



NORTHERN IRELAND
HUMAN RIGHTS
COMMISSION

**Submission of the NIHRC and ECNI
to the House of Lords Sub-
Committee on the Protocol's call
for evidence for its inquiry on the
Windsor Framework**

2 May 2023

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Summary of Recommendations

In summary, the Commissions recommend that:

- the UK Government and the NI Executive monitor the impact on equality and human rights in NI, of any divergence of rights on the island of Ireland resulting from the Stormont Brake being applied to block EU legislation which would have, if introduced, strengthened equality or human rights;
- the Sub-Committee considers the recommendations set out in the Commissions' *Policy recommendations: EU developments in equality and human rights*¹ which relate to the broader context of the increasing divergence of equality and human rights on the island of Ireland post Brexit;
- equality and human rights considerations are built into all key stages of the 'Stormont Brake' mechanism, including inquiries by the Windsor Framework Democratic Scrutiny (WFDS) Committee;
- the WFDS Committee undertakes meaningful and timely engagement with equality and human rights groups in NI and the Commissions in relation to a proposed EU measure, or a replacement EU act, so as to seek their views on the implications for the promotion and protection of equality and human rights in NI;
- the word 'communities' is interpreted broadly to include a consideration of, for example, equality and human rights impacts including the impacts, for example, on Section 75 equality groups;
- equality and human rights considerations are built into the revised process under original Protocol Article 13(4);
- the NI Assembly, in advance of passing an applicability motion regarding the addition of a new measure to an Annex of the Windsor Framework,

¹ ECNI, NIHRC, IHREC, [Policy Recommendations: European Union Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland](#), 2023

should give consideration to meaningful and timely engagement with the Commissions and equality and human rights stakeholders;

- the development of “structured sub-groups” within the Joint Consultative Working Group (JCWG) includes establishing a group that focuses on issues relating to Windsor Framework Article 2 and equality and human rights in NI;
- the UK Government and EU work together to ensure that there are timely updates and relevant information exchange on developments in European Union law, to aid the effective implementation of Windsor Framework Article 2;
- the EU (and UK Government) ensure the Commissions are given early notice of relevant EU law and policy developments and that the Commissions have opportunities to highlight in advance any implications of those developments for equality and human rights law in Northern Ireland;
- the European Commission’s engagement with NI stakeholders includes timely, targeted, and structured engagement, both with the Commissions, as the dedicated mechanism, and also with equality and human rights groups in NI on EU proposals that have implications for equality and human rights in NI;
- the European Commission’s impact assessment, as regards NI, on draft EU proposals includes a specific assessment of the impact on the promotion and protection of equality and human rights, including any issues of relevance to the UKG’s compliance with Windsor Framework Article 2;
- compliance with Windsor Framework Article 2 be considered from the earliest stages in the development of policy and legislation;
- the UK Government and NI Executive ensure that Explanatory Memoranda on draft UK and NI legislative proposals that are likely to engage Windsor Framework Article 2 sets out what consideration has been given to ensuring conformity with Windsor Framework Article 2;

- the Sub-Committee ask the NI Secretary of State to set out, in detail, what consideration was given to compliance with Windsor Framework Article 2 in the development of the Windsor Framework (Democratic Scrutiny) Regulations 2023;
- the Sub-Committee ask the Leader of the House of Commons for an update in terms of the development of guidance, relating to how consideration of Windsor Framework Article 2 can be built into the Whitehall legislative drafting processes and procedures.

1.0 Introduction

- 1.1. The Equality Commission for Northern Ireland ('ECNI') is an independent public body established under the Northern Ireland Act 1998. Its powers and duties derive from a number of equality statutes providing protection against discrimination on the grounds of age, disability, race, religion and political opinion, sex and sexual orientation. Its remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998.
- 1.2. 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.
- 1.3. 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 United Nations (UN) systems. In addition to these treaty standards, there exists a body of 'soft law' developed by the human rights bodies of the CoE and UN. These declarations and principles are non-binding but provide further guidance in respect of specific areas.
- 1.4. The NIHRC and ECNI ('the Commissions'), pursuant to sections 78A(1) and 78B(1) respectively of the Northern Ireland Act 1998, monitor the implementation of Article 2(1) of the Ireland/Northern Ireland Protocol ('the Protocol') to the UK-EU Withdrawal Agreement². As the Committee will be aware, the EU and UK has now agreed to refer to the Protocol as

² Article 2(1) states: "The UK 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."

‘the Windsor Framework’. Consequently, Article 2 of the Protocol is referred to below as ‘Article 2 of the Windsor Framework’.

- 1.5. The Commissions welcome this opportunity to respond to the call for evidence by the House of Lords Sub-Committee on the Protocol (‘the Sub-Committee’) on its inquiry into the Windsor Framework. The Commissions are available to provide an oral briefing if this could provide further assistance to the Committee.
- 1.6. In this briefing, the Commissions have focused on addressing only those questions in the Sub-Committee’s call for evidence which fall within the scope of our respective roles and remits.

2.0 Responses to Questions

Overall Questions: Question 2: How would you assess the Windsor Framework against the UK and EU’s joint commitment to protect the Belfast/Good Friday Agreement, “including its subsequent implementation agreements and arrangements, in all its dimensions and in all its strands”?

Response

- 2.1. As the Sub Committee will be aware, the UK Government (‘UKG’) has committed, under Article 2 of the Windsor Framework, to ensuring no diminution of the rights, safeguards or equality of opportunity set out in that part of the Belfast (Good Friday) Agreement entitled Rights, Safeguards and Equality of Opportunity, results from its withdrawal from the EU. The UKG has acknowledged the importance of the rights and equality protections set out in the Belfast (Good Friday) Agreement, which recognise the unique circumstances of Northern Ireland’s history and the need to put rights and equality central to creating a peaceful and shared future in Northern Ireland.³
- 2.2. Prior to the Windsor Framework agreement, the Commissions had consistently recommended that the UKG ensures that there are no

³ NIO explainer document on Protocol Article 2 (2020). [Protocol on Ireland/Northern Ireland: Article 2 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/92342/Protocol-on-Ireland-Northern-Ireland-Article-2-GOV.UK)

changes to the Protocol that would result in a weakening of either the Article 2 commitment or rights, safeguards and oversight mechanisms relating to this commitment. It is therefore **welcome** that the changes, under the Windsor Framework, to the original Protocol Article 13 do not apply to the Windsor Framework Annex 1 equality Directives.

- 2.3. Further, the Commissions had identified a number of concerns about the impact of certain provisions of the Protocol Bill on the implementation of Windsor Framework Article 2. We therefore **welcome** the fact that those provisions will fall, as a result of agreement on the Protocol Bill under the Windsor Political Declaration.
- 2.4. However, whilst the above are to be welcomed, we have concerns in relation to the potential implications of a number of changes introduced by the Windsor Framework on equality and human rights in Northern Ireland ('NI'); as well as in relation to processes adopted in bringing about those changes.

Customs procedures and the movement of goods: Question 5. What is your assessment of the Windsor Framework's provisions in relation to customs procedures and the movement of goods between Great Britain and Northern Ireland, including the arrangements for 'green' and 'red' lanes, an enhanced Trusted Trader Scheme, handling of Tariff Rate Quotas and the system of commercial data-sharing?

Response

- 2.5. The Commissions have previously raised in submissions to the Sub-Committee their concerns over the impact of Brexit on the sourcing of halal and kosher meat products and ritual items on Muslim and Jewish communities in NI⁴.

⁴ Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland, [Submission on the UK and EU proposals and the prospects for Agreement to the House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland](#), 12 November 2021, and Northern Ireland Human Rights Commission and Equality Commission for Northern Ireland, Joint written evidence to the House of Lords Sub-Committee on

- 2.6. The Commissions had raised concerns on access to, cost, and the availability of halal and kosher food and ritual items, including the potential impact on lower income groups, such as students, refugees and asylum seekers.
- 2.7. We had recommended that the UKG work with the EU Commission to find a long-term solution which ensures Muslim and Jewish communities in NI are able to access halal and kosher food products and ritual items respectively.
- 2.8. We note that there are changes under the Windsor Framework aimed at improving arrangements for the flow of goods between Great Britain ('GB') and NI. However, it is not clear at this stage whether the alleviation of administrative obligations around food and goods coming into NI will address these issues satisfactorily.
- 2.9. We will monitor the impact of the developments in the Windsor Framework which the UKG has indicated will facilitate goods coming into NI from GB but still ensure NI exports can move freely into the EU, in terms of the ability of these communities to access these food products and ritual items.

Medicines: Question 9. What is your assessment of the Windsor Framework's provisions on the supply of human medicines to Northern Ireland? Do they deal sufficiently with the issues previously raised by industry in relation to the Protocol?

Response

- 2.10. The Commissions had previously highlighted to the Sub-Committee that under the original Protocol, NI remained aligned to EU regulations and legislation on medicines and their supply, and that following the end of the 'grace period', which had been due to end on 31 December 2021, it

would have been required that all medicines imported to Northern Ireland from GB follow EU rules and regulations.

- 2.11. We highlighted that as a result, suppliers had raised concerns about the viability of supplying items to NI in the longer term. We had raised concerns that this could result in NI facing continued and intensified disruption in relation to medicines supply.
- 2.12. We highlighted the potential equality and human rights implications and negative impacts on the day to day lives of disabled people in NI; and emphasised that there should be no diminution of rights for disabled people in relation to their access to health and treatment.⁵
- 2.13. We had recommended that the UKG, working with the EU, continues to monitor and address any outstanding issues relating to the supply of medicines from GB to NI to guarantee no reduction in the current provision, including for disabled people, and to protect the highest attainable standard of health.
- 2.14. We note the changes to the provisions on the supply of medicines to Northern Ireland set out in the Windsor Framework, and therefore welcome any of these developments that address those issues for disabled people in NI in terms of access to medicines.

Movement of pets: Question 12. What is your assessment of the proposals on pets, including a pet travel document and owner declaration for pets moving from Great Britain to Northern Ireland, and microchip identification for pets moving from Northern Ireland to Great Britain and back?

Response

- 2.15. The Commissions have previously highlighted to the Sub-Committee that the issue of travel arrangements for assistance dogs between GB and NI

⁵ Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland, [Submission of the NIHRC and ECNI to the House of Lords Sub-Committee on the Protocol's follow up Inquiry on the impact of the Protocol](#), 8 June 2022 and Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland, [Submission on the UK and EU proposals and the prospects for Agreement to the House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland](#), 12 November 2021,

may have potential equality and human rights implications both domestically and internationally.

- 2.16. We have also highlighted the need to ensure that there are no adverse impacts on assistance dog owners in NI in terms of requirements on pet passport arrangements post Brexit. We had recommended that the UK Government work with the EU Commission to find a long-term solution which minimises checks on assistance dog owners travelling between GB and NI.
- 2.17. We note the changes to pet requirements travelling between GB and NI set out in the Windsor Framework, and therefore welcome any such developments that will remove or reduce those checks on assistance dog owners. We also welcome that the UKG has indicated that it will work with ferry companies to ensure that their online guidance reflects these new arrangements and gives travellers confidence to travel once again with their pets.

Regulatory divergence: Question 14. What is the significance of the Windsor Framework for regulatory divergence a) East-West, between Northern Ireland and Great Britain and b) North-South, on the island of Ireland? What is your assessment of the mechanisms to manage divergence, including the new Special Goods Body and the role of the Office of the Internal Market? Should a record be kept of such divergence, and if so, by whom?

Response

- 2.18. As set out below, under provisions in the original Protocol, any future EU changes to a number of EU Regulations/Directives listed in Windsor Framework Annex 2 and which have equality and human rights implications, would have been subject to the 'keeping pace' requirement under the original Protocol Article 13 (3) and automatically applied to NI; though subject to the democratic consent arrangements that applied in the original Protocol.
- 2.19. There is now the potential for the Stormont Brake mechanism to apply to these EU law provisions, which largely apply to goods and products, and for the UKG to block subject to a finding of non-compliance by the

arbitration panel⁶, the application of an EU rule that amends/ replaces such EU law. Should this take place, it will result in increasing divergence of equality and human rights in these areas on the island of Ireland post Brexit. It is important, in those circumstances, that any resulting equality or human rights impact in NI, is monitored.

- 2.20. It is important however, that our recommendation set out below, on the need for monitoring for such divergence, is not considered in isolation, as the Commissions also stress the importance of equality and human rights considerations being built into all key stages of the ‘Stormont Brake’ mechanism, including inquiries by the Windsor Framework Democratic Scrutiny Committee (‘WFDS’) Committee (see below on Stormont brake).
- 2.21. More generally, the Commissions consider that long-term North-South equivalence of rights and equality protections is important to ensure there is no lowering of rights in NI and to ensure that human rights and equality protections are subject to continual improvement and reflect international human rights standards and best practice, including in Ireland.
- 2.22. We ask the Committee to note that the Commissions, together with the Irish Human Rights and Equality Commission (‘IHREC’), have published an independent research report⁷, together with the Commissions’ policy recommendations⁸, which have explored the impact of Brexit and the widening gaps in rights across the island of Ireland, and made recommendations for the UKG, the NI Executive, and others. The Commissions’ policy recommendations also highlighted gaps in equality protections between NI and GB, and the need to address these.

⁶ [Recommendation No 2/2023 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](#)

⁷ Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney, [European Union developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland](#), 2022

⁸ ECNI, NIHRC, IHREC, [Policy Recommendations: European Union Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland](#), 2023

- 2.23. We would ask the Committee to note, however, that these recommendations relate to the broader context of the impact of Brexit on the divergence of rights across the island of Ireland more generally, rather than the specific impact of the Windsor Framework developments on the divergence of rights.
- 2.24. The Commissions are available to provide an oral briefing on our policy recommendations in this area, if this would be of further assistance to the Committee.

Recommendations

- 2.25. **The Commissions recommend that the UKG and the NI Executive monitor the impact on equality and human rights in NI, of any divergence of rights on the island of Ireland resulting from the Stormont Brake being applied to block EU legislation which would have, if introduced, strengthened equality or human rights.**
- 2.26. **The Commissions recommend that the Sub-Committee considers the recommendations set out in their *Policy recommendations: EU developments in equality and human rights* which relate to the broader context of the increasing divergence of equality and human rights on the island of Ireland post Brexit.**

The democratic deficit and the ‘Stormont Brake’: Question 16. What is your assessment of the proposed Stormont Brake and the conditions for its use, including that an EU act “would have a significant impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist”? To what extent will this address the democratic deficit under the Protocol? What practical, political and legal factors need to be borne in mind in terms of its use and operation, including the Government’s commitment to bring forward legislation to give effect to the Stormont Brake, and the EU’s ability to take “appropriate remedial measures” in response to a UK veto?

Response

- 2.27. Whilst we welcome, as stated above, the fact that the changes, introduced by the Windsor Framework, to the original Protocol Article 13 do not apply to the Windsor Framework Annex 1 equality Directives,

we consider that there is the potential for the ‘Stormont Brake’ mechanism as regards certain EU law in the Windsor Framework Annex 2 to have implications for equality and human rights in NI.

- 2.28. In particular, there a number of EU measures (Directives and Regulations) listed in Windsor Framework Annex 2⁹, which will be subject to the Stormont Brake, and which the Commissions have identified in their Working paper on the scope of Article 2¹⁰, as falling within scope of the Windsor Framework Article 2 ‘non-diminution’ commitment.
- 2.29. We had therefore identified *some* of the provisions of these EU laws as falling within the scope of the right to ‘equality of opportunity etc’ in the relevant Chapter of the Belfast (Good Friday) Agreement, and therefore relevant to the protection of the rights of equality groups; including for disabled people in terms of accessibility standards.
- 2.30. For example, Article 24 of Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC, amends the law on the manufacture of lifts in relation to access for, and use by, disabled people.
- 2.31. Under provisions in the original Protocol, any future EU changes to these Regulations/Directives would have been subject to the ‘keeping pace’

⁹ In particular: Directive 2014/33/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to lifts and safety components for lifts; Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union, insofar as conditions and technical specifications for the placing on the market, putting into service and free movement of railway products are concerned; Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC; Regulation (EC) No 78/2009 of the European Parliament and of the Council of 14 January 2009 on the type-approval of motor vehicles with regard to the protection of pedestrians and other vulnerable road users, amending Directive 2007/46/EC and repealing Directives 2003/102/EC and 2005/66/EC; Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC; Regulation (EU) 2016/424 of the European Parliament and of the Council of 9 March 2016 on cableway installations and repealing Directive 2000/9/EC; Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC.

¹⁰ ECNI/NIHRC [Working Paper: The Scope of Article 2\(1\) of the Ireland/Northern Ireland Protocol](#) , 2022

requirement under original Protocol Article 13 (3) and automatically applied to NI; though subject to the democratic consent arrangements that applied in the original Protocol.

- 2.32. Depending on the exact provisions of any future EU changes to these EU laws, this may have resulted in changes to NI law that could have benefitted equality groups.
- 2.33. As a result of the Windsor Framework, there is the potential for the Stormont Brake mechanism to apply to these provisions and for the UK Government to block, subject to a finding of non-compliance by the arbitration panel, the application of an EU rule that amends/ replaces certain EU law within Windsor Framework Annex 2, and the accompanying Court of Justice of the EU (CJEU) interpretation.
- 2.34. It is therefore vital that equality and human rights considerations are built into all key stages of the 'Stormont Brake' mechanism, including inquiries by the WFDS Committee.
- 2.35. Further, in terms of any WFDS Committee inquiry into a replacement EU act, we note that the Committee must 'seek substantive discussion and engagement', 'to the extent it considers appropriate' with business and civil society affected.
- 2.36. In deciding who to engage with, it is essential that the Committee gives consideration to the impact or potential impact of that replacement EU act on the promotion and protection of equality and human rights in NI. Where there is an impact or potential impact, it is important that the Committee undertakes early, effective, meaningful, and timely consultation/engagement with both equality and human rights groups in NI and the Commissions as the Dedicated Mechanism, so as to provide them with the opportunity to respond as part of that consultation, should they wish to do so.
- 2.37. This is important in order to ensure their voices are heard and views taken into consideration, in terms of the implications of the proposed EU measure on the promotion and protection of equality and human rights.

- 2.38. However, due to the short timelines set out in legislation in terms of the different stages of the Committee scrutiny period as regards replacement EU acts, we have concerns that there will not be sufficient time for meaningful engagement with the Commissions and/or equality and human rights stakeholders.
- 2.39. In order to mitigate this, it is important that measures are put in place so that the Committee considers the equality and human rights implications of draft proposed EU law, and seeks the views of the Commissions and equality and human rights stakeholders at that early stage.
- 2.40. Further, we note that the UKG has indicated that the ‘Stormont Brake’ mechanism could potentially be used to stop the application in NI of certain amended or replacement EU legal provisions, where MLAs have shown that the EU rule has a significant and lasting impact specific to the everyday lives of communities in NI in a way that is liable to persist. We note that the word ‘communities’ has not been defined in the 2023 Regulations. It is not clear, for example, whether the word ‘communities’ includes Section 75 equality groups¹¹.
- 2.41. We consider that a broad interpretation of the word ‘communities’ will help ensure that there is consideration, at this critical stage of the process, of, for example, equality and human rights impacts, including the impacts on, for example, Section 75 equality groups.
- 2.42. However, we wish to stress that our advice is aimed at ensuring that MLAs, before taking a decision on notifying the UKG that they wish to trigger the brake, take into consideration whether or not the EU law in question, if introduced, would help to strengthen the rights of particular Section 75 equality groups and promote equality and human rights in NI.
- 2.43. In terms of the introduction of applicability motions, the Commissions advise that these changes could potentially mean that cross-community support is required for the inclusion in Annex 1 of a new EU act on

¹¹ Section 75 of the NI Act 1998

equality and/or human rights. It would also apply in respect of amendments to /replacement of EU acts in Annex 2, that have equality and human rights implications and to which the Stormont Brake has been applied. We recognise that the UKG can, in certain circumstances, proceed in the absence of an applicability motion and agree in the Joint Committee to the inclusion of such an EU measure to the relevant Annex.

- 2.44. We also note that there is a relatively short time line for the applicability motion to take place. In light of this, and aligned to our earlier recommendation on building in equality and human rights considerations into key stages of the Stormont Brake mechanism, it is crucial that equality and human rights considerations are built into the revised process under the original Protocol Article 13(4).
- 2.45. For example, this could include a consideration by the NI Assembly before passing an ‘applicability motion’, of the impact, if any, of the new EU measure, or the amendment/ replacement EU act/s, on the promotion and protection of equality and human rights in NI. By way of example, one option by way this could be achieved is amending the NI Assembly Standing Orders to give effect to this consideration.
- 2.46. It is also important that the NI Assembly gives consideration to engaging with the Commissions and equality and human rights stakeholders as part of that process.
- 2.47. Finally, we are also concerned that there was a very short time frame between the publication of the draft 2023 Regulations and their coming into force. This has meant there has been very limited time for effective scrutiny by Parliament, or the opportunity for the Commissions, or others, to provide views on the draft 2023 Regulations before being passed by Parliament.

Recommendations

- 2.48. **The Commissions recommend that equality and human rights considerations are built into all key stages of the ‘Stormont Brake’ mechanism, including inquiries by the WFDS Committee.**

- 2.49. **We recommend that the WFDS Committee undertakes meaningful and timely engagement with equality and human rights groups in NI and the Commissions in relation to a proposed EU measure, or a replacement EU act, so as to seek their views on the implications for the promotion and protection of equality and human rights in NI.**
- 2.50. **We recommend that the word ‘communities’ is interpreted broadly to include a consideration of, for example, equality and human rights impacts including the impacts, for example, on Section 75 equality groups.**
- 2.51. **We recommend that equality and human rights considerations are built into the revised process under original Protocol Article 13(4).**
- 2.52. **We also recommend that the NI Assembly, in advance of passing an applicability motion regarding the addition of a new measure to an Annex of the Windsor Framework, should give consideration to meaningful and timely engagement with the Commissions and equality and human rights stakeholders.**

New structures for UK-EU cooperation: Question 17. How would you assess the Framework’s enhanced mechanisms for UK-EU cooperation, including the Special Body on Goods, the Enhanced Coordination Mechanism on VAT and excise, sub-groups to the Joint Consultative Working Group?

Response

- 2.53. The Commissions had previously made clear in its evidence to the Sub-Committee that the UK Government should give consideration to putting in place appropriate arrangements to ensure that there is regular and meaningful engagement between the Joint Consultative Working Group and the Commissions, as well as with equality and human rights stakeholders in NI, in relation to the commitment set out in Article 2 of the Windsor Framework.
- 2.54. We welcome that the Sub-Committee had raised this matter with the Secretary of State for Northern Ireland in its letter on Article 2 (rights of individuals), including stressing the importance of meetings between the

Commissions and the JCWG. To date the Commissions have not had the opportunity to meet with the JCWG; though we have welcomed the opportunity to meet with the UK co-chair of the JCWG and, separately, with the EU co-chair.

- 2.55. We would ask the Committee to note that a public awareness survey commissioned by the Commissions has indicated that nearly three quarters (72%) of respondents felt that the UK Government's commitment to ensuring that certain equality and human rights in NI will not be reduced as a result of Brexit was important, or very important, to them¹². Particularly in light of the importance of this commitment to individuals in NI, and the emerging issues relating to the impact of Brexit on equality and human rights in NI, we consider that the establishment of an Article 2 "structured sub-group" within the JCWG¹³ could assist with ensuring regular and structured engagement and information exchange between the JCWG and the Commissions, as well as wider equality and human rights stakeholders.

Recommendation

- 2.56. **The Commissions continue to recommend that the development of "structured sub-groups" within the JCWG includes establishing a group that focuses on issues relating to Windsor Framework Article 2 and equality and human rights in NI.**

Engagement with Northern Ireland stakeholders:

Question 18. What is your assessment of the Commission's proposals for enhanced engagement with Northern Ireland stakeholders, including dedicated annual presentations, information sessions, workshops, and mechanisms for engagement with public consultations and impact assessments?

¹² [ECNI - Delivering Equality, Equality Commission, Northern Ireland \(equalityni.org\)](#)

¹³ See [Political Declaration](#) by the European Commission and UKG , Political Declaration , 2023, page 3

Question 19. What steps should be taken by the EU to inform and consult Northern Ireland Executive Ministers and Assembly members on forthcoming legislative proposals applying to Northern Ireland?

Response

- 2.57. The Commissions welcome the recognition by the European Commission that engagement with stakeholders in NI is of paramount importance for the EU, as well as the introduction of enhanced measures to deepen engagement, including with people in NI. These include that the European Commission foresees it will have a specific section for issues relating to the operation of the Protocol when carrying out impact assessments that deal with EU acts in the scope of the Protocol, and that this section will provide an overview of Northern Ireland stakeholders' input and how that input has been taken into account in the final proposal.
- 2.58. We note however that there is no specific reference made to engagement by the European Commission with the Commissions, as the dedicated mechanism, and with equality and human rights groups in NI on EU proposals that have implications for equality and human rights in NI. We also note there is no specific reference as to whether the European Commission's impact assessment will specifically include an assessment of the impact on the promotion and protection of equality and human rights.
- 2.59. It is clear from an independent research report¹⁴ commissioned by the Commissions, together with the IHREC, and from the Commissions' policy recommendations,¹⁵ that there have already been a number of significant EU legislative proposals post Brexit relating to equality and

¹⁴ Sarah Craig, Anurag Deb, Eleni Frantziou, Alexander Horne, Colin Murray, Clare Rice and Jane Rooney [European Union developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland](#), 2022

¹⁵ ECNI, NIHRC, IHREC, [Policy Recommendations: European Union Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland](#), 2023

human rights. These have included in relation to work life balance, the EU Accessibility Act, and pay transparency reporting.

- 2.60. In light of this, we consider it vital that the views of the Commissions and of equality and human rights groups in NI are heard and taken into consideration, in terms of the implications of the proposed EU measure on the promotion and protection of equality and human rights.

Recommendations

- 2.61. **The Commissions continue to recommend that the UK Government and EU work together to ensure that there are timely updates and relevant information exchange on developments in European Union law, to aid the effective implementation of Windsor Framework Article 2.**
- 2.62. **We continue to recommend that the EU (and UK Government) ensure the Commissions are given early notice of relevant EU law and policy developments and that the Commissions have opportunities to highlight in advance any implications of those developments for equality and human rights law in Northern Ireland.**
- 2.63. **We recommend that the European Commission's engagement with NI stakeholders includes timely, targeted, and structured engagement, both with the Commissions, as the dedicated mechanism, and also with equality and human rights groups in NI on EU proposals that have implications for equality and human rights in NI.**
- 2.64. **We recommend that the European Commission's impact assessment, as regards NI, on draft EU proposals includes a specific assessment of the impact on the promotion and protection of equality and human rights, including any issues of relevance to the UKG's compliance with Windsor Framework Article 2.**

3.0 Consideration of compliance with Windsor Framework Article 2

- 3.1. The Explanatory Notes to the 2023 Regulations make no reference to any consideration being given to ensuring compliance with Windsor Framework Article 2. The Commissions have previously recommended that this should be the case regarding all relevant legislation.
- 3.2. As the Committee will be aware, the Leader of the House of Commons responded to the Committees in December 2022, and indicated work on developing guidance was being progressed and that she would update the Committees on how it was intended to incorporate the guidance into the Guide to Making Legislation, and other explanatory material. To date, we understand that this guidance has not been issued and an update is awaited.

Recommendations

- 3.3. **The Commissions recommend that compliance with Windsor Framework Article 2 be considered from the earliest stages in the development of policy and legislation.**
- 3.4. **We recommend that the UK Government and NI Executive ensure that Explanatory Memoranda on draft UK and NI legislative proposals that are likely to engage Windsor Framework Article 2 set out what consideration has been given to ensuring conformity with Windsor Framework Article 2.**
- 3.5. **We recommend that the Sub-Committee ask the NI Secretary of State to set out, in detail, what consideration was given to compliance with Windsor Framework Article 2 in the development of the Windsor Framework (Democratic Scrutiny) Regulations 2023.**
- 3.6. **We recommend that the Sub-Committee ask the Leader of the House of Commons for an update in terms of the development of guidance, relating to how consideration of Windsor Framework Article 2 can be built into the Whitehall legislative drafting processes and procedures. May 2023**

Contact us

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