



**Equality Commission for Northern Ireland's  
response to the Department of Justice's public  
consultation on the Modern Slavery and  
Human Trafficking Strategy 2022**

**27 January 2023**

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## 1. Introduction

- 1.1 The Equality Commission for Northern Ireland (ECNI) is an independent public body established under the Northern Ireland Act 1998. Its powers and duties derive from a number of equality statutes providing protection against discrimination on the grounds of age, disability, race, religion and political opinion, sex and sexual orientation. Its remit also includes overseeing the statutory duties on public authorities on the promotion of equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998.
- 1.2 Following the UK's exit from the EU, the UK Government has committed under Article 2 of the Ireland/Northern Ireland Protocol ('the Protocol') to ensuring that certain equality and human rights in Northern Ireland will continue to be upheld after Brexit. Since 1 January 2021, the Equality Commission, together with the Northern Ireland Human Rights Commission (NIHRC), has been given additional powers and responsibilities, as the 'dedicated mechanism', to ensure that the UK Government's commitment under Article 2 of the Protocol is met<sup>1</sup>.
- 1.3 The Commission welcomes the opportunity to respond to the Department of Justice's consultation on its draft Modern Slavery and Human Trafficking Strategy 2022.
- 1.4 In summary, the Commission recommends that:
  - The Modern Slavery and Human Trafficking Strategy 2022 should include a reference, and a commitment, to ensuring compliance with the UK Government's Protocol Article 2 obligations.
  - At all stages of policy and legislative development and reform in the area of modern slavery and human trafficking, the Northern Ireland Executive and relevant departments, including the Department of Justice, ensures that there is consideration of, and compliance with, Protocol Article 2 obligations. This should include ensuring there is no reduction of the rights of trafficked victims under the EU Anti-Trafficking Directive and of victims under the EU Child Sexual Exploitation Directive, contrary to Protocol Article 2.
  - Any draft legislation arising from the strategy should make clear in its Explanatory Memorandum what consideration has been given to compliance with Protocol Article 2.
  - Those providing advice and resources to victims/potential victims of modern slavery/human trafficking should make clear to recipients the rights of individuals under both equality legislation and in relation to alleging a breach of Protocol Article 2.

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<sup>1</sup> Schedule 3 of the European Union (Withdrawal Agreement) Act 2020 amended the Northern Ireland Act 1998 to confer these additional powers on the Commission – to monitor, advise, report on and enforce the UK's adherence to its commitment.

## 2. Protocol Article 2

- 2.1 Under Article 2(1) the UK Government has committed to ensuring there is no diminution of rights, safeguards and equality of opportunity protections and provisions as set out in the relevant part of the Belfast (Good Friday) Agreement. There is also a commitment to ensuring that some of Northern Ireland's equality laws will keep pace with any changes the EU may make to amend or replace the EU equality laws, set out in Annex 1 to the Protocol<sup>23</sup>.
- 2.2 In addition, UK courts when considering the interpretation of any of the equality directives listed in Annex 1, must do so in conformity with any relevant case law of the Court of Justice of the EU (CJEU)<sup>4</sup>.
- 2.3 Significantly, neither the Northern Ireland Assembly, nor the Northern Ireland Executive, can act in a way that is incompatible with the UK Government's commitment. If they do, those actions can be challenged in courts, by way of judicial review proceedings.
- 2.4 This commitment therefore has significant implications for the work of the NI Assembly, Executive Ministers, and departments, including as they develop, consult on, and introduce new legislation. They must ensure that legislation complies with the UK Government's commitment under the Protocol.
- 2.5 The Commission **recommends** that the Department of Justice should include within the Modern Slavery and Human Trafficking Strategy 2022 both a reference, and a commitment, to comply with the UK Government's obligations under Article 2 of the Ireland/Northern Ireland Protocol, including the keeping pace commitment in relation to the EU equality Directives at Annex 1 of the Protocol.
- 2.6 The Commission notes that Objective 1.1 (Strand 1) of the strategy is to ensure that modern slavery legislation is used effectively and remains

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<sup>2</sup> Ireland/Northern Ireland Protocol Annex 1 Directives: [Gender Goods and Services Directive \(Gender\)](#): Directive 2004/113/EC of 13 December 2004, [Recast Directive \(Gender\)](#): Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006, [Race Equality Directive \(Race\)](#): Directive 2000/43/EC of 29 June 2000, [Framework Directive \(religion and belief; age; sexual orientation; and disability\)](#): Directive 2000/78/EC of 27 November 2000, [Equal Treatment Directive: Self-employment \(Gender\)](#): Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010, [Equal Treatment Directive: Social security \(Gender\)](#): Directive 79/7/EEC of 19 December 1978.

<sup>3</sup> In addition, UK courts when considering the interpretation of any of the equality directives listed in Annex 1, including the Race Directive, must do so in conformity with any relevant case law of the Court of Justice of the EU (CJEU). UK Government, [Explainer Document](#): UK Government commitment to "no diminution of rights, safeguards and equality of opportunity" in Northern Ireland, 7 August 2020

<sup>4</sup> The Northern Ireland Office has, in its 2020 Explainer Document, stated that when a UK Court is considering the interpretation of any of the directives listed in Annex 1, this will be done in conformity with any relevant case law of the CJEU

relevant and fit for purpose, and as such is proposing a number of commitments/actions including scoping the need for legislation to require jury directions to be given in modern slavery and human trafficking cases<sup>5</sup>.

- 2.7 In taking forward, pursuant to this strategy, the Commission **recommends** that the Northern Ireland Executive and relevant departments, including the Department of Justice, ensures that at all stages of policy and legislative development and reform in the area of modern slavery and human trafficking there is consideration of, and compliance with, Protocol Article 2 obligations. We also **recommend** that any draft legislation arising from the strategy should also make clear in its Explanatory Memorandum what consideration has been given to compliance with Protocol Article 2 considerations.

### 3. EU Directives

- 3.1 The Commission would also like to particularly highlight the relevance of the EU Anti-Trafficking Directive and the EU Child Sexual Exploitation Directive in relation to the development of the strategy and in the context of Article 2 considerations.

#### *Anti-Trafficking Directive*

- 3.2 The EU Anti-Trafficking Directive<sup>6</sup> is the fundamental EU legislative act addressing human trafficking. Provisions within the Directive relating to assistance and support for victims of human trafficking are relevant to the strategy's approach to reduce the harm caused by modern slavery and human trafficking through improved adult and child victim identification and support (Strand 2 'Protect')<sup>7</sup>.
- 3.3 Of further relevance to the draft strategy (Strands 2 'Protect' and 3 'Prevent') is that the Anti-Trafficking Directive requires gender perspectives to be taken into account to strengthen both the prevention and protection of victims<sup>8</sup>, and notes that assistance and support measures should also be gender specific, where appropriate, due to women and men being trafficked for different purposes<sup>9</sup>.

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<sup>5</sup> Department of Justice, Northern Ireland Draft Modern Slavery & Human Trafficking Strategy [Consultation document](#), October 2022, page 24

<sup>6</sup> [DIRECTIVE 2011/36/EU](#) OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

<sup>7</sup> Department of Justice, Northern Ireland Draft Modern Slavery & Human Trafficking Strategy [Consultation document](#), October 2022, pages 27-30

<sup>8</sup> [DIRECTIVE 2011/36/EU](#) OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Article 1

<sup>9</sup> [DIRECTIVE 2011/36/EU](#) OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Recital 3

- 3.4 The Commission considers that the Anti-Trafficking Directive falls within the scope of Article 2<sup>1011</sup>. Therefore, the Commission **recommends** that the Northern Ireland Executive and relevant departments, including the Department of Justice, should ensure that any legislative developments progressed under this strategy do not reduce the rights of trafficked victims under the Anti-Trafficking Directive in a manner that is contrary to the UK Government’s commitment under Article 2 of the Protocol.
- 3.5 The Commission recognises that under Objective 2.2 (Strand 2)<sup>12</sup> of the draft strategy the department seeks to ensure the provision of appropriate and effective support for all victims/potential victims of modern slavery/human trafficking. We **recommend** that those providing advice and those resources make clear to recipients the rights of individuals under both equality legislation and in relation to alleging a breach of Article 2. The Commission refers you to our ‘Your rights’ publication on challenging a breach of the UK Government’s commitment under the Ireland/Northern Ireland Protocol Article 2(1) of the Protocol, available [here](#).

*EU Child Sexual Exploitation Directive*

- 3.6 In addition to the Anti-Trafficking Directive, the Commission would like to highlight the relevance of the EU Child Sexual Exploitation Directive<sup>13</sup>. This Directive contains a number of protections for child victims of sexual abuse and sexual exploitation and also places positive obligations on States to prevent and investigate these crimes<sup>14</sup>.
- 3.7 The Commission is of the view that this Directive falls within the scope of Protocol Article 2<sup>15</sup> and is therefore relevant in relation to the draft strategy. For example, under Strand 2 ‘Protect’ of the strategy the Department seeks to reduce the harm caused by modern slavery by improved adult and child victim identification and support. Therefore, the Commission **recommends** that the Northern Ireland Executive and relevant departments, including the Department of Justice, should ensure that any legislative developments progressed under this strategy do not reduce the rights of victims under the

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<sup>10</sup> See [Joint NIHRC / ECNI Briefing Paper on the Modern Slavery and Human Trafficking and Electronic Travel Authorisation provisions in the Nationality and Borders Bill](#). Paras 3.2. p6.

<sup>11</sup> ECNI and NIHRC, [Working Paper: The Scope of Article 2\(1\) of the Ireland/ Northern Ireland Protocol](#), December 2022, pages 15 and 33-35

<sup>12</sup> Department of Justice, Northern Ireland Draft Modern Slavery & Human Trafficking Strategy [Consultation document](#), October 2022, page 29

<sup>13</sup> [Directive 2011/93/EU](#) of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA

<sup>14</sup> [Directive 2011/93/EU](#) of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, Articles 1-20

<sup>15</sup> ECNI and NIHRC, [Annual Report of the NIHRC and the ECNI on the implementation of Protocol Article 2 2021 – 2022](#), 2022, pages 44-45

Child Sexual Exploitation Directive in a manner that is contrary to the UK Government commitment under Article 2 of the Protocol.

#### **4. Conclusion**

- 4.1 The Commission welcomes the department's consultation on the draft Modern Slavery and Human Trafficking Strategy 2022.
- 4.2 As set out above, the Department should ensure that at all stages of policy and legislative development and reform in the area of modern slavery and human trafficking there must be consideration of, and compliance with, Protocol Article 2 obligations.
- 4.3 We trust that the information and recommendations set out in this response are of assistance. We look forward to further engagement with the department on these issues, and other issues relating to Article 2.
- 4.4 Further information on the Commission's Protocol [Article 2 role and responsibilities](#) and is also available on our website. More information on the Commission's view on the scope of Protocol Article 2 and the EU legal obligations which underpin the rights and safeguards in the relevant part of the Belfast (Good) Friday Agreement - which are subject to the no diminution commitment - can be found in the joint ECNI-NIHRC [working paper](#) on 'The Scope of Article 2(1) of the Ireland/Northern Ireland Protocol'.

**January 2023**