

**Call for Expression of Interest on the interaction between
the UN Convention on the Rights of the Persons with
Disabilities and Article 2 of the Windsor Framework**

29 August 2024

The Northern Ireland Human Rights Commission and Equality Commission for Northern Ireland are seeking to contract research on the interaction between the UN Convention on the Rights of Persons with Disabilities, EU law and Article 2 of the Windsor Framework.

The deadline for submitting a quotation is 12 noon on 28 October 2024.

Summary

The Northern Ireland Human Rights Commission and Equality Commission for Northern Ireland are interested in exploring the degree to which the EU's accession to the UN Convention on the Rights of Persons with Disabilities (UN CRPD) contributes to the continued protection of equality and human rights in Northern Ireland and how those rights are enforced as a result of the Withdrawal Agreement. The purpose of this research is to inform policy-makers of the need to consider Windsor Framework Article 2 and its interaction with the UNCRPD. The maximum budget available for this project £25,000 (inclusive of VAT).

1.0 Background

- 1.1 The Northern Ireland Human Rights Commission (NIHRC) is a national human rights institution accredited with 'A' status by the United Nations. Pursuant to section 69(1) of the Northern Ireland Act 1998, the NIHRC reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland (NI).
- 1.2 The Equality Commission for Northern Ireland (ECNI) is an independent public body established under the Northern Ireland Act 1998. Its powers and duties derive from a number of equality statutes providing protection against discrimination on the grounds of age, disability, race, religion and political opinion, sex and sexual orientation. It also oversees the statutory duties on public authorities on the promotion of equality of opportunity and good relations under section 75 of the Northern Ireland Act 1998.
- 1.3 NIHRC and ECNI (the Commissions), pursuant to section 78A(1) and 78B(1) of the Northern Ireland Act 1998 respectively, monitor the implementation of Article 2(1) of the Windsor Framework ('Windsor Framework Article 2')¹ to the EU Withdrawal Agreement. Windsor

¹ The Protocol on Ireland/Northern Ireland was renamed by Decision No 1/2023 of the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023 laying down arrangements relating to the Windsor Framework.

Framework Article 2 is a UK Government commitment to ensure there is no diminution of rights protected in the 'Rights, Safeguards and Equality of Opportunity' chapter of the Belfast (Good Friday) Agreement 1998 as a result of the United Kingdom (UK)'s withdrawal from the EU.

- 1.4 In accordance with Article 33(2) of the UN CRPD, the Commissions are separately designated as the independent mechanism to monitor implementation of the UN CRPD in NI. Together with the Equality and Human Rights Commission and Scottish Human Rights Commission, the two Commissions in NI make up the UK Independent Mechanism.
- 1.5 Pursuant to Sections 78A(7) and 78B(7), the Commissions are seeking to conduct research to examine the ongoing relevance of the EU's accession to the UN CRPD in NI after the UK's withdrawal from the EU.

2.0 Article 2 of the Windsor Framework

- 2.1 During the negotiations leading to the UK's withdrawal from the EU, both the UK and EU recognised that human rights and the Belfast (Good Friday) Agreement required consideration and protection. Both parties affirmed that the 1998 Agreement must be protected in all its parts, including in its practical application and the totality of relationships set out in the agreement.²
- 2.2 Windsor Framework Article 2 requires the UK Government and NI Executive to ensure that there is no diminution of the rights, safeguards and equality of opportunity protections contained in that chapter of the Belfast (Good Friday) Agreement, as a result of the UK leaving the EU. To fall within scope of Article 2 the human right or equality protection being relied on must therefore be covered by the relevant chapter of the Agreement and have been underpinned by EU law and given effect in NI law on, or before, 31 December 2020.

² Joint report from the Negotiators of the EU and UK Government progress during Phase 1 of Negotiations under Article 50 TEU on the UK's Orderly Withdrawal from the EU, 8 December 2017, para 42.

- 2.3 In the rights, safeguards and equality of opportunity chapter of the Belfast (Good Friday) Agreement, the parties affirmed their commitment to “the mutual respect, the civil rights and religious liberties of everyone in the community”, including the “right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity”. The UK Government also committed to incorporation of the ECHR into NI law and the Agreement envisaged a Bill of Rights for NI drawing on international instruments and experience.
- 2.4 Article 13(3) of the Windsor Framework provides that “where this Protocol makes reference to a Union act, that reference shall be read as referring to that Union act as amended or replaced”. Windsor Framework Article 2 therefore entails a commitment by the UK Government that NI equality law will dynamically align or “keep pace” with any EU law developments falling within the six EU Equality Directives³ listed in Annex 1 to the Windsor Framework after 1 January 2021. That means that if the minimum standards in the Annex 1 Directives are updated or replaced, the UK Government must ensure that domestic legislation in Northern Ireland reflects any enhancements in relevant protections.⁴
- 2.5 In addition to the six Directives, there is other relevant EU law that underpins rights set out in the relevant chapter of the Belfast (Good Friday) Agreement. The UK Government has identified that these include, but are not limited to, the EU Victims’ Directive;⁵ the EU

³ Council Directive 2004/113/EC, ‘EU Council Directive implementing the principle of equal treatment between men and women in the access to and supply of goods and services’, 13 December 2004; Directive 2006/54/EC, ‘EU Directive on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation’, 5 July 2006; Council Directive 2000/43/EC, ‘EU Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin’, 29 June 2000; Council Directive 2000/78/EC, ‘EU Council Directive establishing a general framework for equal treatment in employment and occupation’, 27 November 2000; Directive 2010/41/EU, ‘EU Directive on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC’, 7 July 2010; Council Directive 79/7/EEC, ‘EU Council Directive on the progressive implementation of the principle of equal treatment for men and women in matters of social security’, 19 December 1978.

⁴ NI Office, ‘UK Government Commitment to “no diminution of rights, safeguards and equality of opportunity” in Northern Ireland: What does it mean and how will it be implemented?’, (NIO, 2020), at para 13.

⁵ [Directive 2012/29/EU](#), ‘Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime’, 25 October 2012.

Parental Leave Directive;⁶ the EU Pregnant Workers’ Directive,⁷ and “specific measures aimed at protecting the rights of persons with disabilities”.⁸ In addition, the Commissions have identified a range of other measures which fall within the non-diminution commitment.⁹ The UK Government has committed to ensuring that there will be no diminution of protections as were contained in relevant EU law on 31 December 2020.¹⁰

2.6 In line with Article 13(2) of the Windsor Framework, “the provisions of this Protocol referring to Union law or to concepts or provisions thereof shall in their implementation and application be interpreted in conformity with the relevant case law of the Court of Justice of the European Union (CJEU)”. Therefore, the Annex 1 Equality Directives will continue to be informed by future CJEU rulings and, to the extent that such rulings evolve general principles of EU law, the EU Charter of Fundamental Rights and relevant EU Treaty provisions as they relate to implementation of the UN CRPD, these will continue to have relevance in NI.¹¹

2.7 In addition, as noted by Lock et al:

EU constitutional law treats case law pronouncements as interpretations of the law as it was, rather than as incremental developments of that law. ... In this sense, it could be argued that EU measures falling within the non-diminution guarantee that are subsequently reinterpreted by the CJEU

⁶ [Directive 2010/18/EU](#), ‘Council Directive implementing the revised Framework Agreement on parental leave’, 8 March 2010.

⁷ [Directive 92/85/EEC](#), ‘Council Directive on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding’, 19 October 1992.

⁸ NI Office, ‘UK Government Commitment to “no diminution of rights, safeguards and equality of opportunity” in Northern Ireland: What does it mean and how will it be implemented?’, (NIO, 2020), at para 13.

⁹ See Appendix 1 of the NI Human Rights Commission and Equality Commission NI, ‘Working Paper: Scope of Article 2(1) of the Ireland/NI Protocol to the Withdrawal Agreement 2020’, (NIHRC and ECNI, 2022).

¹⁰ 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).

¹¹ Article 13(2) and 13(3), Windsor Framework to the UK-EU Withdrawal Agreement; Re Allister [2021] NIQB 64, para 234.

suffer substantive diminution if their reinterpretation results in a higher level of protection of fundamental rights, but this is not applied in Northern Ireland as a result of Brexit.¹²

2.8 The UK has incorporated the Withdrawal Agreement, including the Windsor Framework, into domestic law through the EU (Withdrawal Agreement) Act 2020. Section 7A EU (Withdrawal) Act 2018 provides that all rights, obligations and remedies from the Withdrawal Agreement, including Article 2, are recognised and available in domestic law. The Commissions have been given additional powers to oversee the UK Government's commitment under Article 2.¹³ The Commissions are responsible for providing advice to government and monitoring, supervising, enforcing and reporting on the ongoing implementation of this commitment.

2.9 The Court of Appeal set out a six-part test for establishing a breach.¹⁴ The Commissions take the following approach when assessing whether Article 2 is engaged, and establishing a potential breach, which is broadly aligned to that of the Court:

- (i) Does the right, safeguard or equality of opportunity protection fall within the relevant part of the Belfast (Good Friday) Agreement?
- (ii) Was the right, safeguard or equality of opportunity protection:
 - (a) underpinned by EU law binding on the UK on 31 December 2020?
 - (b) Given effect in NI law, in whole or in part, on or before 31 December 2020?¹⁵

¹² Tobias Lock, Eleni Frantziou and Anurag Deb, 'the Interaction between the EU Charter of Fundamental Rights and the general principles of EU law with the Windsor Framework' (NIHRC, forthcoming).

¹³ Sections 78A-E, Northern Ireland Act 1998

¹⁴ *Re SPUC Pro-Life Limited* [2023] NICA 35, at para 54.

¹⁵ Where UK and NI law was out of alignment with EU law on 31 December 2020, the absence of a 'domestic implementing measure' is not an insurmountable obstacle to demonstrating a diminution of Protocol Article 2, provided the EU legal

- (iii) Has there been a diminution in the right, safeguard or equality of opportunity protection on or after 1 January 2021?
- (iv) Would this diminution have been unlawful if the UK had remained in the EU?

3.0 The UN CRPD and Withdrawal Agreement

- 3.1 Windsor Framework Article 2 must be interpreted in light of the UK-EU Withdrawal Agreement. Article 4(1) of the Withdrawal Agreement states “Provisions of this agreement and the provisions of EU law made applicable by this agreement shall produce in respect of and in the UK the same legal effect as those which they produce within the Union and its Member States”.¹⁶
- 3.2 Article 4(1) applies both to the provisions of the Withdrawal Agreement and EU law made applicable by it. Moreover, any reference to EU law concepts or provisions in the Withdrawal Agreement must be interpreted and applied in accordance with the methods and general principles of EU law.¹⁷
- 3.3 Article 4(2) of the Withdrawal Agreement states “the UK will ensure compliance with [Article 4(1)], including as regards the required powers of its judicial and administrative authorities to disapply inconsistent or incompatible domestic provisions, through domestic primary legislation”.¹⁸ In addition, in accordance with Article 4(3), provisions of the Withdrawal Agreement referring to EU law and concepts should be interpreted and applied in accordance with the methods and principles of EU law.

obligation existed and was capable of having direct effect on that date. See also *Re SPUC Pro-Life Limited* [2022] NIQB 9, at para 88-90 for further discussion of the relationship between EU underpinning law and Article 2.

¹⁶ Article 4(1), UK-EU Withdrawal Agreement.

¹⁷ Article 4(3), UK-EU Withdrawal Agreement.

¹⁸ Article 4(2), EU-UK Withdrawal Agreement.

- 3.4 Article 2 of the Withdrawal Agreement includes international agreements to which the EU is party within its definition of EU law.¹⁹ In 2010, the EU formally ratified the UN CRPD in accordance with Council Decision 2010/48/EC. Therefore, the UN CRPD is relevant to the interpretation of the Withdrawal Agreement, including Windsor Framework Article 2, and to all EU measures referenced in that Agreement.
- 3.5 The right to equality of opportunity in all social and economic activity, regardless of disability, is listed in the rights, safeguards and equality of opportunity part of the Belfast (Good Friday) Agreement. The UK Government has recognised as within the scope of Windsor Framework Article 2 the supporting framework of EU law which protect the rights of disabled people.²⁰
- 3.6 The Framework Equality Directive, which is listed in Annex 1, protects against discrimination on grounds of disability in employment and vocational training.²¹ This has been implemented in NI law through a range of measures, including through the Disability Discrimination Act 1995.²² The EU’s Disability Strategy 2021-30 notes that a gap exists in EU law to ensure equal treatment of persons with disabilities outside the field of employment.²³

¹⁹ Article 2(a)(iv), EU-UK Withdrawal Agreement. An argument can also be made that the UK-EU Withdrawal Agreement is itself EU law and therefore should be interpreted in light of EU law principles. This is further evidenced by the fact that Article 4(1) applies to the provisions of the Withdrawal Agreement and therefore indicates that it should be interpreted in the same way as a Member State applying EU law.

²⁰ NI Office, ‘UK Government Commitment to “No Diminution of Rights, Safeguards and Equality of Opportunity” in Northern Ireland: What does it Mean and How will it be Implemented?’ (NIO, 2020), at para 13.

²¹ Directive 2000/78/EC, ‘EU Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation’, 27 November 2000.

²² Other implementing measures include the Industrial Tribunals (Interest on Awards in Sex and Disability Discrimination Cases) Regulations (Northern Ireland) 1996 (SI 1996/581); The Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland) 2004 (SI 2004/55); The Disability Discrimination (Northern Ireland) Order 2006. See equality Commission for NI and NI Human Rights Commission, [Table](#) of EU Directives which underpin the Rights, Safeguards and Equality of Opportunity Provisions included in the Chapter of the Belfast (‘Good Friday’) Agreement of the same name and Implementing Domestic Legislation’ (ECNI and NIHRC, 2022).

²³ EU Commission, ‘Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030’ (EU Commission, 2021), at para 5.2.

- 3.7 The Commissions have jointly produced a working paper on the scope of Windsor Framework Article 2 which includes an appendix of EU measures that are considered as underpinning the UK Government's commitment to 'non-diminution' of certain equality and human rights as a result of the withdrawal from the EU.²⁴ Many of the measures identified regulate the rights of persons with disabilities, such as access to air travel²⁵ and bus and coach transport.²⁶
- 3.8 The EU measures listed in the working paper reflect those identified by the Commissions to date and the list may be subject to change, not least in light of any judicial decisions on the scope of Windsor Framework Article 2.

Incorporation of the UN CRPD in the EU legal order

- 3.9 International agreements concluded by the EU are an integral part of EU law, situated below primary sources (such as Treaties and EU Charter) and general principles of EU law, but above secondary sources (such as legislative acts).²⁷ They have a legal force superior to unilateral secondary acts, which must therefore comply with them.²⁸
- 3.10 Therefore, all EU measures such as regulations, directives and decisions must be in conformity with the UN CRPD in so far as their provisions fall within the scope of EU competence. Any conflicting secondary legislation may be annulled by the CJEU in accordance with Article 263 of the Treaty on the Functioning of the European Union (TFEU).

²⁴ NI Human Rights Commission and Equality Commission for NI, 'Working Paper: The Scope of Article 2(1) of the Ireland/Northern Ireland Protocol' (NIHRC, 2022).

²⁵ Regulation 1107/2006/EC, 'Regulation of the European Parliament and of the Council concerning the rights of disabled persons and persons with reduced mobility when travelling by air', 5 July 2006.

²⁶ Regulation 181/2011/EU, 'Regulation of the European Parliament and of the Council concerning the rights of passengers in bus and coach transport', 16 February 2011.

²⁷ EUR-Lex, 'International agreements and the EU's external competences'. Available at: <https://eur-lex.europa.eu/EN/legal-content/summary/international-agreements-and-the-eu-s-external-competences.html>.

²⁸ Ibid.

- 3.11 Since its ratification, it is observed that new EU laws and policies have increasingly mentioned the UN CRPD in their preambles.²⁹ In 2024, the European Disability Expertise, which provides support to the EU Commission in respect of disability, published its most recent mapping report of EU laws and policies affecting people with disabilities.³⁰ It therefore provides insight into the extent to which disability is being mainstreamed across different areas of EU law.³¹
- 3.12 The CJEU has recognised that the UN CRPD is part of the EU legal order and therefore can be relied on for the interpretation of EU measures which impact on the lives of disabled people.³² However, the CJEU has found that the provisions of the UN CRPD do not meet the criteria for direct effect as they are not sufficiently precise and unconditional.³³ While the obligation to ensure that EU law is interpreted in line with the UN CRPD remains, it is considered that the CJEU, to date, has been hesitant to rely on the UN CRPD over existing EU measures where conflicts arise.³⁴
- 3.13 The CJEU has had a number of cases that have clarified the interpretation and application of the rights of persons with disabilities in the application of EU law in national legal systems. For example, the CJEU amended its case law in relation to the definition of disability in the context of the Framework Equality Directive.³⁵ Another area specifically identified by the EU Commission as a field where there are ongoing legal developments, yet where further legislative action may be required, is

²⁹ Roundtable discussion with NI Human Rights Commission, academic researchers and experts in EU law, 15 November 2023.

³⁰ Janina Arsenjeva, 'Annotated Review of European Union Law and Policy with Reference to Disability' (EU Commission, 2024).

³¹ Ibid.

³² *HK Danmark (Jette Ring and Lone Skouboe Werge)*, Case 335/11 and Case 337/11, 11 April 2013, at paras 28-32; *Z v A Government Department*, Case C-363/12, 14 March 2014, at para 85.

³³ *Z v A Government Department*, Case C-363/12, 14 March 2014, at paras 84-91 and accepted by the NI High Court in *Re SPUC Pro-Life Limited* [2022] NIQB 9, at para 131. See also: *In the matter of an application by SPUC Pro-Life Limited for Judicial Review* [2023] NICA 35, at paras 68-72.

³⁴ Roundtable discussion with NI Human Rights Commission, academic researchers and experts in EU law, 15 November 2023. See *Wolfgang Glatzel v Freistaat Bayern*, Case 356/12, 22 May 2014, at paras 67-73.

³⁵ *HK Danmark (Jette Ring and Lone Skouboe Werge)*, Case 335/11 and Case 337/11, 11 April 2013, at para 41.

disability discrimination and the need for measures securing integration of persons with disabilities.³⁶

- 3.14 The European Parliament has recently adopted a Resolution calling for amendments to the EU Framework Employment Equality Directive to ensure the full integration of persons with disabilities and give further effect to the UN CRPD.³⁷ The Parliament has also reiterated its previous calls for the proposed horizontal anti-discrimination directive to be progressed by the Council.³⁸ The need for further legislative change has also been identified by the EU Commission in its most recent report on the Framework Equality Directive.³⁹
- 3.15 The UN CRPD is relevant to the interpretation of the Annex 1 equality directives. In addition, it is also relevant to the interpretation of any additional underpinning EU obligations of the rights, safeguards and equality of opportunity listed in the relevant part of the Belfast (Good Friday) Agreement. The EU's Disability Strategy highlights the complexity in identifying the range of measures in EU law which can have an impact on the rights of disabled people.⁴⁰
- 3.16 The Commissions, alongside the Irish Human Rights and Equality Commission, are undertaking further parallel research on horizon scanning for current and future EU measures which may lead to a

³⁶ *Szpital Kliniczny im. dra J. Babińskiego Samodzielny Publiczny Zakład Opieki Zdrowotnej w Krakowie*, Case C-16/19, 27 January 2021; *TC and UB v Komisja za zashtita ot diskriminatsia and VA ('Jurors')*, Case C-824/19, 21 October 2021; *Tartu Vangla*, Case C-795/19, 15 July 2021; cited in, Equality Commission for NI, NI Human Rights Commission and Irish Human Rights and Equality Commission, 'European Union Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland' (NIHRC, ECNI and IHREC, 2022), at 68-72. *Daouidi v Bootes Plus SL*, Case C-395/15, 1 December 2016; cited in Letter from NI Human Rights Commission and Equality Commission for NI to Head of NI Civil Service, 10 June 2021.

³⁷ European Parliament resolution of 10 March 2021 on the implementation of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation in light of the UNCRPD (2021) OJ C 474/04.

³⁸ European Parliament resolution of 19 April 2023 on combating discrimination in the EU – the long-awaited horizontal anti-discrimination directive (2023/2582(RSP)) OJ C 446.

³⁹ EU Commission, 'Report from the Commission to the European Parliament and the Council on the Application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('the Racial Equality Directive') and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation ('the Employment Equality Directive')', (EC, 2021).

⁴⁰ EU Commission, 'Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030' (EU Commission, 2021), at 5.

divergence of rights on the island of Ireland and measures that may be identified as potential additions to the Annex 1 Equality Directives.⁴¹ This research is ongoing and any findings will be shared with the successful contractor at the earliest opportunity.

Competences of the EU

- 3.17 The EU can only act within the limits of its competences. The competences of the EU and its Member States are defined in the EU Treaties. There are three main categories: exclusive competences of the EU (Article 3 TFEU), shared competences (Article 4 TFEU) and supporting competences (Article 6 TFEU).
- 3.18 The EU has committed to promoting, protecting and implementing the UN CRPD and mainstreaming it within the scope of its competences.⁴² It is a mixed agreement, meaning part of it falls within the scope of the EU powers and part within the scope of the powers of the Member States.
- 3.19 At the point of ratification, the EU Council Decision set out a Declaration of Competence to specify which areas fall within the competence of the EU and within that of Member States. The initial Declaration of Competence set out only three areas as part of the exclusive competence of the EU: the compatibility of State aid with the common market; the Common Customs Tariffs; and obligations with respect to the EU's own public administration to the extent that provisions of EU law are affected by the provision of the Convention.
- 3.20 In terms of the EU's shared competence with Member States, the Declaration refers to combatting discrimination on the ground of

⁴¹ Changes introduced by the Windsor Framework, regarding applicability motions aligned to Article 13(4) of the Windsor Framework, could potentially mean that new procedural hurdles impede the application of a new or amended/replaced EU act that has equality and/or human rights implications. See NI Human Rights Commission and Equality Commission for NI, 'Annual Report of the Equality Commission for NI and the NI Human Rights Commission on the Implementation of Article 2 of the Windsor Framework 2022-2023' (NIHRC and ECNI, 2023), at para 2.17.

⁴² Annex II, Council Decision 2010/48/EC concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities, 26 November 2009 is a Declaration Concerning the Competence of the European Community with regard to matters governed by the UN CRPD.

disability; free movement of goods, persons, services and capital; agriculture; transport by rail, road, sea and air transport; taxation; internal market; equal pay for male and female workers; trans-European network policy; and statistics. However, in some circumstances matters that are initially shared competences may become exclusive competence where the UN CRPD affects common rules previously established by the EU. This transfer of competence is set out in Article 3(2) of the TFEU.⁴³

- 3.21 The Declaration only listed ‘Community acts’ that explicitly mention disability, which may lead to the perception that there is no disability-related competence in some fields where the EU indeed does have the competence to act on them. The UN CRPD Committee appears to be aware of the issue and recommended that the EU “regularly update the declaration of competence and its list of instruments to include recently adopted instruments and instruments that may not specifically refer to persons with disabilities, but that are relevant to persons with disabilities”.⁴⁴
- 3.22 In 2017, a progress report on the implementation of the European Disability Strategy 2010-2020 provided an updated overview of EU Community acts regarding UN CRPD.⁴⁵ In 2023, the EU advised that this list is currently under revision.⁴⁶

The EU Charter

- 3.23 Where required by the UK-EU Withdrawal Agreement, including Windsor Framework Article 2, the EU Charter of Fundamental Rights

⁴³ Article 3(2) TFEU specifies that “The Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope”.

⁴⁴ CRPD/C/EU/CO/1, ‘UN CRPD Committee Concluding observations on the initial report of the European Union’, 2 October 2015.

⁴⁵ EU Commission, ‘Progress Report on the implementation of the European Disability Strategy (2010 – 2020)’ (EC, 2017).

⁴⁶ CRPD/C/EU/2-3, ‘UN CRPD Committee combined second and third reports submitted by the European Union under article 35 of the Convention, pursuant to the optional reporting procedure’, 23 May 2023. See also discussion of EU competences in *Re SPUC Pro-Life Limited* [2023] NICA 35.

continues to have relevance in NI.⁴⁷ This is an exception from the general provision of the EU (Withdrawal) Act 2018 which provides that the EU Charter is not carried over by the general rules on the retention of EU law and is not part of UK law on or after 1 January 2021.⁴⁸

3.24 As noted above, the definition of EU law within the UK-EU Withdrawal Agreement includes the EU Treaties, which encompasses the EU Charter of Fundamental Rights.⁴⁹

3.25 When EU Member States are implementing EU law, they are required to “respect the rights, observe the principles and promote the application” of the EU Charter.⁵⁰ Therefore the EU Charter will continue to apply in the application and interpretation of any EU law and concepts referred to in the Withdrawal Agreement.⁵¹ The NI High Court recently confirmed that the EU Charter remains enforceable in NI and falls within the ambit of Windsor Framework Article 2.⁵² Where a relevant EU measure cannot be read to be compatible with the EU Charter, the Charter must be given precedence. The application of the EU Charter is confined to when Member States are implementing EU law and it does not extend the field of application of EU law.⁵³

3.26 The EU Charter can be considered to have direct effect where it meets the test of being sufficiently precise and unconditional.⁵⁴ It places an obligation on the national courts to “guarantee the full effectiveness of

⁴⁷ NI Human Rights Commission and Equality Commission NI, ‘Working Paper: Scope of Article 2(1) of the Ireland/NI Protocol to the Withdrawal Agreement 2020’, (NIHRC and ECNI, 2022), at 7.7.

⁴⁸ Section 5, EU (Withdrawal) Act 2018. See *Re SPUC Pro-Life Limited* [2022] NIQB 9, at paras 78 and 115.

⁴⁹ Article 2(a)(i), UK-EU Withdrawal Agreement.

⁵⁰ Article 51(1) of the EU Charter of Fundamental Rights; *Åklagaren v Hans Åkerberg Fransson*, Case C-617/10, 26 February 2013; *Vera Egenberger v Evangelisches Werk für Diakonie und Entwicklung eV*, Case C-414/16, 17 April 2018, at para 76.

⁵¹ Article 4(3) provides that where the Withdrawal agreement refers to EU law or concepts, it should be interpreted and applied in accordance with the methods and general principles of EU law. As noted in Kellerbauer et al, “The obligation to apply these provisions in accordance with the general principles of [EU] law means for the UK that it is bound to observe the EU fundamental rights when implementing those provisions of the Agreement. Hence in substance, Article 4(3) has the same effect as article 51(1) if the EU Charter of Fundamental Rights.” Kellerbauer, Dumitriu-Segnana, Thomas Liefänder, ‘The UK-EU Withdrawal Agreement – A Commentary’ (OUP, 2021), at 39.

⁵² In the matter of an application by Aman Angesom [2023] NIKB 102, at para 94. See also *AT v Secretary of State for Work and Pensions* [2023] ECWA Civ 1307; *Re Dillon and others* [2024] NIKB 11; *Re NIHRC and Another* [2024] NIKB 35.

⁵³ Article 51 of the EU Charter of Fundamental Rights.

⁵⁴ *Vera Egenberger v Evangelisches Werk für Diakonie und Entwicklung eV*, Case C-414/16, 17 April 2018, at para 78.

those articles by disapplying, if need be, any contrary provision of national law”.⁵⁵

3.27 As noted above, pursuant to Article 4(1), the Withdrawal Agreement produces ‘the same legal effects’ on the UK as EU law on EU Member States, including compliance with the EU Charter on Fundamental Rights and the general principles of EU law.⁵⁶

3.28 The EU Charter contains two explicit references to disability and contains other provisions which have implications for persons with disabilities. Article 21 of the EU Charter prohibits discrimination on the ground of disability and Article 26 recognises the right of people with disabilities to benefit from measures to ensure their independence, social and occupational integration and participation in the life of the community. Other provisions include the right to physical and mental integrity (Article 3), the right to education (Article 14), the right to engage in work (Article 15), rights of the elderly (Article 25), and the right to social security (Article 34). Therefore, provisions of the EU Charter are closely linked to the UN CRPD and will continue to have relevance to Windsor Framework Article 2 and its interpretation.

3.29 The NIHRC is publish independent research on the interaction between Windsor Framework Article 2 and the EU Charter, including general principles of EU law and CJEU case law in September 2024.⁵⁷

4.0 Annexes 2-5 of the Ireland/Northern Ireland Protocol

4.1 Annex 2 of the Windsor Framework lists all of the required pieces of legislation that still apply to NI to keep it aligned with EU product standards and covers areas such standards on motor vehicles, lifts, medicinal products, medical devices, and rail transport. Windsor

⁵⁵ Ibid, 17 April 2018, at para 79.

⁵⁶ For further discussion on the EU Charter and Windsor Framework Article 2 see Bernard McCloskey, ‘Charter of Fundamental Rights’ in McCrudden (ed), ‘The Law and Practice of the Ireland-Northern Ireland Protocol’ (OUP, 2021), at 164-166.

⁵⁷ See: NI Human Rights Commission, ‘Tender for Research on the Interaction between the EU Charter of Fundamental Rights & Article 2 of the Ireland/Northern Ireland Protocol’ (NIHRC, 2022).

Framework Article 5(4) states “the provisions of Union law listed in Annex 2 to this [Framework] shall also apply, under the conditions set out in that Annex, to and in the UK in respect of NI”.

- 4.2 Annex 3 of the Windsor Framework lists provisions of EU law that relate to the governing of VAT and excise. Windsor Framework Article 8 identifies that Annex 3 provisions shall apply to and in the UK in respect of NI, Windsor Framework Article 8 also states that “the Joint Committee shall regularly discuss the implementation of this article”.
- 4.3 Windsor Framework Article 9 provides that provisions of EU law relating to wholesale electricity markets listed in Annex 4 of the Windsor Framework shall apply to and in the UK in respect of NI. These provisions apply to the generation, transmission, distribution and supply and trading of electricity, particularly in relation to the wholesale market in Ireland and NI.
- 4.4 Annex 5 of the Windsor Framework contains EU law relevant to the provisions of EU state aid. Article 10 of the Windsor Framework notes that these provisions will apply to the UK “including with regard to measures supporting the production of and trade in agricultural products in NI, in respect of measures which affect that trade between NI and the EU which is subject to this [Framework]”.
- 4.5 Windsor Framework Article 13(3) provides that where the Framework refers to EU law, “that reference shall be read as referring to a Union Act as amended or replaced”. Therefore, the UK Government is obligated to ensure that any amendment to, or replacement of, an EU law listed in the [Windsor Framework] is reflected in NI law.
- 4.6 Following the political agreement between the UK and EU on a new way forward on the original Protocol in February 2023,⁵⁸ Article 13(3) has

⁵⁸ Political Declaration by the European Commission and the Government of the United Kingdom of 27 February 2023.

been amended as it relates to Annex 2.⁵⁹ New measures which amend or replace those currently listed in Annex 2 will no longer be automatically read as ‘amended or replaced’. Article 13(3)(a) of the Windsor Framework provides for additional scrutiny of such measures by the NI Assembly in respect of Annex 2 measures.⁶⁰ This has been given effect in UK law through the Windsor Framework (Democratic Scrutiny) Regulations 2024, which implement the ‘Stormont brake’ mechanism in domestic law. This will allow the UK Government to potentially stop the application in NI of amended or replaced EU legal provisions, including certain EU law in Annex 2 of the Windsor Framework.

- 4.7 Nevertheless, Windsor Framework Article 13(2) provides that EU law listed in the Windsor Framework shall be read in conformity with relevant case law of the CJEU, similar to the keeping pace obligation for the EU equality Directives listed in Annex 1 of the Windsor Framework. It is the Commissions’ view that the measures in Annexes 2-5 will continue to be informed by future CJEU rulings and, to the extent that such rulings evolve the application of the UN CRPD in EU law, these will continue to have relevance in NI. The Commissions are also mindful that future case law of the CJEU which, for example, impacts persons with disabilities will continue to have relevance to the measures Annexes 2-5 and their interpretation.

5.0 Key Research Aims

The NIHRC, on behalf of both Commissions, is interested in exploring the degree to which the EU’s accession to the UN CRPD contributes to the continued protection of human rights in NI and how those rights are enforced as a result of the Withdrawal Agreement. The purpose of this research is to

⁵⁹ [Decision No 1/2023 of the Joint Committee](#) established by the agreement on the withdrawal of the United Kingdom Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023, laying down arrangements relating to the Windsor Framework.

⁶⁰ [Decision No 1/2023 of the Joint Committee](#) established by the agreement on the withdrawal of the United Kingdom Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023, laying down arrangements relating to the Windsor Framework.

inform policy-makers of the need to consider Windsor Framework Article 2 and its interaction with the UNCRPD.

It is therefore expected that the research will undertake the following non exhaustive list of tasks:

- Noting the EU Commission’s preliminary work in this area and the comprehensive mapping of EU measures which affect disabled people identified above, the researcher is asked to set out:
 - a literature review on the application of the UN CRPD in EU law, with a particular focus on areas of shared competence with EU; and
 - a high-level interpretation of the continuing application and impact of the UN CRPD for the enjoyment and enforcement of equality and human rights in NI law resulting from the UK-EU Withdrawal Agreement and the Windsor Framework. This should include the application and impact of the UN CRPD in the context of Windsor Framework Article 2.
- The analysis should be illustrated by way of example/case study, e.g. looking at particular Directives or CJEU judgments of significance and identifying:
 - the implication for equality and human rights in NI, including indicating whether the judgment was delivered before or after 1 January 2021; and
 - whether and to what extent these examples/case studies require legal and/or policy changes in NI and further monitoring by the Commissions.
- It would be helpful if examples/case studies chosen included reference to an EU measure(s) in each of the following categories, in order to demonstrate the potential impact of the EU’s accession to the UN CRPD in terms of equality and human rights protection in different contexts:
 - Directives listed in Annex 1 of the Windsor Framework;

- Link between UN CRPD and the EU Charter and/or General Principles;
 - EU measures identified by the Commissions as falling within the scope of Windsor Framework Article 2 but not specified in any Annex of the Windsor Framework; and
 - EU measures identified by the Commissions as falling within the scope of Windsor Framework Article 2 and also included in any of Annexes 2-5 of the Windsor Framework.
- In respect of the examples identified, the researcher is asked to set out how the UN CRPD, or particular UN CRPD Articles, inform the application and interpretation of the measures identified, including in respect of existing EU (and domestic) caselaw, remedies and enforcement.
 - The researcher may wish to identify trends or, for example, the implications of particular EU and domestic judgments for the interpretation of EU law more broadly.
 - The researcher is invited to suggest areas for further research in this area.

Exclusions

The Commissions have produced their own analysis on the scope of Windsor Framework Article 2. The NIHRC understand that the researchers may wish to set out context and background for the research to ensure an understanding of Windsor Framework Article 2 and to take account of relevant and emerging case law. Nevertheless, the research should not seek to set out a full overview of Article 2.

The NIHRC has contracted for independent research on the EU Charter of Fundamental Rights, which will be published in the Autumn, and on the environment, human rights and Windsor Framework Article 2, which is at an advanced stage. In addition, ECNI has commissioned research on behalf of the NIHRC and Irish Human Rights and Equality Commission on the Impact of Brexit

on the Divergence of Rights and Best Practice on the Island of Ireland, which is at an advanced stage. Any duplication of work with these projects should be avoided and the Commission will ensure that the researchers are kept apprised of related projects and will facilitate collaboration and sharing of drafts where possible.

Specification

The NIHRC, on behalf of both Commissions, recognise that the research will require a diverse range of expertise and welcomes tenders from both individual researchers and/or a consortium bid.

The successful contractor will be required to:

- Engage with the NIHRC to clarify the parameters of the project;
- To undertake both desktop research and any potential interviews with key stakeholders which may include civil society organisations, practitioners, service providers, academic or policy makers in this field; and
- To submit a first full draft by **31 January 2025** and, having taken account of the NIHRC's comments, a second and final peer reviewed draft by **2 May 2025**. These timeframes are negotiable with the NIHRC.

The NIHRC retains all rights to the intellectual property and will be responsible for future decisions regarding the publication of the report. In all publications, the role of the contractor will be duly acknowledged. The researchers will undertake their activities in good faith and seek to avoid any potential conflicts of interest in the course of academic teaching and research undertaken during the course of the project. If any of the research team intend to publish any of the research material developed under this project/agreement prior to the Commission's publication of the final project report and there is the potential for any conflicts of interest, they will consult with the Commission in advance. The Commission grants licence to the members of the research team to use

the research for academic purposes, subject to appropriate acknowledgment of the Commission, where portions of the report are reproduced.

Further dissemination opportunities will follow from this research in the form of a seminar and/or round table event which will be jointly hosted by the Commissions and funded by the Northern Ireland Human Rights Commission.

The Director (Human Rights after EU Withdrawal) will be available to liaise with the successful contractor for the duration of the project, to resolve any queries concerning the research or the NIHRC's requirements in respect of the final draft.

Application

Interested contractors are invited to:

1. Write a brief letter of motivation of no more than three pages, accompanied by additional appendices of relevant experience and publications of no more than one page per researcher, demonstrating the following:
 - experience of each member of the research team in undertaking research in one or more of the following fields (to ensure coverage across of the range of relevant experience):
 - UN CRPD;
 - EU law, with a particular focus on EU human rights law with a disability lens;
 - EU disability law;
 - the UK's withdrawal from the EU; and
 - Windsor Framework;
 - knowledge and understanding across the research team of the key issues relating to the UN CRPD; CJEU case law; the UK's withdrawal from the EU; Windsor Framework Article 2;

- how they will conduct the research, including how the research team will ensure the research adds value to pre-existing research;
- how they will ensure value for money; and
- how quality assurance will be guaranteed, including through peer review.

It is expected that interested contractors will provide an outline of the proposed approach to the project, including the methods they will employ for ascertaining and ensuring that the NIHRC's requirements are met.

2. Quote a fixed price of no more than **£25,000** (inclusive of VAT) for writing and presenting a final report detailing a breakdown of how many days will be allocated to specific tasks undertaken by research team members, alongside a daily financial rate for each researcher. This fixed price should include indicative budget to be allocated to peer review. The proposals will be assessed for value for money.
3. Provide details of two referees who can comment on their ability to deliver the type of document described in the above specification.

The award of the contract will be based on:

- the applicants' competence to undertake the work, judged from the content of the letter of motivation and previous experience;
- how effectively the proposal will be delivered in practice, including a consideration of the applicant's understanding of requirements, proposed methodology and timetable for delivery; and
- value for money.

The NIHRC reserves the right not to accept the lowest quotation.

Human Rights Policy

Tenderers must confirm that their organisation has a human rights policy. Those tenderers who have been selected will be asked to provide a copy of their organisational human rights policy prior to award of contract.

GDPR Policy

To the extent that the project deals with personal data, tenderers must confirm that their organisation has a GDPR policy. Those tenderers who have been selected will be asked to provide a copy of their organisational GDPR policy prior to award of contract.

Any questions about the project should be emailed to Eilis.Haughey@NIHRC.org who will arrange a prompt response.

Please email your application to Accounts@NIHRC.org

by Noon on 28 October 2024

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