

Equality Commission

FOR NORTHERN IRELAND



NORTHERN IRELAND
HUMAN RIGHTS
COMMISSION

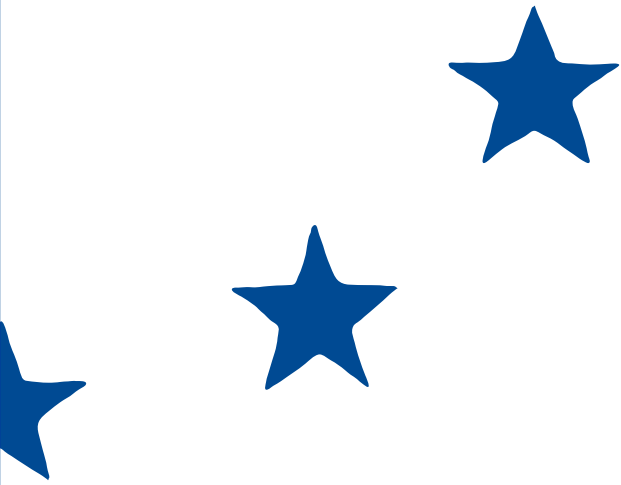
A Short Guide



Equality and Human Rights after Brexit:

The UK Government's commitment under
the Windsor Framework

Article 2 (1) of the Windsor Framework



Introduction

Under the EU/UK Withdrawal Agreement, the UK Government has committed, in Article 2 (1) of the Windsor Framework, to ensuring that certain equality and human rights in Northern Ireland will continue to be protected after Brexit.

Set out below is further information on that commitment, the right of individuals to challenge an alleged breach of the UK Government's commitment and how the Equality Commission and the Northern Ireland Human Rights Commission can assist individuals who wish to make such a challenge.

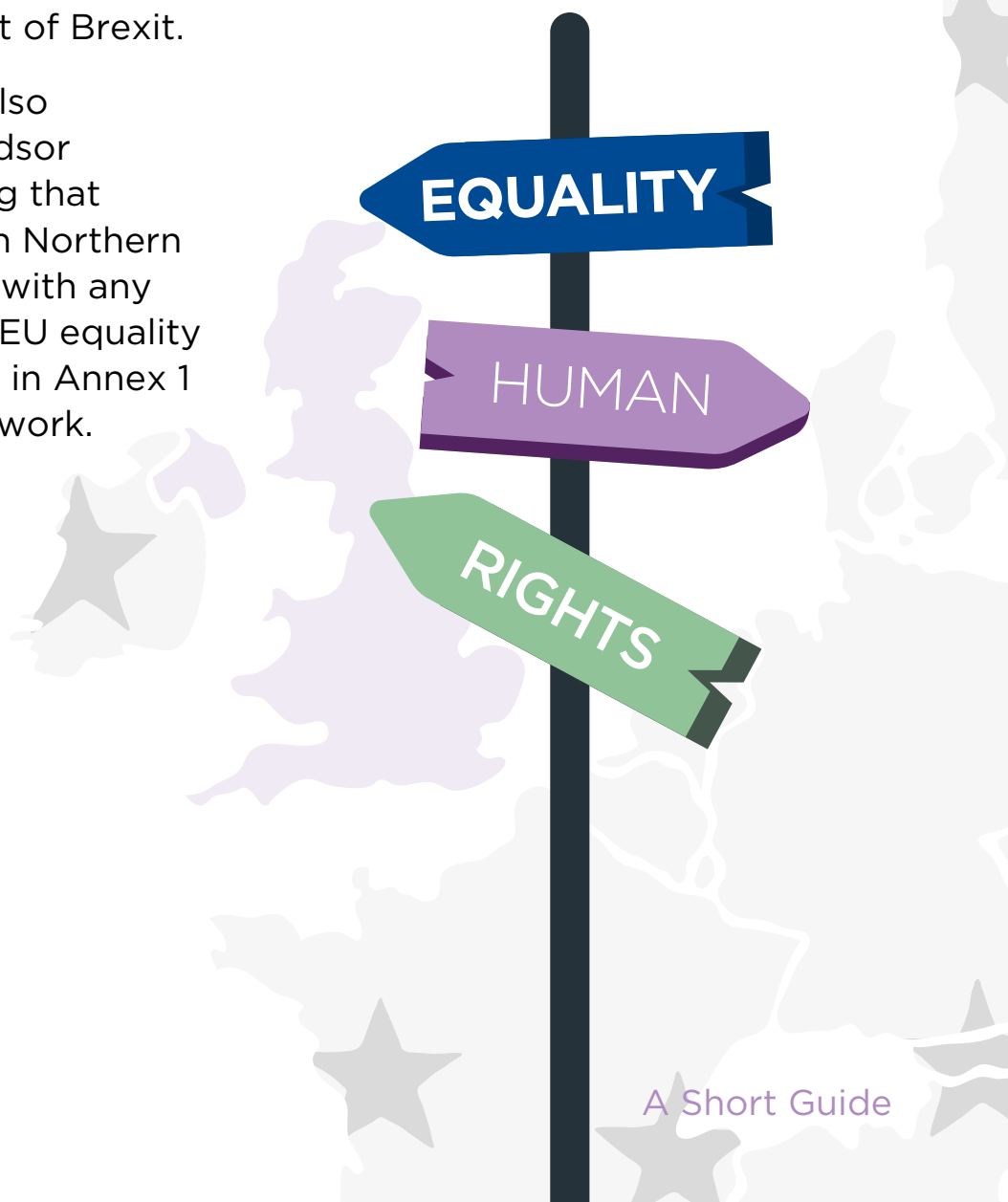
The UK Government's commitment to equality and human rights after Brexit

The UK Government has committed, in Article 2 of the Windsor Framework, to ensuring that the protections currently in place in Northern Ireland regarding the rights, safeguards, and equality of opportunity provisions, set out in the chapter of the same name in the Belfast (Good Friday) Agreement, are not reduced as a result of Brexit.

The UK Government also committed in the Windsor Framework to ensuring that certain equality laws in Northern Ireland will keep pace with any future changes to the EU equality laws which are set out in Annex 1 to the Windsor Framework.

This commitment is a recognition of the importance and centrality of rights and equality protections in the Belfast (Good Friday) Agreement and of the fact that this Agreement has underpinned the peace process here.

This commitment applies to Northern Ireland. Everyone who is protected by Northern Ireland law is covered by this commitment irrespective of whether the law has been passed by the Northern Ireland Assembly or the UK Parliament.



The rights covered by the commitment

The commitment in Article 2 of the Windsor Framework applies to the rights, safeguards, and equality of opportunity provisions set out in the chapter of the same name in the Belfast (Good Friday) Agreement, which include:

- The right of free political thought
- The right to freedom and expression of religion
- The right to pursue democratically national and political aspirations
- The right to seek constitutional change by peaceful and legitimate means
- The right to freely chose one's place of residence
- The right to equal opportunity in all social and economic activity regardless of class, creed, disability, gender or ethnicity
- The right to freedom from sectarian harassment
- The right of women to full and equal political participation
- The right of victims to remember as well to contribute to a changed society
- Respect, understanding and tolerance in relation to linguistic diversity
- The need to ensure that symbols and emblems are used in a manner which promotes mutual respect rather than division

Some of these rights, as set out on the previous page, are underpinned by EU anti-discrimination laws which protect against discrimination on the grounds of: gender; racial or ethnic origin; religion or belief; disability; age; sexual orientation; and which promote equal treatment.

These EU laws cover areas such as employment, access to goods and services, and social security, and are set out in Annex 1 to the Windsor Framework, and are listed in Appendix 1 of this booklet.

There are also other EU laws which are relevant to the

protection of these rights. These include EU laws such as the Parental Leave Directive, Victims' Directive and Pregnant Workers' Directive, as well as specific measures aimed at protecting the rights of disabled people.

This commitment is binding on the UK Government and Parliament, and the Northern Ireland Executive and the Assembly, as a matter of international law.

All the provisions in the Withdrawal Agreement, including the UK Government's commitment under Article 2 of the Windsor Framework, are now contained in UK law.



The role of the Equality Commission and the Northern Ireland Human Rights Commission

To ensure that the UK Government meets its commitment under Article 2 of the Windsor Framework, it created a 'dedicated mechanism' comprising of the Equality Commission of Northern Ireland and the Northern Ireland Human Rights Commission.

The Commissions have been given additional powers and responsibilities to ensure that the UK Government's commitment is met.

They are responsible for providing advice to government and monitoring, supervising, enforcing and reporting on the ongoing implementation of this commitment.

Specifically, the Commissions' new powers and duties include:

Monitoring how the commitment is implemented;

Reporting on its implementation to the Secretary of State for Northern Ireland and The Executive Office;

Advising the Secretary of State and the Northern Ireland Executive of legislative and other measures that must be taken to implement the commitment;

Advising the Northern Ireland Assembly (or a committee of the Assembly) whether a Bill is compatible with the commitment;

Promoting understanding and awareness of how important the commitment is;

Bringing or intervening in legal proceedings in respect of an alleged breach (or potential future breach of the commitment); and

Assisting persons in relevant legal proceedings.

The Commissions can carry out their powers and duties either jointly or separately.

The Commissions will also work with the Irish Human Rights and Equality Commission (IHREC) to provide oversight of, and reporting on, rights and equalities issues falling within the scope of the commitment that have an island of Ireland dimension.

Further, the Equality Commission, the NI Human Rights Commission, and the Joint Committee of NI Human Rights Commission and IHREC can directly raise matters of relevance to how the commitment is being implemented with the Specialised Committee on the Windsor Framework.

Challenging a breach of the Article 2 commitment

Individuals have the right to bring legal actions before the domestic courts if they consider that there has been a breach, or a potential future breach, of the UK Government's commitment under Article 2 of the Windsor Framework.

For example, this means that if individuals consider that the

Northern Ireland Assembly, or the Northern Ireland Executive, has acted in a way that is incompatible with the UK Government's commitment, they can challenge those actions in domestic courts, by taking a form of legal action known as a 'judicial review'.

Only the courts can decide whether a breach of Article 2 of the Windsor Framework has occurred.

In order to show that there has been a breach of the UK Government's commitment, there must be evidence that:

- ✓ **the right, safeguard or equality of opportunity protection is covered by the chapter of the same name in the Belfast (Good Friday) Agreement;**
- ✓ **it was protected under Northern Ireland law on or before the end of the Brexit transition period, namely 31 December 2020;**
- ✓ **the reduction in rights occurred as a result of Brexit.**

A failure by the UK Government to ensure that Northern Ireland equality laws keep pace with any future changes that the EU makes to update or replace the EU equality laws set out in Annex 1 to the Windsor Framework, would also be a breach of its commitments under the Windsor Framework.

Enforcement powers of the Commissions

Both Commissions have additional powers to enforce the UK Government's commitment under Article 2 of the Windsor Framework and to ensure the rights and equality protections are upheld.



Both Commissions can:

Provide advice and assistance to individuals¹, including, where appropriate, provide support to individuals to bring legal proceedings, where they believe that the UK Government's commitment has been breached;

Bring legal challenges or intervene in legal cases, where there is an alleged breach, or potential future breach, of the UK Government's commitment, where appropriate.

The Commissions can exercise their enforcement powers and duties jointly or separately. For example, they have the power to bring legal proceedings together or in their own name.

[1] The relevant legislation (Section 78 D (1) & (2) of the Northern Ireland Act 1998) refers to the power of Commissions to assist 'persons' in legal proceedings.

Time limits for making a complaint

There are strict time limits for lodging judicial review proceedings with a court.



A judicial review case for an alleged breach of Article 2 must be brought within **3 months** of the decision or action being complained of taking place.

Please note that contacting the Commissions or making an application for assistance to the Commissions for advice or assistance does **not** constitute issuing legal proceedings.

Further information

For further information and guidance on the UK Government's commitment under Article 2 of the Windsor Framework, or in relation to contacting the Commissions as regards an alleged breach of the UK Government's commitment under Article 2 of the Windsor Framework, please see below:

Equality Commission for NI

www.equalityni.org/brexit

NI Human Rights Commission

www.nihrc.org/our-work/brexit

For additional information: NIO (2020), Explainer: UK Government commitment to no diminution of rights, safeguards and equality of opportunity in Northern Ireland

<https://www.gov.uk/government/publications/the-windsor-framework>

Appendix 1: Equality Directives listed in Annex 1 to the Windsor Framework

The six EU Equality Directives listed in Annex 1 to the Windsor Framework are:

Gender Goods and Services Directive (Gender): Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services;

Recast Directive (Gender): Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast);

Race Equality Directive (Race): Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;

Framework Directive (Religion and belief; age; sexual orientation; and disability): Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;

Equal Treatment Directive: Self-employment (Gender): Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 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;

Equal Treatment Directive: Social security (Gender): Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

Further information

For further information and guidance, please contact:

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