This should include consideration of how this interpretation can be reconciled with, for example:**
- the commitment to a “new beginning” the Declaration of Support to the Belfast (Good Friday) Agreement;**

- the commitment to the rights of “everyone in the community” in the Rights, Safeguards and Equality of Opportunity chapter of that Agreement;
- the rights ‘affirmed in particular’ in that chapter, such as the right to equal opportunity regardless of disability;
- universality of rights and the living instrument doctrine; and
- the EU interpretive obligations arising in relation to Windsor Framework Article 2 and the EU equality directives in Annex 1.

4.42 the Committee ask the Secretary of State for NI when the UK Government discussed, and what it agreed, with its co-guarantor of the Belfast (Good Friday) Agreement, the Government of Ireland, on the scope and interpretation the Rights, Safeguards and Equality of Opportunity chapter.

4.43 the Committee ask the Secretary of State for NI when the UK Government discussed, and what it agreed, with its EU treaty partner on the scope and interpretation of Windsor Framework Article 2, including the UK Government view that the rights protected by Article 2 are confined to those concerned with ending the sectarian conflict in NI.

4.44 the Committee note that even if the Rights Safeguards and Equality of Opportunity chapter of the Belfast (Good Friday) Agreement is understood as a broad-based endorsement of the full range of UK human rights and equality commitments, Windsor Framework Article 2 is necessarily constrained by the limited range of EU law which affects human rights and equality and applies only to those measures which were binding on the UK before Brexit.

4.45 the Committee explore the origin, development and status of the Explainer document on Windsor Framework Article 2, published by the UK Government in 2020; enquire what engagement the UK Government undertook in developing the document, particularly with the EU and the Government of

Ireland; and explain its rationale for withdrawing it and what, if any, engagement it undertook prior to doing so.

4.64 the Committee consider and affirm the importance and value to the public of human rights and equality protections provided in Windsor Framework Article 2.

4.65 the Committee explore with the UK Government the methods by which ambiguities and gaps in the Dillon judgment may be addressed to put Windsor Framework Article 2 on a clear and firm footing, consistent with the expectations of its treaty partner and stakeholders and thereby reduce the risk of litigation and international dispute. Diplomatic options include seeking agreement with the EU on a Decision by the UK-EU Joint Committee on the scope and direct effect of Windsor Framework Article 2 or a joint version of the Explainer document, either of which would automatically be incorporated into UK domestic law by virtue of section 7A, EU (Withdrawal) Act 2018.

5.19 the NI Executive roll out effective training on Windsor Framework Article 2 to all relevant officials and act promptly to ensure guidance on policy and legislative development is updated to include advice on detailed consideration of Windsor Framework Article 2.

5.20 the NI Executive ensure that Explanatory Memoranda and impact assessments set out detailed consideration of compliance with Windsor Framework Article 2. This should include reviewing all provisions of EU law engaged under Windsor Framework Article 2 relevant to the legislation or policy being assessed, including EU law which underpins relevant ECHR rights.

5.21 to facilitate compliance with the dynamic alignment obligation pursuant to Articles 2 and 13 of the Windsor Framework, the Executive Office, the Department for Communities and other relevant departments, publish an annual report monitoring any proposed changes by the EU to

the EU equality directives listed in Annex 1 and relevant CJEU case law.

- 6.8 the Explanatory Notes to legislation applying to NI address Windsor Framework Article 2, in line with Cabinet Office guidance.**
- 6.9 the Human Rights Memoranda to Bills which apply to NI be expanded to include detailed consideration of compliance of the Bill with Windsor Framework Article 2, including relevant EU minimum standards. This should include reviewing all provisions of relevant EU law engaged under Windsor Framework Article 2, including EU law which underpins relevant ECHR rights.**
- 6.11 the Committee urges the UK Government to undertake and publish early and detailed technical analysis of proposed EU law developments, including those of relevance to Windsor Framework Article 2, to facilitate effective parliamentary scrutiny of those developments.**
- 6.12 the Committee consider whether there is early, detailed and effective scrutiny of proposed EU law developments relevant to the dynamic alignment obligations, including under Windsor Framework Article 2, within the UK parliamentary committee structure.**
- 6.16 to ensure effective embedding of Windsor Framework Article 2 in policy and processes, UK Government departments roll out effective training on Article 2 to all relevant officials.**

1.0 Introduction

- 1.1 The Northern Ireland Human Rights Commission (NIHRC), pursuant to section 69(1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland (NI). The NIHRC is also mandated, under section 78A(1) to monitor the implementation of Article 2(1) of the Windsor Framework.¹ In accordance with these functions, this advice is submitted to the House of Lords NI Scrutiny Committee Inquiry on Article 2 of the Protocol/Windsor Framework.
- 1.2 The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), as incorporated by the Human Rights Act 1998, and the treaty obligations of the Council of Europe (CoE) and the United Nations (UN).
- 1.3 The NIHRC further advises on the UK Government's commitment in Windsor Framework Article 2 to ensure there is no diminution of rights, safeguards and equality of opportunity in the relevant section of the Belfast (Good Friday) Agreement as a result of the UK's withdrawal from the EU. This is given effect in UK law by section 7A of the EU (Withdrawal) Act 2018. Section 6 of the Northern Ireland Act 1998 prohibits the NI Assembly from making any law which is incompatible with Windsor Framework Article 2. Section 24 of the 1998 Act also requires all acts of NI Ministers and NI Departments to be compatible with Windsor Framework Article 2.
- 1.4 This NIHRC welcomes the opportunity to respond to the NI Scrutiny Committee Inquiry on Article 2 of the Protocol/Windsor Framework and acknowledges the important and effective role the Committee has played in scrutinising the implementation of Article 2 to date. The NIHRC would be happy to provide further evidence to the Committee, should this prove useful. This response includes a

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 European Atomic Energy Community, 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).

degree of repetition in an effort to ensure that answers to questions are as complete as possible.

2.0 Preliminary Observations

- 2.1 The NIHRC is concerned that the UK Supreme Court judgment in *Dillon*² along with UK Government statements and actions, have resulted in a significant departure from what was negotiated and publicly expressed by Government and understood by stakeholders in relation to Windsor Framework Article 2.
- 2.2 It is of particular concern that the UK Government has repudiated its Explainer document³ which set out the Government's understanding of Windsor Framework Article 2 and was published contemporaneously with UK withdrawal from the EU. The NIHRC was consulted by the UK Government in the development of the Explainer and is disappointed that the UK Government argued against its own guidance before the UK Supreme Court.⁴ This action may have implications for trust and confidence in the UK Government's commitment to human rights in NI.
- 2.3 The NIHRC has a duty under the Northern Ireland Act 1998 to monitor the implementation of Windsor Framework Article 2 and intervened in this case in line with our statutory functions.⁵ The case was brought by the families of victims, who raised human rights concerns both in relation to the ECHR and Windsor Framework Article 2. The NIHRC had serious human rights concerns about the NI Troubles (Legacy and Reconciliation) Act 2023 and published advice on the Bill during its passage.⁶

² *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15.

³ NI Office, 'UK Government Commitment to "No Diminution of Rights, Safeguards and Equality of Opportunity" in Northern Ireland: What does it Mean and How will it be Implemented?' (NIO, 2020).

⁴ For further detail, see response to question 9.

⁵ Section 78A and 78C-E, Northern Ireland Act 1998. See the response to question 10 for further detail.

⁶ House of Commons NI Affairs Committee, 'Oral Evidence: Addressing the Legacy of NI's Past - The UK Government's New Proposals', 7 June 2022; Northern Ireland Human Rights Commission, 'Legislative Scrutiny: NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); Northern Ireland Human Rights Commission, 'Rule 9 Submission to the CoE Committee of Ministers in Relation to the Supervision of the Cases Concerning the Actions of the Security Forces in NI: Advice on NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); Northern Ireland Human Rights Commission, 'Advice on NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022); Letter from the Northern Ireland Human Rights Commission to the Chair of the House of Lords Sub-Committee on the Ireland/Northern Ireland Protocol, Lord Jay, 30 January 2023; Northern Ireland Human Rights Commission, 'Supplementary Briefing: UK Government's Proposed Amendments to NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2023).

- 2.4 The interpretation of the Belfast (Good Friday) Agreement 1998 and the Rights, Safeguards and Equality of Opportunity chapter by the UK Supreme Court is troubling. The Supreme Court used an EU law test to interpret the 1998 Agreement.⁷ The Court also made reference to the background to that Agreement in terms of sectarian conflict which, despite some ambiguity, has prompted suggestions that the Rights, Safeguards and Equality of Opportunity chapter may have been confined by the Court to rights concerned with ending the conflict.⁸
- 2.5 The Supreme Court overturned the NI Court of Appeal decision in certain areas, notably in finding that there was no diminution of rights in relation to the immunity provisions in the 2023 Act.⁹ However, in other regards it has affirmed the NIHRC advice. For example, the Court confirmed that Windsor Framework Article 2 can be relied before the court and the test it used for consideration of Article 2 is not dissimilar to that proposed by the NIHRC.¹⁰
- 2.6 The NIHRC has noted the contrasting and sometimes inaccurate ways in which this complex judgment has been described in Parliament, in the NI Assembly and online. The Committee inquiry is a welcome opportunity to consider its implications and encourage accuracy and completeness in discussion. Vigilance is required to ensure that the judgment is not used to justify an unduly narrow interpretation of Windsor Framework Article 2 that goes beyond the decision of the UK Supreme Court and weakens human rights protections in NI.
- 2.7 The judgment in *Dillon* is complex and nuanced. It focused on the issues put to the court by the applicants resulting in some ambiguity in relation to the scope and application of Windsor Framework Article 2 and gaps in respect of issues not arising. Diplomatic, legal or legislative steps will be required to clarify and ensure compliance with Article 2 under international and domestic law.

⁷ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 113.

⁸ For detail, see responses to questions 5, 6 and 9.

⁹ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 135-136.

¹⁰ For detail, see responses to questions 5 and 7.

3.0 Origins and Obligations of Windsor Framework Article 2

Question 1: Why did the UK and EU negotiate and include Article 2 WF in the Protocol/ Windsor Framework? How does Article 2 WF relate to the Belfast/ Good Friday Agreement?

- 3.1 Human rights and equality protections are at the heart of the Belfast (Good Friday) Agreement 1998 and are central to the peace process in NI. The Declaration of Support to the 1998 Agreement includes a dedication to the “protection and vindication of the human rights of all”. Human rights and equality protections continue to be contested in NI. While the ECHR was incorporated into UK law via the Human Rights Act, a Bill of Rights for NI to reflect the particular circumstances of NI and drawing on international instruments and experience remains outstanding.¹¹ Prior to and since Brexit, human rights and equality standards in NI have lagged behind those in Britain and Ireland in several regards.¹²
- 3.2 As noted in the preamble to the Windsor Framework, EU law “provided a supporting framework for the provisions on Rights, Safeguards and Equality of Opportunity of the 1998 Agreement”. Prior to withdrawal from the EU, many of the significant developments in human rights in NI were the result of EU law obligations. Examples include NI legislation on equality,¹³ the rights of victims of crime and the protection of personal data.¹⁴
- 3.3 The importance of protecting the Belfast (Good Friday) Agreement including its human rights and equality commitments was accepted

¹¹ The NIHRC provided advice to the UK Government in 2008 (Northern Ireland Human Rights Commission, ‘A Bill of Rights for NI: Advice to the Secretary of State for NI’ (NIHRC, 2008)). In 2022, the NI Assembly Ad Hoc Committee on a Bill of Rights reaffirmed that a majority of individuals and groups in NI support a Bill of Rights but was unable to advise as to what form this should take due to the absence of an expert panel and the disagreement of the Democratic Unionist Party. (NI Assembly, ‘Report of the Ad Hoc Committee on Bill of Rights’ (NIA, 2022)).

¹² For example, in areas such as the introduction of marriage equality for same-sex partners and abortion law reform, changes to the NI law were introduced by the UK Parliament rather than the NI Assembly (NI (Executive Formation etc) Act 2019). Similarly, gender pay gap reporting has not been implemented in NI and it remains the only part of the UK and Ireland without this framework in place (see Northern Ireland Human Rights Commission, ‘Submission to the Department for Communities’ Consultation on the Gender Pay Gap Information Regulations’ (NIHRC, 2025)).

¹³ Equality Commission for NI, ‘Submission to the Committee for the Executive Office Inquiry into Gaps in Equality Legislation’ (ECNI, 2024).

¹⁴ The Victim Charter (Justice Act (Northern Ireland) 2015) Order (Northern Ireland) 2015; Explanatory Memorandum to The Victim Charter (Justice Act (Northern Ireland) 2015) Order (Northern Ireland) 2015 SR 2015/370, at para 2.1; Data Protection Act 2018; Explanatory Notes – Data Protection Act 2018, at 8.

as a key issue for resolution in negotiations leading to the UK's withdrawal from the EU.¹⁵ As noted above, the 1998 Agreement affirmed the commitment of all parties to human rights.

3.4 In December 2017, the UK and EU affirmed "that the achievements, benefits and commitments of the peace process will remain of paramount importance to peace, stability and reconciliation" and that the Belfast (Good Friday) Agreement must be protected in all its parts, including in its practical application and the totality of the relationships set out in the Agreement.¹⁶ In this joint statement, the UK Government also made a commitment for the first time to ensuring "no diminution of rights" would be "caused by its departure from the EU, including in the area of protection against forms of discrimination enshrined in EU law".¹⁷

3.5 That commitment to safeguarding human rights and equality protections is reflected in Windsor Framework Article 2. It states:

1. The United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, including in the area of protection against discrimination, as enshrined in the provisions of Union law listed in Annex 1 to this Protocol, and shall implement this paragraph through dedicated mechanisms.
2. The United Kingdom shall continue to facilitate the related work of the institutions and bodies set up pursuant to the 1998 Agreement, including the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland and the Joint Committee of representatives of the Human Rights Commissions of Northern Ireland and Ireland, in upholding human rights and equality standards.

¹⁵ Joint Report from the Negotiators of the EU and UK Government on progress during Phase 1 of Negotiations under Article 50 TEU on the UK's Orderly Withdrawal from the EU, 8 December 2017, at para 42 and 53; Preamble to the Windsor Framework recognised that the UK withdrawal from the EU presented a 'significant and unique challenge to the island of Ireland'.

¹⁶ Joint Report from the Negotiators of the EU and UK Government on progress during Phase 1 of Negotiations under Article 50 TEU on the UK's Orderly Withdrawal from the EU, 8 December 2017, at para 42.

¹⁷ Joint Report from the Negotiators of the EU and UK Government on progress during Phase 1 of Negotiations under Article 50 TEU on the UK's Orderly Withdrawal from the EU, 8 December 2017, at para 53.

3.6 The objectives of the Windsor Framework include the protection of the 1998 Agreement in all its parts.¹⁸ Article 2 is designed to protect the human rights and equality aspects of the 1998 Agreement in line with that objective. The 'ambit' of the Rights, Safeguards and Equality of Opportunity chapter determines the range of EU-derived measures that continue to set minimum standards in NI. How this connection operates to determine the scope of Article 2 is dealt with below in response to questions 5 and 6.

3.7 The NIHRC recommends that the Committee affirm that human rights and equality were central to the Belfast (Good Friday) Agreement; that human rights and equality standards in NI lagged behind Great Britain and Ireland before Brexit and continue to do so; that EU law underpinned most of what limited progress was made on human rights and equality in NI since 1998; that this is the context that resulted in the negotiation of Windsor Framework Article 2; and that it was designed to protect the Belfast (Good Friday) Agreement by preventing a reduction in EU-derived human rights and equality standards in NI.

Question 2: Prior to Brexit, how were the rights, safeguards, and equality of opportunity (RSEO) provisions of the Belfast/ Good Friday Agreement protected?

3.8 The Rights, Safeguards and Equality of Opportunity chapter of the Belfast (Good Friday) Agreement was not drafted as a comprehensive statement of rights and was forward-looking: it anticipated further work to guarantee the enjoyment of rights and was not as a whole incorporated directly into domestic law. While the ECHR was incorporated into UK law via the Human Rights Act, the 1998 Agreement also envisaged a Bill of Rights for NI to supplement ECHR rights and to reflect the particular circumstances in NI, drawing on international instruments and experience.¹⁹ That

¹⁸ Article 1(3), Windsor Framework.

¹⁹ Belfast (Good Friday) Agreement, 10 April 1998, Part 6 on Rights, Safeguards and Equality of Opportunity, at para 4-5. This commitment to a Bill of Rights for Northern Ireland was further elaborated in the Joint Declaration by the British and Irish Governments at Hillsborough Castle in April 2003, para 25-33 and Annex 3.

envisaged framework for rights and equality in NI has not been achieved: a Bill of Rights remain outstanding.

- 3.9 The establishment of the NIHRC and Equality Commission for NI are also provided for in the Rights, Safeguards and Equality of Opportunity chapter and were established under the Northern Ireland Act 1998, which also provides for a statutory equality duty. This is supplemented by a patchwork of individual pieces of equality legislation, some of which are decades old and were often a result of EU obligations.²⁰
- 3.10 While the current rights and equality framework falls short of what was intended under the 1998 Agreement, much of the progress since 1998 resulted from EU obligations. Despite this, prior to and since Brexit, human rights and equality standards in NI have lagged behind those in Britain and Ireland in several regards, as referenced below.

Question 3: What is your view as to the inclusion of Article 2 in the Protocol/ Windsor Framework?

- 3.11 The inclusion of Article 2 within the Windsor Framework is a necessary commitment to rights and equality protection in a society where, in many instances, such protections still fall short of those enjoyed in the rest of the UK and Ireland, and where the fulfilment of rights promised in the Belfast (Good Friday) Agreement are often the subject of political contestation. Windsor Framework Article 1 stipulates the objective of the entire Windsor Framework is to “address the unique circumstances on the island of Ireland, to maintain the necessary conditions for continued North-South cooperation, to avoid a hard border and to protect the 1998 Agreement in all its dimensions”. Article 2 is central to achieving this.
- 3.12 The accepted importance of Windsor Framework Article 2 is evident in the fact that the core commitment not to backtrack on existing rights remained an undisputed element of the UK-EU negotiations

²⁰ Equality Commission for NI, ‘Submission to the Committee for the Executive Office Inquiry into Gaps in Equality Legislation’ (ECNI, 2024).

leading up to the signature and ratification of the UK-EU Withdrawal Agreement²¹ and was reaffirmed by the UK Government in its 2020 Explainer Document.²² Indeed, the previous UK Government noted in 2021 that “the provisions that ensure there is no diminution of human rights in NI as a result of the UK’s withdrawal from the EU are not controversial”.²³

Question 4: What obligation is imposed on the UK Government by Windsor Framework Article 2? What is the significance of this obligation for NI, and for the UK Government?

- 3.13 Windsor Framework Article 2 is a unilateral commitment of the UK Government to the EU in the UK-EU Withdrawal Agreement. As a matter of international law, this is a binding commitment by the UK to its treaty partner and subject to the dispute resolution mechanisms set out in Articles 167 to 181 of the treaty. It is the UK Government’s responsibility to ensure compliance with its international commitments.
- 3.14 Article 4 of the UK-EU Withdrawal Agreement provides for the methods and principles relating to the effect, implementation and application of the Agreement. It requires that provisions of the Withdrawal Agreement, and the provisions of EU law made applicable by it, produce the same legal effects within the UK as within the EU and its Member States. It further specifies that natural or legal persons can rely directly on the provisions “contained or referred to” in the Withdrawal Agreement which meet the conditions for direct effect under EU law. As noted by the UK Supreme Court in *Allister*:

In this way the Withdrawal Agreement makes provision for its direct application in Union law and in UK domestic law. It also makes provision for legal or natural persons being able

²¹ See for example the Joint Report from the Negotiators of the EU and UK Government on progress during Phase 1 of Negotiations under Article 50 TEU on the UK’s Orderly Withdrawal from the EU, 8 December 2017, at para 53; and Theresa May MP, ‘PM Belfast speech: 20 July 2018’ (UKG 2018).

²² NI Office, ‘UK Government Commitment to “No Diminution of Rights, Safeguards and Equality of Opportunity” in Northern Ireland: What does it Mean and How will it be Implemented?’ (NIO, 2020).

²³ UK Government, ‘NI Protocol: the way forward’ (UKG, 2021), at para 37.

to rely directly on the provisions of the Withdrawal Agreement in certain circumstances.²⁴

- 3.15 Section 7A of the EU (Withdrawal) Act 2018 provides that the rights, obligations and remedies arising under the UK-EU Withdrawal Agreement are given legal effect in UK law without the need for further enactment.²⁵ This incorporates the treaty, including Windsor Framework Article 2, into domestic law. The NI Assembly is prohibited from making any law which is incompatible with Windsor Framework Article 2²⁶ and a similar restriction applies regarding all acts of NI departments.²⁷ Westminster legislation affecting NI is also subject to Windsor Framework Article 2.
- 3.16 Windsor Framework Article 2 requires the UK Government to ensure that there is no diminution of rights, safeguards and equality of opportunity contained in the relevant part of the Belfast (Good Friday) Agreement 1998, as a result of the UK's withdrawal from the EU. This means that a range of EU measures that bound the UK before its withdrawal continue to set minimum standards in NI. The majority of EU obligations against which the UK Government commitment is measured relate to the relevant EU standards as they were on 31 December 2020.
- 3.17 Windsor Framework Article 2 is an obligation of result and is largely a 'standstill provision' protecting rights in NI post-Brexit. In addition, there is a narrow dynamic alignment obligation in respect of the six EU equality directives listed in Annex 1 of the Windsor Framework. Article 13(3) of the Windsor Framework provides that where the Windsor Framework refers to an EU law measure, which includes the six equality directives in Annex 1, "that reference shall be read as referring to a Union act as amended or replaced". It is the NIHRC's view that Article 13(3) must be read with Article 2 and therefore the dynamic alignment obligation has effect subject to the requirement that there is no diminution of rights and safeguards.

²⁴ *In the Matter of an Application by James Hugh Allister and another for Judicial Review* [2023] UKSC 5, at para 61.

²⁵ See *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 111.

²⁶ Section 6, Northern Ireland Act 1998.

²⁷ Section 24, Northern Ireland Act 1998.

- 3.18 The dynamic alignment obligation also requires ongoing adherence to relevant Court of Justice of the EU (CJEU) case law.²⁸ Article 13(2) states that provisions of the Windsor Framework referring to EU law or to concepts or provisions thereof should be interpreted in conformity with the relevant case law of the CJEU.²⁹ UK Government and NI departments should therefore consider relevant EU case law in the development of laws and policies in areas covered by the six Annex 1 equality directives. Similarly, NI courts should ensure that consideration of any provision of the six Annex 1 equality directives is in line with relevant CJEU jurisprudence. It is therefore necessary to monitor relevant CJEU case law developments to ensure that NI law is compliant with Articles 2 and 13 of the Windsor Framework.
- 3.19 Windsor Framework Article 2 is an important but limited commitment which means that certain EU measures continue to set minimum standards in NI. It only applies to measures that bound the UK before Brexit and only to the extent that they fall within the 'ambit' of the Rights, Safeguards and Equality of Opportunity chapter of Belfast (Good Friday) Agreement. It is largely a non-diminution or standstill provision. The dynamic alignment obligation only applies to the six EU equality directives specified in Annex 1. As discussed below, the precise scope and application of the obligation remain to be clarified.

4.0 Protection of Rights

Question 5: The UK Supreme Court said in *Dillon* that Article 2(1) WF was directly effective in certain circumstances. What are those circumstances? And what rights are covered in these circumstances?

- 4.1 The UK Supreme Court in *Dillon* applied an EU law test set out by the CJEU in *Demirel*, to indicate when a provision of an international

²⁸ Article 13(2), Windsor Framework.

²⁹ This provides an important qualification to the general approach after the 1 January 2021, as set out in Article 4(4) and 4(5) of the UK-EU Withdrawal Agreement.

agreement, in this case Windsor Framework Article 2, meets the test for direct effect:

regard being had to its wording and to the purpose and nature of the agreement, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure.³⁰

- 4.2 The Court found that Windsor Framework Article 2 is capable of direct effect in certain circumstances, in other words, that individuals may assert their rights under Article 2 before the courts.³¹ This requires the identification of a clear, precise and unconditional obligation by reading Windsor Framework Article 2 *along with* the Rights, Safeguards and Equality of Opportunity chapter of the Belfast (Good Friday) Agreement 1998 *and* the relevant EU measure:

In considering whether article 2(1) is capable of having direct effect it is necessary to focus on “rights, safeguards or equality of opportunity, as set out in [the RSEO chapter]”. It is necessary to identify a clear and precise obligation in EU law by reference to the RSEO chapter.³²

- 4.3 The Court confirmed that Windsor Framework Article 2, when read together with a provision of one of the six equality directives specified in Annex 1, can give rise to a directly effective right against which there should be no diminution.³³ The Court also found that Article 2 is capable of direct effect in conjunction with other EU law instruments, subject to the *Demirel* criteria that they be sufficiently clear, precise and unconditional, and within the ambit of Rights, Safeguards and Equality of Opportunity chapter.³⁴ The Court based its analysis on the issues raised by the applicants noting that they rely on paragraphs 1, 11 and 12 of the Rights, Safeguards and

³⁰ *Lesoochranské zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky*, Case C-240/09, 8 March 2011, at para 44, reiterating the test in *Meryem Demirel v Stadt Schwabisch Gmünd*, Case 12/86, 30 September 1987, at para 14.

³¹ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 111-118 and 125.

³² *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 116.

³³ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 118.

³⁴ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 118.

Equality of Opportunity chapter.³⁵ The court extends its approach to include the rights particularised in the bullet points in paragraph 1 of that Chapter, noting that the applicants did not raise this in pleadings. However, the court found that Article 2 may be capable of direct effect in future cases where other EU instruments are within the ambit of other parts of the Rights, Safeguards and Equality of Opportunity chapter.³⁶

- 4.4 The court explicitly left open the question of whether the rights in the EU Victims' Directive relied on in this case, fell within the ambit of paragraph 11 of the Rights, Safeguards and Equality of Opportunity chapter.³⁷ The court found that rights in Articles 11 and 16 of the EU Victims' Directive did not regulate questions of policy as to when prosecutions should be pursued.³⁸ However, it did not rule out the possibility of those provisions of the EU Victims' Directive having direct effect in the context of an actual or potential individual prosecution.³⁹
- 4.5 While in principle the UK Supreme Court has accepted that Article 2 is capable of direct effect, in practice, by seeking direct effect across Windsor Framework Article 2, the Rights, Safeguards and Equality of Opportunity chapter and the relevant measure, it will make it difficult to rely on this protection.
- 4.6 The NIHRC is concerned that the approach to direct effect taken by the Court creates some confusion about the level of specificity required to find a right within the ambit of the Rights, Safeguards and Equality of Opportunity chapter. In the early part of the judgment the Court considered whether the Rights, Safeguards and Equality of Opportunity chapter creates enforceable rights if read with Windsor Framework Article 2 but *without* any specific EU law.⁴⁰ For example, the Court references the 'high level of generality' in respect of civil rights and paragraphs 11 and 12 of the Rights, Safeguards, and Equality of Opportunity Chapter and does not

³⁵ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 114.

³⁶ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 125.

³⁷ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 133.

³⁸ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 135.

³⁹ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 137.

⁴⁰ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 113.

consider them capable of direct effect on their own terms.⁴¹ However, the Court returns to consider these paragraphs of the Rights, Safeguards and Equality of Opportunity chapter *together with* the EU Victims' Directive and adopts a slightly different tone in this context.⁴² When considering paragraph 11 of the Rights, Safeguards and Equality of Opportunity chapter, the Court finds that it is:

expressed in such broad language... that it might be argued that it is capable of embracing the prosecution of offenders and the award of compensation, on the basis that these may be ways of addressing the suffering of victims of violence.⁴³

4.7 The Court found that the rights asserted under the EU Victims' Directive in this case - rights relating to the prosecution of offenders and award of compensation - could not be considered directly effective when read with the 'civil rights' commitment in the Rights, Safeguards and Equality of Opportunity chapter, since the court considered that this "appears to refer at a general level to civil and political rights".⁴⁴ The court did not consider the possibility of other EU measures falling within the ambit of the civil rights commitment in such a way as to create justiciable rights under Windsor Framework Article 2.

4.8 Article 4 of the UK-EU Withdrawal Agreement sets out interpretive obligations in relation to the Withdrawal Agreement to ensure consistent interpretation. The application of the EU law *Demirel* test for direct effect to Windsor Framework Article 2 is a matter of EU law and may, ultimately, be subject to consideration by the CJEU, should this matter be referred to arbitration under the terms of the Withdrawal Agreement.⁴⁵

4.9 The NIHRC is concerned that the UK Supreme Court has applied an EU law test to the interpretation of the Belfast (Good Friday)

⁴¹ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 114.

⁴² *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 130-133.

⁴³ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 133.

⁴⁴ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 131.

⁴⁵ See Articles 167-181, UK-EU Withdrawal Agreement.

Agreement. The NIHRC is unaware of CJEU caselaw applying the EU *Demirel* test to a treaty to which the EU was not signatory.

Question 6: Who can rely on Article 2 WF and when?

4.10 The NIHRC is concerned about the current lack of clarity on the scope and application of Windsor Framework Article 2, and the departure from what was negotiated, understood and publicly expressed by the UK Government. This section sets out the NIHRC's current understanding of Windsor Framework Article 2, in light of the *Dillon* judgment, looking at the cohort of persons protected and what can be said about the range of rights protected by Article 2. The response to question 9 sets out possible steps to put Article 2 on a clear and firm footing. The response to question 5 dealt with individual redress in terms of direct effect.

Cohort of persons protected

4.11 In the rights, safeguards and equality of opportunity section of the Belfast (Good Friday) Agreement, the parties affirmed their "commitment to the civil rights and religious liberties of **everyone in the community**" (emphasis added).⁴⁶ In the Declaration of Support the parties dedicate themselves to "a fresh start, in which we firmly dedicate ourselves to the achievement of reconciliation, tolerance, and mutual trust, and to the protection and vindication of **the human rights of all**" (emphasis added).

4.12 Human rights are indivisible, interdependent and interrelated⁴⁷ and universality is a cornerstone of human rights. In its Explainer, the UK Government stated that Article 2 was intended to protect the rights of "everyone who is subject to Northern Ireland law – irrespective of whether such law has been passed by the Northern Ireland legislature or Westminster".⁴⁸

⁴⁶ Belfast (Good Friday) Agreement, 10 April 1998, Part 6 on Rights, Safeguards and Equality of Opportunity.

⁴⁷ For example, the Vienna Declaration and Programme of Action 1993, adopted by the World Conference on Human Rights in Vienna, 25 June 1993 reaffirmed that "All human rights are universal, indivisible and interdependent and interrelated"; the preambles of the UN International Covenant on Civil and Political Rights (UN ICCPR) and the UN International Covenant on Economic, Social and Cultural Rights (UN ICESCR) recognise that the full enjoyment of human rights can only be achieved if conditions are created whereby everyone can enjoy the full range of rights in both Covenants.

⁴⁸ NI Office, 'UK Government Commitment to "No Diminution of Rights, Safeguards and Equality of Opportunity" in Northern Ireland: What does it Mean and How will it be Implemented?' (NIO, 2020), at para 8.

- 4.13 The UK Supreme Court in *Dillon* did not specify in the judgment who is protected under Windsor Framework Article 2.⁴⁹ However, the NI High Court found that Article 2 protections can extend to vulnerable people where the relevant legal requirements are met, including within the context of asylum and human trafficking.⁵⁰ The UK Government did not challenge the application of Windsor Framework Article 2 to asylum-seekers or victims of human trafficking, *as individuals*, and challenged only the range of EU law invoked in the case.
- 4.14 Subject to ambiguous references in the *Dillon* judgment to the sectarian conflict in NI, which are dealt with below, Windsor Framework Article 2 has been understood to date as protecting “everyone in the community”, where a relevant EU standard underpins a right within the ambit of the Rights, Safeguards and Equality of Opportunity chapter.

Backdrop of sectarian conflict

- 4.15 As noted above, paragraph 1 of the Rights, Safeguards and Equality of Opportunity chapter commits parties to the “civil rights and religious liberties of everyone in the community”. The second sentence continues “Against the background of the recent history of communal conflict, the parties affirm in particular” a number of rights.
- 4.16 The judgment in *Dillon* states, in relation to paragraph 1, “the rights listed with bullet points are all concerned with ending sectarian conflict”.⁵¹ In the context of a case centring on the legacy of the conflict, this could be read as an acknowledgement that the commitments to human rights in the relevant chapter were part of the response to sectarian conflict, before the judgment goes on to consider whether the legacy-related issues at stake in this case are covered and /or diminished. The NIHRC is concerned, however, that another reading of this sentence is that a link to the sectarian

⁴⁹ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15.

⁵⁰ *In the Matter of an Application by the Northern Ireland Human Rights Commission and JR295 for Judicial Review* [2024] NIKB 35, at paras 68-69.

⁵¹ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 119. See also para 131.

conflict must be demonstrated to invoke Windsor Framework Article 2 on the basis the rights particularised in the bullet points (read with a relevant EU measure). The NIHRC considers that such a reading would be contrary to the ordinary meaning of the Rights, Safeguards and Equality of Opportunity chapter, the object and purpose of the Belfast (Good Friday) Agreement and Windsor Framework Article 2 as interpreted in line with Article 4 of the UK-EU Withdrawal Agreement.

- 4.17 First, it would be difficult to reconcile with the clear language of the Declaration of Support in relation to a “new beginning” based on “the achievement of reconciliation, tolerance, and mutual trust and the protection and vindication of the human rights of all”; and the commitment to the civil rights and religious liberties of “everyone in the community”. Secondly, it is difficult to see how parties to the Belfast (Good Friday) Agreement could have intended equality on grounds of gender or disability to be restricted to a troubles-related context. Moreover, reading the listed rights as being aimed primarily at certain members of the community, or addressing violations only for a particular motive, also jars with the principle of universality, a cornerstone of human rights and the rule of law principle that everyone is equal before the law.
- 4.18 A further issue is that under Article 4 of the UK-EU Withdrawal Agreement, the EU equality directives, referenced in Windsor Framework Article 2, must be interpreted in line with EU norms. A conflict-related restriction on their application would be contrary to the requirements of the Withdrawal Agreement. A conflict-related read would also be difficult to reconcile with the fact that the Windsor Framework was signed decades after the Belfast (Good Friday) Agreement and acknowledges that “Union law has provided a supporting framework for the provisions on Rights, Safeguards and Equality of Opportunity of the 1998 Agreement”.⁵²
- 4.19 There is no evidence that the NIHRC is aware of that Article 2 was negotiated or agreed on the basis of a restrictive interpretation connected to the conflict, nor evidence that the parties to the Belfast (Good Friday) Agreement, including the Government of

⁵² Preamble, Windsor Framework.

Ireland and, until recently the UK Government, ever intended or interpreted the human rights commitments in the relevant chapter as limited to the conflict. There is no reference to such a restriction in the UK Government's Explainer document.

- 4.20 The NIHRC was involved – as were civil society organisations – in discussions with the two Governments and the EU, leading to the drafting of Article 2, advocating for the protection of human rights in the Windsor Framework. If there had been a proposal to narrow the benefits of Article 2 to particular groups in society, the NIHRC could not have welcomed the commitment, given that the NIHRC is national human rights institution, mandated to uphold human rights on the basis of universality and the living instrument doctrine.⁵³

When Windsor Framework Article 2 can be relied upon – the 'ambit' of the Rights, Safeguards and Equality of Opportunity chapter of the Belfast (Good Friday) Agreement

- 4.21 What is beyond dispute is that the interpretation of what the UK Supreme Court called the 'ambit' of the Rights, Safeguards and Equality of Opportunity chapter of the Belfast (Good Friday) Agreement is central to identifying the rights protected and therefore the range of EU law that continues to set minimum standards in NI. The following paragraphs address the content of the chapter as well as its interpretation in the context of the Belfast (Good Friday) Agreement.

- 4.22 The UK Supreme Court indicated that Windsor Framework Article 2 may create justiciable rights in conjunction with "EU instruments falling within the **ambit of the RSEO chapter** if the *Demirel* requirements are satisfied in respect of the obligation imposed" (emphasis added).⁵⁴ However, the UK Supreme Court in *Dillon* did not define the ambit of the chapter nor identify the range of EU law relevant to it, beyond its consideration of the relevant provisions of

⁵³ The NIHRC is accredited as an 'A status' national human rights institution in compliance with UN Paris Principles by the UN Global Alliance of National Human Rights Institutions (A/RES/48/134, 'UN General Assembly Principles Relating to the Status of National Institutions', 20 December 1993).

⁵⁴ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 125.

the EU Victims' Directive and acknowledgement of the EU equality directives in Annex 1.⁵⁵

- 4.23 Based on the facts of the case, the Court only considered three paragraphs of the Rights, Safeguards and Equality of Opportunity chapter relied upon by the applicants (paragraphs 1, 11 and 12) and only considered those paragraphs in relation to the rights asserted under Articles 11 and 16 of the EU Victims' Directive.⁵⁶ The Court did not consider the purpose of the Rights, Safeguards and Equality of Opportunity chapter as a whole in the context of the Belfast (Good Friday) Agreement, nor did it consider any provisions of EU law falling within the scope of the bullet-pointed rights affirmed "in particular" in paragraph 1.⁵⁷
- 4.24 The Court ruled that the commitment to 'civil rights' in paragraph 1 of the Rights, Safeguards and Equality of Opportunity chapter "refer[s] at a general level to civil and political rights" and did not cover the rights in Article 11 or 16 of the EU Victims' Directive.⁵⁸
- 4.25 The Court further ruled that paragraph 12 of the Rights, Safeguards and Equality of Opportunity chapter (the right of victims to remember as well as to contribute to a changed society) did not cover rights under Articles 11 or 16 of the EU Victims' Directive.⁵⁹
- 4.26 Importantly, however, the court said it could be argued that paragraph 11 of the Rights, Safeguards and Equality of Opportunity chapter might be broad enough to cover the relevant rights in the Victims' Directive, but that it did not need to decide on this since there was no diminution of rights in this instance.⁶⁰
- 4.27 Later, the court stated that it was not necessary in the circumstances to rule on whether Articles 11 and 16 of the Victims'

⁵⁵ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 118. Directive 2012/29/EU, 'EU Parliament and Council Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

⁵⁶ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at paras 114 and 130-133.

⁵⁷ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 119.

⁵⁸ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 131.

⁵⁹ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 132.

⁶⁰ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at paras 133 and 136.

Directive⁶¹ may provide enforceable rights as regards individual prosecutions (as opposed to prosecution policy which it has ruled out).⁶²

- 4.28 In leaving these questions open, the UK Supreme Court has not entirely reversed the NI Court of Appeal approach: the relevant provisions of the EU Victims' Directive⁶³ have not been ruled out of scope of the Rights, Safeguards and Equality of Opportunity chapter,⁶⁴ nor has the EU Victims' Directive more generally been dismissed in relation to legislation on legacy.⁶⁵
- 4.29 In addition to the rights addressed in paragraphs 1, 11 and 12, the Rights, Safeguards and Equality of Opportunity chapter deals with many other issues including, for example, the incorporation of the ECHR into domestic law and an envisaged Bill of Rights for NI drawing on international instruments and experience.⁶⁶
- 4.30 Caselaw to date has accepted that ECHR rights fall within the ambit of the Rights, Safeguards and Equality of Opportunity chapter,⁶⁷ but this was not considered by the UK Supreme Court.⁶⁸
- 4.31 It is worth emphasising that the question here is whether the commitment to ECHR rights in the Rights, Safeguards and Equality of Opportunity chapter helps to define the ambit of that chapter and in so doing helps to identify EU law falling within the protection of Windsor Framework Article 2. There is no suggestion that ECHR rights, in themselves, are protected by Windsor Framework Article

⁶¹ Directive 2012/29/EU, 'EU Parliament and Council Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

⁶² *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 137.

⁶³ Directive 2012/29/EU, 'EU Parliament and Council Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

⁶⁴ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 137.

⁶⁵ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at paras 135 and 137. The UK Supreme Court only examined Articles 11 and 16, EU Victims' Directive and while it does confirm that those provisions do not regulate wider policy issues, it did not find it necessary to determine if they apply in the context of an actual or potential *individual* prosecution. The UK Supreme Court does not consider the EU Victims' Directive more generally.

⁶⁶ Belfast (Good Friday) Agreement, 10 April 1998, Part 6 on Rights, Safeguards and Equality of Opportunity, at paras 2 and 4.

⁶⁷ *In the Matter of an Application by the Northern Ireland Human Rights Commission and JR295 for Judicial Review* [2024] NIKB 35, at para 70; *Martina Dillon and Others v Secretary of State for NI* [2024] NICA 59, at paras 117, 119 and 125.

⁶⁸ The Court made reference to ECHR rights in the context of considering the connection between ECHR rights and rights in the EU Charter of Fundamental Rights. See *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 147.

2, since Windsor Framework Article 2 is exclusively concerned with EU minimum standards.

4.32 In its 2020 Explainer document the UK Government confirmed that the “key rights and equality provisions in the [Belfast (Good Friday)] Agreement are supported by the ECHR”.⁶⁹

4.33 The NIHRC and the Equality Commission for NI have taken the view, subject to any future consideration by the courts, that the non-diminution commitment in Windsor Framework Article 2 encompasses the full range of rights set out in the ECHR, *to the extent that they are underpinned by EU legal obligations* in force on or before 31 December 2020.⁷⁰

Approaches to interpreting the Rights, Safeguards and Equality of Opportunity chapter of the Belfast (Good Friday) Agreement

4.34 In *Dillon*, the UK Supreme Court recognised that the 1998 Agreement is made up of two interrelated documents, each annexed to the other: the multi-party agreement; and the agreement between the UK and Ireland, an “international treaty between two sovereign Governments”.⁷¹ The Court considered the Vienna Convention on the Law of Treaties⁷² and recognised that its provisions reflect the relevant international customary law on the interpretation of treaties, although only considered it in the context of the UK-EU Withdrawal Agreement and the Windsor Framework.⁷³

4.35 The Vienna Convention provides that an international treaty should be interpreted in “good faith” and “in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”.⁷⁴ The Vienna Convention further provides supplementary means of interpretation including the “preparatory work of the treaty and the circumstances of its conclusion”.⁷⁵ Having acknowledged these interpretive rules, the

⁶⁹ NI Office, ‘UK Government Commitment to “No Diminution of Rights, Safeguards and Equality of Opportunity” in Northern Ireland: What does it Mean and How will it be Implemented?’ (NIO, 2020), at para 3.

⁷⁰ Northern Ireland Human Rights Commission and Equality Commission for NI, ‘Working Paper: The Scope of Article 2(1) the Ireland/Northern Ireland Protocol’ (NIHRC and ECNI, 2022).

⁷¹ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 2.

⁷² Vienna Convention on the Law of Treaties 1969.

⁷³ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 122.

⁷⁴ Article 31(1), Vienna Convention on the Law of Treaties 1969.

⁷⁵ Article 32, Vienna Convention on the Law of Treaties 1969.

Court did not consider the Belfast (Good Friday) Agreement in the context of the Vienna Convention. Instead, the Court moved to start its analysis by looking at direct effect, based on an approach that involved examining the Rights, Safeguards and Equality of Opportunity chapter for specificity, rather than starting with the context, object and purpose of the 1998 Agreement. Moreover, this led to an examination focused on the rights in question without wider consideration of object and purpose of the provisions. The NIHRC considers that the contextual consideration required for the interpretation of an international treaty is vitally important to understanding the extent of the commitment to upholding the rights contained within it in conjunction with Windsor Framework Article 2.

- 4.36 Important context to the Rights, Safeguards and Equality of Opportunity chapter is provided by the Declaration of Support as referenced above. Further, in the preamble to the British-Irish Agreement 1998, the UK Government and the Government of Ireland reaffirm their “commitment to the principles of equality and mutual respect and to the protection of civil, political, social, economic and cultural rights”.⁷⁶

Accuracy and ambiguity

- 4.37 The NIHRC urges caution to avoid over-stating the *Dillon* judgment in a way that would undermine the object and purpose of the Belfast (Good Friday) Agreement or narrow Windsor Framework Article 2 beyond the Court’s decision. For example, the Secretary of State for NI stated in Parliament that “The Supreme Court’s judgment has ...confirmed the Government’s long-standing position that the rights protected by Article 2 of the Windsor Framework are those concerned with ending the sectarian conflict in Northern Ireland”.⁷⁷ The NIHRC is concerned that this does not accurately reflect the Court’s findings which referred to paragraph 1 of the Rights, Safeguards and Equality of Opportunity chapter of the

⁷⁶ Belfast (Good Friday) Agreement, 10 April 1998 – Preamble to the Agreement between the UK Government and Government of Ireland.

⁷⁷ UK Parliament Hansard, ‘Oral Statement: Supreme Court *Dillon* Judgment – Secretary of State for NI, Hilary Benn MP’, 14 May 2026.

Belfast (Good Friday) Agreement and stated: “The rights listed with bullet points are all concerned with ending sectarian conflict”.⁷⁸

4.38 The NIHRC notes that the *Dillon* judgment is complex and nuanced and that it has been described in contrasting ways and sometimes inaccurately in Parliament, the NI Assembly and online; welcomes the Committee inquiry in creating an opportunity to consider its implications and encourage accuracy and completeness in discussion.

4.39 The NIHRC recommends that the Committee explore the ambit of the Rights, Safeguards and Equality of Opportunity chapter of the Belfast (Good Friday) Agreement and how it is understood by the two Governments.

4.40 The NIHRC recommends that the Committee explore the risk of inferring from ambiguous references in the *Dillon* judgment that the Rights, Safeguards and Equality of Opportunity chapter of the Belfast (Good Friday) Agreement should be interpreted in a manner that confines the rights and safeguards to those concerned with ending the communal/ sectarian conflict.

4.41 The NIHRC recommends that the Committee ask the Secretary of State for NI on what basis, and at what point, the UK Government decided to interpret the rights protected by Windsor Framework Article 2 as confined to those concerned with ending the sectarian conflict. This should include consideration of how this interpretation can be reconciled with, for example:

- **the commitment to a “new beginning” the Declaration of Support to the Belfast (Good Friday) Agreement;**
- **the commitment to the rights of “everyone in the community” in the Rights, Safeguards and Equality of Opportunity chapter of that Agreement;**
- **the rights ‘affirmed in particular’ in that chapter, such as the right to equal opportunity regardless of disability;**

⁷⁸ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 119.

- **universality of rights and the living instrument doctrine; and**
- **the EU interpretive obligations arising in relation to Windsor Framework Article 2 and the EU equality directives in Annex 1.**

4.42 The NIHRC recommends that the Committee ask the Secretary of State for NI when the UK Government discussed, and what it agreed, with its co-guarantor of the Belfast (Good Friday) Agreement, the Government of Ireland, on the scope and interpretation the Rights, Safeguards and Equality of Opportunity chapter.

4.43 The NIHRC recommends that the Committee ask the Secretary of State for NI when the UK Government discussed, and what it agreed, with its EU treaty partner on the scope and interpretation of Windsor Framework Article 2, including the UK Government view that the rights protected by Article 2 are confined to those concerned with ending the sectarian conflict in NI.

4.44 The NIHRC recommends that the Committee note that even if the Rights Safeguards and Equality of Opportunity chapter of the Belfast (Good Friday) Agreement is understood as a broad-based endorsement of the full range of UK human rights and equality commitments, Windsor Framework Article 2 is necessarily constrained by the limited range of EU law which affects human rights and equality and applies only to those measures which were binding on the UK before Brexit.

4.45 The NIHRC recommends that the Committee explore the origin, development and status of the Explainer document on Windsor Framework Article 2, published by the UK Government in 2020; enquire what engagement the UK Government undertook in developing the document, particularly with the EU and the Government of Ireland; and explain its rationale for withdrawing it and what, if any, engagement it undertook prior to doing so.

Question 7: What is classified as a 'diminution' of rights under Article 2 WF and how is a breach determined?

- 4.46 Windsor Framework Article 2 is an obligation of result. It requires that EU minimum standards within the ambit of the Rights, Safeguards and Equality of Opportunity chapter of the Belfast (Good Friday) Agreement are not diminished as a result of EU withdrawal. It does not prevent amendment of UK law and policy; however, any such change should not result in a reduction in the effectiveness of the existing protections, including how that right is claimed or enforced.
- 4.47 In *Dillon*, the UKSC used a three-stage test, which is similar to that proposed by the NIHRC, to assess whether a diminution has occurred:
- i. Is a right, safeguard or equality of opportunity that falls within the Rights, Safeguards and Equality of Opportunity chapter of the Belfast (Good Friday) Agreement engaged?
 - ii. If so, did that right, safeguard or equality of opportunity have legal effect in NI on 31 December 2020 and was it underpinned by EU law? and
 - iii. Was there a diminution of that right, safeguard or equality of opportunity as a result of the UK's withdrawal from the EU?⁷⁹
- 4.48 The UK Supreme Court did not overrule the six-stage framework set out by the NI Court of Appeal in *SPUC*,⁸⁰ but instead preferred the three-stage test noting that it was "not material to the outcome of the appeal".⁸¹
- 4.49 The NI Court of Appeal found that "a diminution prohibited by Article 2 [of the Windsor Framework] might occur either by reducing the substance of a right (as here) or by reducing the efficacy of available remedies".⁸²

⁷⁹ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 128.

⁸⁰ *Society for the Protection of the Unborn Child Pro-Life Ltd v Secretary of State for NI* [2023] NICA 35, at para 54.

⁸¹ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 128.

⁸² *Martina Dillon and Others v Secretary of State for NI* [2024] NICA 59, at para 146.

Question 8: How should a breach of Article 2 WF be remedied. What, if any, are the constitutional implications of disapplying primary legislation for a breach of Article 2 WF?

4.50 Article 4 of the UK-EU Withdrawal Agreement requires the UK to ensure courts have the power to disapply domestic provisions that are inconsistent or incompatible with the Withdrawal Agreement. Section 7A of the EU (Withdrawal) Act 2018 provides that the rights, obligations and remedies arising under the UK-EU Withdrawal Agreement are given legal effect in UK law without the need for further enactment.⁸³

4.51 As noted by the UK Supreme Court in *Allister*:

The answer to any conflict between the Protocol [Windsor Framework] and any other enactment whenever passed or made is that those other enactments are to be read and have effect subject to the rights and obligations which are to be recognised and available in domestic law by virtue of section 7A(2).⁸⁴

4.52 The UK Supreme Court further found that disapplication is not permanent repeal, but that the impugned provisions are “modified to the extent and for the period during which the [Windsor Framework] applies”.⁸⁵

4.53 The Windsor Framework, including Article 2, is an integral part of the UK-EU Withdrawal Agreement.⁸⁶ UK law, whether passed through Westminster Parliament, or the NI Assembly, must be consistent with the UK’s obligations under the UK-EU Withdrawal Agreement. Where there is a breach of Article 2, the relevant provisions should be set aside until such time as that breach is remedied. In *Dillon*, the UK Supreme Court did not consider

⁸³ See *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 111.

⁸⁴ *In the Matter of an Application by James Hugh Allister and another for Judicial Review* [2023] UKSC 5, at para 66.

⁸⁵ *In the Matter of an Application by James Hugh Allister and another for Judicial Review* [2023] UKSC 5, at para 67-68.

⁸⁶ Article 182, UK-EU Withdrawal Agreement.

whether disapplication was required as it found no breach of Windsor Framework Article 2 in this instance.⁸⁷

- 4.54 Any law which is incompatible with Windsor Framework Article 2 is outside the NI Assembly's legislative competence⁸⁸ and a similar restriction applies to all actions and decisions of NI departments.⁸⁹ This means that if the NI Assembly were to inadvertently pass a law of which certain provisions were inconsistent with its obligations under Article 2, those provisions are not law.
- 4.55 In 2025, the NIHRC published independent research on enforcement and remedies in the context of Windsor Framework Article 2.⁹⁰ This research explored the key remedies in EU law prior to Brexit and their continued relevance in the context of Windsor Framework Article 2. It also examined what remedies are available where the UK had not adequately transposed an EU measure prior to Brexit; the application of the right to an effective remedy in the EU Charter of Fundamental Rights; and EU law concepts such as direct effect, consistent interpretation and state liability. The report also explores how the oversight mechanisms under the UK-EU Withdrawal Agreement operate and how they interact with the non-diminution commitment in Article 2.
- 4.56 Breach of Windsor Framework Article 2 is also subject to international oversight. Under sections 78A(9) and 78B(9) of the Northern Ireland Act 1998, the NIHRC and the Equality Commission for NI respectively, may raise matters of concern in relation to Windsor Framework Article 2 with the UK-EU Specialised Committee on the implementation of the Windsor Framework, in line with Windsor Framework Article 14(c). The Specialised Committee may make recommendations to the UK-EU Joint Committee and the Joint Committee may come to agreement or, if agreement cannot be reached, rely on the dispute resolution processes under the UK-EU Withdrawal Agreement.⁹¹

⁸⁷ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 138.

⁸⁸ Section 6, Northern Ireland Act 1998.

⁸⁹ Section 24, Northern Ireland Act 1998.

⁹⁰ Anurag Deb, Sylvia de Mars, Eleni Frantziou, Colin Murray, and Aoife O'Donoghue, 'Windsor Framework Article 2: Enforcement and Remedies' (NIHRC, 2025).

⁹¹ Articles 167-181, UK-EU Withdrawal Agreement.

Question 9: What is your overall assessment as to the success of Article 2 WF in ensuring the protection of rights following the UK's exit from the European Union?

- 4.57 Windsor Framework Article 2 provides an important but limited protection as outlined in response to question 6. The NIHRC is concerned that the capacity of Article 2 to protect rights is uncertain in light of the *Dillon* judgment and UK Government action and statements as referenced above. The aim of the non-diminution commitment was to provide a degree of stability in rights protection and to alleviate anxiety about the potential for a roll-back on those EU law rights after the UK left the EU. In addition to protection against diminution of rights, there is a limited dynamic alignment guarantee in respect of the six equality directives in Annex 1.
- 4.58 The Government has departed from its publicly expressed understanding of what this commitment encompassed, recently removing from its website its Explainer document published in 2020 as referenced above and stating that the UK Supreme Court “confirmed the Government’s long-standing position that the rights protected by Article 2 of the Windsor Framework are those concerned with ending the sectarian conflict in Northern Ireland”.⁹² Concerns about this interpretation and wider concerns about ambiguities and gaps in caselaw are addressed in response to question 6 above.
- 4.59 While the UK Supreme Court rejected consideration of the Explainer on technical grounds, it was not a blanket dismissal of its relevance.⁹³ Moreover the Explainer provides an important insight into the UK Government’s intention regarding its commitment in Article 2. It is deeply worrying that the Government has disavowed its earlier assurances about Windsor Framework Article 2.
- 4.60 Article 2 has attracted public support. Since 2022 the Equality Commission for NI has commissioned an annual public awareness survey to ask a representative sample of the people of NI about

⁹² UK Parliament Hansard, ‘Oral Statement: Supreme Court *Dillon* Judgment – Secretary of State for NI, Hilary Benn MP’, 14 May 2026.

⁹³ *In the Matter of an Application by Martina Dillon and others for Judicial Review* [2026] UKSC 15, at para 122-124.

their awareness of their rights after Brexit, under the Windsor Framework. LucidTalk undertook the survey on behalf of the Equality Commission for NI via their online opinion panel between 9 and 12 May 2025 and there were 1,050 responses. Amongst the key findings were that:

- Just over three quarters of all respondents (78%) were aware that equality and human rights are part of the UK Government's commitments under the Windsor Framework. This is the same proportion of respondents as in 2024, and an increase compared to 70% in 2023 and 53% in 2022.
- A substantial proportion of respondents (69%) indicated that the equality and human rights protections included in the Windsor Framework were important to them (74% in 2024, 75% in 2023 and 72% in 2022).

4.61 The success of Windsor Framework Article 2 also depends to an extent on the degree to which the UK Government and NI Executive embed consideration of Windsor Framework Article 2 in the development of law and policy that apply in NI. As noted below in response to question 13, this process is incomplete. While the Government continues to state publicly that it is committed to Windsor Framework Article 2, the lack of transparency and the UK Government policy of refusing to publish its analysis of Windsor Framework Article 2⁹⁴ makes it difficult to assess the degree to which this commitment is seriously considered in the development of law and policy.

4.62 It was hoped that Windsor Framework Article 2 would provide a robust standstill provision in relation to EU-derived rights relevant to the range of human rights and equality measures listed in the Rights Safeguards and Equality of Opportunity chapter of the Belfast (Good Friday) Agreement, in addition to a measure of dynamic alignment with certain EU equality measures. Given the questions that remain, action is required to place Article 2 on a clear and firm footing, consistent with what was negotiated, agreed and understood.

⁹⁴ Letter from the Secretary of State for NI, Hillary Benn MP to the Northern Ireland Human Rights Commission, 21 May 2026.

4.63 There are four main channels by which treaty implementation issues may be addressed: domestic legislation, litigation, diplomatic engagement or dispute resolution under the UK-EU Withdrawal Agreement. In relation to the present uncertainty over Windsor Framework Article 2, the UK Government could, for example, engage with its treaty partner and issue domestic statutory guidance consistent with the treaty. Alternatively, this matter could be addressed under the auspices of the UK-EU Joint Committee, the body that oversees the implementation of the treaty. A matter may be raised by either party in the Joint Committee or referred to it by the UK-EU Specialised Committee on the implementation of the Windsor Framework. The Joint Committee could agree and issue a Joint Committee Decision, which has the force and standing of UK-EU Withdrawal Agreement provisions⁹⁵ and could set out the scope and application of Article 2. Due to section 7A of the EU (Withdrawal) Act 2018, all obligations created by or arising under the treaty would be automatically incorporated into domestic law. Where the Joint Committee cannot reach agreement on an issue, either party may initiate the dispute resolution processes under Articles 167 to 181 of the UK-EU Withdrawal Agreement. Failure to address the matter by diplomatic means will likely result in further domestic litigation which is costly, time-consuming and may still require diplomatic engagement depending on the outcome. Under Article 14 of the Windsor Framework, the Specialised Committee must “consider any matter of relevance to Article 2 of this Protocol brought to its attention by 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”. The NIHRC has not yet exercised this function and is continuing to consider this matter.

4.64 The NIHRC recommends that the Committee consider and affirm the importance and value to the public of human rights and equality protections understood to be provided in Windsor Framework Article 2.

4.65 The NIHRC recommends that the Committee explore with the UK Government the methods by which ambiguities and gaps

⁹⁵ Article 166, UK-EU Withdrawal Agreement.

in the *Dillon* judgment may be addressed to put Windsor Framework Article 2 on a clear and firm footing, consistent with the expectations of its treaty partner and stakeholders and thereby reduce the risk of litigation and international dispute. Diplomatic options include seeking agreement with the EU on a Decision by the UK-EU Joint Committee on the scope and direct effect of Windsor Framework Article 2 or a joint version of the Explainer document, either of which would automatically be incorporated into UK domestic law by virtue of section 7A, EU (Withdrawal) Act 2018.

5.0 The Commissions

Question 10: What is the role of the Dedicated Mechanism framework in Article 2 WF?

- 5.1 Windsor Framework Article 2(2) outlines the UK Government commitment to implementing Article 2(1) through dedicated mechanisms to protect rights and equality in NI following the UK's withdrawal from the EU. The dedicated mechanism is made up of the NIHRC, the Equality Commission for NI and the Joint Committee of the NIHRC and Irish Human Rights and Equality Commission.
- 5.2 The mechanism to oversee the Government's commitment is given domestic effect through sections 78A-78E of the Northern Ireland Act 1998, which outline the functions of the NIHRC and Equality Commission for NI in relation to the UK-EU Withdrawal Agreement.
- 5.3 The NIHRC is required to monitor the implementation of Windsor Framework Article 2.⁹⁶ It must consider all legislation and policy applicable to NI whether that emanates from the NI institutions or Westminster and advise on any legislative or other measures which ought to be taken to implement Windsor Framework Article 2.⁹⁷ This requires the NIHRC to advise on a potential diminution of rights, through identifying the right or safeguard set out in the relevant chapter of the Belfast (Good Friday) Agreement and the

⁹⁶ Sections 78A(1), Northern Ireland Act 1998.

⁹⁷ Section 78A(5) and (6), Northern Ireland Act 1998.

underpinning EU law, which sets the minimum standard against which there should be no diminution.

- 5.4 In addition, the dynamic alignment commitment requires NI law to be updated to reflect any enhancement to minimum standards of protection enshrined in six EU equality directives listed in Annex 1 to the Windsor Framework.⁹⁸ This is a demanding process and requires horizon scanning for new EU law and policy developments and CJEU case law. Once such developments are identified, ongoing monitoring and detailed analysis is required to identify those areas where NI law requires amendment to reflect those changes.
- 5.5 Where a new EU measure or provision of a new measure supplements, consolidates or further enforces an Annex 1 Equality Directive and does not explicitly state that it will amend or replace that measure, then a systematic approach is required to ensure that any enhancement to rights and protections is reflected in NI law. This clause by clause analysis should take into account at least the legal basis; the aim or purpose of the new measure; the overlap on the substance of rights and safeguards; the degree to which it facilitates the application and implementation of the Annex 1 Directive; whether it facilitates enforcement; the degree to which it interprets and clarifies existing concepts; and any relevant CJEU case law.⁹⁹
- 5.6 Therefore, the Dedicated Mechanism framework provides the oversight and accountability structure for the implementation of the

⁹⁸ Articles 2 and 13, Windsor Framework.

⁹⁹ For example, the EU adopted the Pay Transparency Directive (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), which aims to strengthen the existing enforcement tools and procedures relating to the rights and obligations and equal pay provisions in the EU Gender Equality (Employment) Directive (Directive 2006/54/EC, 'EU Parliament and Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation (Recast)', 5 July 2006), which is listed in Annex 1 of the Windsor Framework. The NIHRC and ECNI conducted a detailed analysis and found that, apart from a small number of provisions that are no longer relevant now that the UK has left the EU, all other provisions of the EU Pay Transparency Directive amend or replace provisions in the EU Gender Equality (Employment) Directive (Equality Commission for NI and Northern Ireland 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)).

non-diminution commitment in NI, established under Windsor Framework Article 2.

Question 11: How are the Commissions resourced? Could this be improved?

- 5.7 In Article 2(2), UK Government commits to implementing Article 2(1) through dedicated mechanisms and to the continued facilitation of the related work of bodies set up pursuant to the Belfast (Good Friday) Agreement, including the NIHRC, the Equality Commission for NI and the Joint Committee of the NIHRC and Irish Human Rights and Equality Commission in upholding human rights and equality standards.¹⁰⁰
- 5.8 Further to the amendments to the Northern Ireland Act 1998 to empower the Commissions in line with Windsor Framework Article 2, the NIHRC receives an additional budget for the purposes of these functions, from the NI Office.
- 5.9 Further to the analysis above, the NIHRC must take time to understand the complexities and implications of the *Dillon* judgment, while taking into account the issues which were not considered by the Court and the ongoing uncertainties. The NIHRC must continue to exercise its functions to bring or intervene in proceedings, or to assist individuals before the courts, in relation to an alleged breach or potential future breach of Windsor Framework Article 2.¹⁰¹
- 5.10 Within this context the NIHRC must also continue to monitor the implementation of Windsor Framework Article 2 and undertake its functions of providing advice to the UK Government and Parliament and to the NI Executive and Assembly, as required.¹⁰² The NIHRC must also promote understanding and awareness of Windsor Framework Article 2, including through research and education.¹⁰³ It is challenging to exercise the NIHRC's functions as fully and effectively as we would like on current resources. However, a

¹⁰⁰ Article 2(2), Windsor Framework.

¹⁰¹ Section 78C and 78D, Northern Ireland Act 1998.

¹⁰² Section 78A(1)-78A(3) and 78A(5)- 78A(6), Northern Ireland Act 1998.

¹⁰³ Section 78A(7)-78A(8), Northern Ireland Act 1998.

further review of the resourcing requirements would be more appropriate when there is more clarity on the scope of Windsor Framework Article 2.

- 5.11 In 2023, following a significant period of deferral, the NIHRC was reaccredited by the UN Global Alliance of National Human Rights Institutions, retaining its 'A status', subject to an interim self-reporting obligation on areas of concern.¹⁰⁴ The Sub-Committee on Accreditation raised concerns about the NIHRC's compliance with UN Paris Principles.¹⁰⁵ The NIHRC was also concerned there would be a potential breach of Windsor Framework Article 2(2) if its 'A-status' was not retained.¹⁰⁶ A subsequent independent review recommended, inter alia, an uplift and comprehensive review of the NIHRC's budget, and a revised sponsorship arrangement between the NIHRC and the NI Office.¹⁰⁷ The UK Government accepted most of the independent review's recommendations, including an agreement, in principle, to a budget review which could consider the ring fenced arrangements that currently exist within the NIHRC's overall budget for work on the Dedicated Mechanism.¹⁰⁸
- 5.12 The UK Government Spending Review 2025-2029 provided a positive outcome on funding and goes some way toward addressing the matters raised by the Sub-Committee on Accreditation.¹⁰⁹ However, at no point over the lifetime of the Spending Review will the NIHRC have reached a level considered sufficient to fund the staffing, infrastructure and institutional capacity required to fully perform its functions or discharge the responsibilities as envisaged. This conclusion is consistent with the findings and recommendations of the two independent reviews.¹¹⁰

¹⁰⁴ Letter from the Global Alliance of National Human Rights Institutions Sub-Committee on Accreditation to the Northern Ireland Human Rights Commission, 1 November 2023.

¹⁰⁵ This review takes place every five years. A/RES/48/134, 'UN General Assembly Principles Relating to the Status of National Institutions', 20 December 1993.

¹⁰⁶ See Letter from Northern Ireland Human Rights Commission to Brandon Lewis MP, Secretary of State for NI, 17 November 2021.

¹⁰⁷ Simon Routh-Jones, 'Independent Review of the Northern Ireland Human Rights Commission' (UKG, 2022). This was published with the UK Government response in 2023.

¹⁰⁸ NI Office, 'UK Government Response to the Independent Review of the Northern Ireland Human Rights Commission 2022' (NIO, 2023), at 5.

¹⁰⁹ Additional funding of £3.5 million has been made available over the period of the Spending Review. This will improve finances and do so progressively by 2028.

¹¹⁰ Simon Routh-Jones, 'Independent Review of the Northern Ireland Human Rights Commission' (UKG, 2022). This was published with the UK Government response in 2023. NI Office, 'UK Government Response to the Independent Review of the Northern Ireland Human Rights Commission 2022' (NIO, 2023). A subsequent independent review was undertaken in 2024, but has not been published by the Government.

5.13 The NIHRC continues to work constructively towards a sustainable solution with the NI Office and acknowledges the significant progress made through the Spending Review; recognises the current context of public spending constraints and the ongoing need for those in receipt of public funds to demonstrate further efficiencies and effective savings, where possible.

Question 12: How would you assess the effectiveness of the existing Windsor Framework structures for formalised engagement between the Northern Ireland Executive and the Commissions? Could they be improved in future? If so, how?

5.14 The NIHRC provides advice to the NI Executive and departments in line with its statutory functions and this includes responding to consultation processes, advice on legislation and policies, NI Assembly scrutiny processes and annual reporting on human rights issues related to Windsor Framework Article 2.¹¹¹ Although these mechanisms provide opportunities for engagement, the effectiveness varies in practice.

5.15 The NIHRC has emphasised the importance of early consideration of Windsor Framework Article 2 obligations to ensure implications of rights, safeguards and equality of opportunity can be identified and addressed prior to policy positions being taken.

5.16 In 2023, the Executive Office issued a Windsor Framework Article 2 Impact Assessment accompanying a consultation.¹¹² However, this approach has not been replicated across the Executive Office or other NI departments. For example, most recently the NIHRC was concerned that the Executive Office consultation on the Draft Framework for Race Relations made no reference to the EU Racial Equality Directive, which is listed in Annex 1 to the Windsor Framework and is subject to dynamic alignment.¹¹³ Moreover,

¹¹¹ Northern Ireland Human Rights Commission, 'Annual Statement 2025 – Human Rights in NI' (NIHRC, 2025); Northern Ireland 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).

¹¹² The Executive Office, 'Article 2(1) Windsor Framework Impact Assessment for the Draft Strategic Framework to End Violence Against Women and Girls' (TEO, 2023); Northern Ireland Human Rights Commission, 'Submission to the Executive Office's Consultation on the Ending Violence Against Women and Girls Strategic Framework' (NIHRC, 2023).

¹¹³ Northern Ireland Human Rights Commission, 'Response to The Executive Office's Consultation on the Framework for Race Relations' (NIHRC, 2026).

when the NIHRC provides advice this is not always considered by departments.

- 5.17 The effectiveness of existing engagement structures should be considered alongside the NIHRC's broader policy advice and scrutiny functions. However, the effectiveness of this oversight is limited unless NIHRC advice is meaningfully considered and embedded within Executive and departmental decision-making processes.
- 5.18 Future improvements should focus on strengthening practical operations of existing structures. For example, improving transparency relating to Windsor Framework Article 2 considerations, ensuring earlier engagement on legislative developments and embedding systematic considerations across policy and legislation processes.
- 5.19 The NIHRC recommends that the NI Executive roll out effective training on Windsor Framework Article 2 to all relevant officials and act promptly to ensure guidance on policy and legislative development is updated to include advice on detailed consideration of Windsor Framework Article 2.**
- 5.20 The NIHRC recommends that the NI Executive ensure that Explanatory Memoranda and impact assessments set out detailed consideration of compliance with Windsor Framework Article 2. This should include reviewing all provisions of EU law engaged under Windsor Framework Article 2 relevant to the legislation or policy being assessed, including EU law which underpins relevant ECHR rights.**
- 5.21 The NIHRC recommends that, to facilitate compliance with the dynamic alignment obligation pursuant to Articles 2 and 13 of the Windsor Framework, the Executive Office, the Department for Communities and other relevant departments, publish an annual report monitoring any proposed changes by the EU to the EU equality directives listed in Annex 1 and relevant CJEU case law.**

6.0 Looking Forward

Question 13: How does the UK Government meet its commitments under Article 2 WF when it is making new legislation? And the Northern Ireland Executive?

Question 13a: How might this be improved?

6.1 Any new international commitment, such as that set out in Windsor Framework Article 2, requires sustained leadership and a significant body of work by the UK Government, NI Executive and others to implement. 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 Windsor Framework Article 2 into policy and legislative development processes; and publishing analysis of compliance with Windsor Framework Article 2. While there has been some progress in this area, the NIHRC considers that significant work is still required at NI Executive and UK Government level to ensure that systematic consideration of Windsor Framework Article 2 is embedded in policy and processes.

UK Government and Parliament

6.2 In 2024, the Cabinet Office published updated guidance on preparing explanatory memoranda for statutory instruments, which advises that where legislation may interact with Windsor Framework Article 2, contact should be made with the Windsor Framework Taskforce in the Cabinet Office.¹¹⁴ However, the guidance does not advise how to identify such situations and must be accompanied by appropriate training to enable relevant officials to identify such interactions. While the NIHRC understands training is made available to officials, materials have not been shared.

6.3 In February 2025, the Cabinet Office published an updated guide to making legislation, which references the importance of Windsor Framework Article 2 compliance.¹¹⁵ Officials with questions about how best to consider Windsor Framework Article 2 when developing

¹¹⁴ Cabinet Office, 'Guide to Preparing Explanatory Memoranda to Statutory Instruments' (CO, 2024), at para 6.1.

¹¹⁵ Cabinet Office, 'Guide to Making Legislation' (CO, 2025).

policy and legislation, are referred to the Rights Team in the NI Office.¹¹⁶ The NIHRC is concerned that this relies on an existing level of knowledge of Windsor Framework Article 2 among officials. Further detail would be required to ensure that officials are adequately informed to identify where legislation may engage Windsor Framework Article 2. This policy has not been consistently applied.

- 6.4 For example, in October 2025, when introducing the NI Troubles Bill to the House of Commons, the accompanying Explanatory Notes referred only to those findings of the NI Court of Appeal that relate to the ECHR and did not refer to the Windsor Framework Article 2 aspects of that case.¹¹⁷ The NI Court of Appeal held that several provisions of the 2023 Act were incompatible with the EU Victims' Directive and therefore in breach of Windsor Framework Article 2.¹¹⁸ In May 2026, following the introduction of the Bill in the new parliamentary session, the UK Government published updated Explanatory Notes to accompany the Bill. These updated notes highlighted the Courts' consideration of both the ECHR and Windsor Framework Article 2 ultimately noting that the UK Supreme Court found that the Legacy Act 2023 did not lead to a diminution of rights contrary to Article 2.¹¹⁹ The NIHRC welcomes this development.
- 6.5 In addition, the NIHRC has for some years contended that, as a domestically incorporated treaty obligation, the UK Government's analysis of Windsor Framework Article 2 compliance should be included in an expanded Human Rights Memorandum accompanying a Bill.
- 6.6 The NIHRC continues to advise Parliamentary Committees on the implementation of Windsor Framework Article 2, however the level of engagement with these issues by those Committees has been inconsistent. There are some positive examples of recent engagement by Committees with Ministers on legislation. The

¹¹⁶ Cabinet Office, 'Guide to Making Legislation' (CO, 2025), at para 10.53.

¹¹⁷ House of Commons, 'Northern Ireland Troubles Bill – Explanatory Notes' (HC, 2025). These Notes relate to the NI Troubles Bill as introduced to the House of Commons on 14 October 2025 (Bill 310 EN 2024-26).

¹¹⁸ *Martina Dillon and Others v Secretary of State for NI* [2024] NICA 59.

¹¹⁹ House of Commons, 'Northern Ireland Troubles Bill – Explanatory Notes' (HC, 2026). These Notes relate to the NI Troubles Bill as introduced to the House of Commons on 14 May 2026 (Bill 006 EN 2026-27).

NIHRC welcomes the active role the NI Scrutiny Committee has played in ensuring that Article 2 is considered by Ministers, following up on correspondence with Ministers,¹²⁰ for example, which has led to analysis of Windsor Framework Article 2 being placed in the public domain.¹²¹ Similarly, the Joint Committee on Human Rights has sought clarification from the UK Government on compliance of the NI Troubles Bill with Windsor Framework Article 2,¹²² leading to a Ministerial response addressing the specific query.¹²³

6.7 However, it remains UK Government policy that it will not publish analysis of Windsor Framework Article 2 compliance of legislation and policy.¹²⁴ The NIHRC remains of the view that transparency is essential and publishing this analysis will support parliamentarians and ensure proper scrutiny of legislation throughout the parliamentary processes.

6.8 The NIHRC recommends that the Explanatory Notes to legislation applying to NI address Windsor Framework Article 2, in line with Cabinet Office guidance.

6.9 The NIHRC recommends that the Human Rights Memoranda to Bills which apply to NI be expanded to include detailed consideration of compliance of the Bill with Windsor Framework Article 2, including relevant EU minimum standards. This should include reviewing all provisions of relevant EU law engaged under Windsor Framework Article 2, including EU law which underpins relevant ECHR rights.

6.10 Prior to its dissolution, the House of Commons European Scrutiny Committee conducted in-depth scrutiny of issues relating to the

¹²⁰ Letter from the Chair of the NI Scrutiny Committee, Lord Carlile of Berriew to the Minister of State in the Home Office, Lord Hanson of Flint, 18 September 2025; Letter from the Minister of State in the Home Office, Lord Hanson of Flint to the Chair of the NI Scrutiny Committee, Lord Carlile of Berriew, 17 October 2025; Letter from the Chair of the NI Scrutiny Committee, Lord Carlile of Berriew to the Minister of State in the Home Office, Lord Hanson of Flint, 5 November 2025.

¹²¹ Letter from the Minister of State in the Home Office, Lord Hanson of Flint to the Chair of the NI Scrutiny Committee, Lord Carlile of Berriew, 26 November 2025.

¹²² Letter from the Chair of the Joint Committee on Human Rights, Lord Alton of Liverpool to the Secretary of State for NI, Hillary Benn MP, 21 May 2026.

¹²³ Letter from the Secretary of State for NI, Hillary Benn MP to the Chair of the Joint Committee on Human Rights, Lord Alton of Liverpool, 28 May 2026.

¹²⁴ Letter from the Secretary of State for NI, Hillary Benn MP to the Northern Ireland Human Rights Commission, 21 May 2026.

UK's withdrawal from the EU, including matters relating to Windsor Framework Article 2.¹²⁵ The UK Government submitted explanatory memoranda on EU proposals which amended or replaced existing measures that fall within the Windsor Framework for consideration by that committee.¹²⁶ Relevant EU laws and proposals now fall under the remit of relevant departmental or other committees.¹²⁷ Therefore those parliamentary committees will need to ensure that there is appropriate monitoring and scrutiny of proposed new EU measures, including those of relevance to the Windsor Framework, to ensure that opportunities for scrutiny of, and influence over, those new measures are maximised.

6.11 The NIHRC recommends that the Committee urges the UK Government to undertake and publish early and detailed technical analysis of proposed EU law developments, including those of relevance to Windsor Framework Article 2, to facilitate effective parliamentary scrutiny of those developments.

6.12 The NIHRC recommends that the Committee consider whether there is early, detailed and effective scrutiny of proposed EU law developments relevant to the dynamic alignment obligations, including under Windsor Framework Article 2, within the UK parliamentary committee structure.

Northern Ireland

6.13 The ability of departmental officials to identify Windsor Framework Article 2 relevant policy areas and carry out the appropriate impact assessment relies on the roll-out of effective training to all relevant officials, as well as the provision of guidance which is updated to include consideration of Article 2. In November 2023, the Executive Office delivered an initial webinar for civil servants on

¹²⁵ House of Commons, 'Press Release: European Scrutiny Committee discontinued', 1 August 2024. Available: [European Scrutiny Committee discontinued - Committees - UK Parliament](#)

¹²⁶ UK Government, 'Government response to the Sub-Committee on the Protocol on Ireland/Northern Ireland's report Scrutiny of EU legislative proposals within the scope of the Protocol on Ireland/Northern Ireland' (UK Gov, 2022), at para 15; House of Lords European Affairs Committee, '5th Report of Session 2021-22 - Report from the Sub-Committee on the Protocol on Ireland/Northern Ireland: Scrutiny of EU legislative proposals within the scope of the Protocol on Ireland/Northern Ireland' (HOL, 2022), at paras 54-60.

¹²⁷ House of Commons, 'Press Release: European Scrutiny Committee discontinued', 1 August 2024. Available: [European Scrutiny Committee discontinued - Committees - UK Parliament](#).

Windsor Framework Article 2 and circulated guidance for policy makers and a checklist and screening document.

- 6.14 The Executive Office has also established an interdepartmental working group which, the NIHRC understands, meets on a monthly basis to share information and learning on Windsor Framework Article 2, with additional ad hoc subgroups on specific themes.¹²⁸ However, while such a group is a welcome means of coordinating departmental consideration of Windsor Framework Article 2, it is not a replacement for appropriate training of officials across departments or the provision of uniform guidance.
- 6.15 The obligations under the Northern Ireland Act 1998 relating to Windsor Framework Article 2 are binding and need to be embedded in the legislative and policy making process in the same way as other obligations under Section 24 of the Northern Ireland Act 1998 such as those governing ECHR compatibility.
- 6.16 To ensure effective embedding of Windsor Framework Article 2 in policy and processes the NIHRC continues to recommend that UK Government departments roll out effective training on Article 2 to all relevant officials.**

Question 14: In light of the devolution settlement for Northern Ireland, what impact does Article 2 WF have on the UK Government's power to legislate on 'excepted' and 'reserved' matters as set out in the Northern Ireland Act 1998?

- 6.17 Windsor Framework Article 2 is binding on the UK Government as a matter of international law, irrespective of the UK's internal devolution arrangements. Insofar as it extends to NI, Westminster legislation must comply with Article 2 Windsor Framework. This is implemented in UK law via Section 7A of the EU (Withdrawal) Act 2018.

¹²⁸ Email correspondence from the NI Executive Office to the Northern Ireland Human Rights Commission, 10 November 2023.

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