

Ireland/Northern Ireland Protocol of the European Union (EU) Withdrawal Agreement, Article 2: island of Ireland dimension

Memorandum of Understanding

Equality Commission for Northern Ireland (ECNI)
Irish Human Rights and Equality Commission (IHREC)
Northern Ireland Human Rights Commission (NIHRC)

March 2021

Purpose

1. This Memorandum of Understanding sets out the agreement reached between the ECNI, the IHREC and the NIHRC on providing oversight of and reporting on rights and equalities issues falling within the scope of the commitment in Article 2 of the Ireland/Northern Ireland Protocol that have an island of Ireland dimension. It includes the working arrangements agreed between the three Commissions to fulfil this mandate.

Background

2. In accordance with Article 2(1) Ireland/Northern Ireland Protocol of the EU Withdrawal Agreement, the UK committed to ensuring

“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.”
3. To assist it in fulfilling this obligation the UK further committed to:

“implement this paragraph through dedicated mechanisms.”
4. In accordance with Article 2(2) the UK is required to:

“continue to facilitate the related work of the institutions and bodies set up pursuant to the 1998 Agreement, including the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland and the Joint Committee of representatives of the Human Rights Commissions of

Northern Ireland and Ireland, in upholding human rights and equality standards.”

5. Article 14 of the Protocol refers to a Specialised Committee created to facilitate the implementation and application of the Protocol. In accordance with Article 14(c), the Specialised Committee is mandated to “consider any matter of relevance to Article 2 of this Protocol brought to its attention by the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland, and the Joint Committee of representatives of the Human Rights Commissions of Northern Ireland and Ireland.”

Dedicated Mechanisms and the All Island Dimension

6. The UK Government’s Explainer document, of 7 August 2020, set out the role and new statutory functions to be conferred on the ECNI and NIHRC to carry out the role of dedicated mechanisms, now established by virtue of Schedule 3, EU (Withdrawal Agreement) Act 2020, by way of amendments to the Northern Ireland Act 1998. It also set out that the ECNI, NIHRC and IHREC will work together to provide oversight of, and reporting on, rights and equalities issues falling within the scope of the commitment that have an all island dimension (see Annex 1).

Roles and responsibilities of NIHRC, ECNI, and IHREC

7. Aligned to the roles set out in the Explainer document, the three Commissions agree that, in the context of the Article 2 commitment, their respective roles and responsibilities are as follows:
 - the Commissions will work together 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.
 - the Commissions will report separately to the Governments of the UK and Ireland, as appropriate, on any issues with an island of Ireland rights and equalities dimension that they have jointly addressed in the context of monitoring the Article 2 commitment.
 - the NIHRC, ECNI and the Joint Committee of NIHRC and IHREC will bring any matter of relevance to the Article 2 commitment to the attention of the Specialised Committee on the Ireland/Northern Ireland Protocol, as appropriate.

8. The Commissions acknowledge that, in carrying out their roles and responsibilities, this arrangement does not alter the constitutional status of the Joint Committee as set out in the Belfast (Good Friday) Agreement. They also agree that any activities undertaken and reports produced jointly by the three Commissions will respect existing reporting structures and statutory roles and responsibilities.

Underpinning principle of cooperation

9. To deliver on the roles and responsibilities outlined above, the three Commissions confirm their commitment to act in a co-operative manner, and in a manner that ensures good communication between the Commissions.

Implementation of the Article 2 commitment, island of Ireland dimension

10. To fulfil the mandated role of the ECNI, IHREC and NIHRC to provide oversight and reporting on rights and equalities issues falling within the scope of the commitment of Article 2 that have an island of Ireland dimension, a set of working arrangements has been agreed between the three Commissions.
11. It is agreed that joint working between ECNI, IHREC and NIHRC will be overseen at a strategic level by the respective Boards of each Commission, with regular reports on joint working provided to each Board and any decisions in relation to joint working being made in line with existing governance arrangements for each Board.
12. A Working Group shall be established, across the three Commissions, comprising the respective Chief Commissioners, plus a Board member and the Chief Executives. This will normally meet four times per year to consider areas for joint working, to share information about issues arising and what may need to be reported on. The Working Group will be supported as necessary by relevant staff.
13. An annual meeting of all members of the three Commissions, and relevant staff, will be organised, to review progress and issues together.

Chairing meetings

14. A Chief Commissioner will normally chair meetings of the Working Group and the annual meetings of the boards. This will rotate between the three Commissions on an annual basis.
15. In the absence of the Chief Commissioner, the appointed Board member or Chief Executive will chair the meeting.

Agendas, papers and minutes

16. The agenda for meetings, minutes of the previous meeting, reports and discussion papers, will be prepared and normally be available no later than five working days before the date of the meeting. Where an item has been added to the agenda fewer than five days prior to a meeting, and is of a matter of particular significance, consideration should be given to the time afforded to representatives of the three Commissions to make an informed decision before deciding the issue.
17. Responsibility for circulating agendas, papers, and minute taking will rotate on an annual basis between the three Commissions.
18. Any urgent matter requiring a decision between Working Group meetings will be addressed by the Chief Commissioners and Chief Executives and referred to the respective Boards as required for a decision in line with existing governance arrangements.

Decision making

19. The three Commissions will strive to reach decisions by consensus on the points discussed at Working Group meetings and proposed actions. 'Consensus' means that the representatives of the Commissions taking part in the discussion accept and recommend the proposed actions to their respective Boards. If, after thorough discussion, and consideration by the respective Boards, consensus is not reached, the independence of each Commission will be respected to pursue, or not pursue, the proposed action.

20. It is envisaged that there will generally be consensus on the actions to be taken, as the work the Commissions will do jointly to oversee and report on rights and equalities issues falling within the scope of the commitment of Article 2 that have an island of Ireland dimension will be evidenced based. However, if no consensus can be reached, each Commission will be mindful in its subsequent actions of the impacts of this and seek to keep the other Commissions informed and updated as appropriate.

Periodic Review

21. This Memorandum of Understanding will be subject to periodic review and may be amended subject to agreement by the respective Boards.



Geraldine McGahey OBE
Chief Commissioner
Equality Commission for Northern Ireland



Sinéad Gibney
Chief Commissioner
Irish Human Rights and Equality Commission



Les Allamby
Chief Commissioner
Northern Ireland Human Rights Commission

Annex

Relevant extracts from UK Explainer Document

22. In its Explainer document on Article 2, published on 7 August 2020, the UK Government set out that the ‘dedicated mechanism’ “is not a new structure in itself; rather, it is a framework for ensuring compliance with the commitment, comprising dedicated monitoring, advising, reporting and enforcement activities and drawing on the existing human rights and equality bodies established under the Agreement, namely the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland, who will oversee the status of the rights, safeguards and equality of opportunity protections covered by the relevant chapter of the Agreement” .
23. The Explainer document sets out the new statutory functions and related powers conferred on the ECNI and the NIHRC and the commitment to resourcing the two bodies to carry out these additional functions [Paras 18, 20 and 21 and 22]
24. On the all island dimension, the Explainer document states that:

“In addition as provided for in the Agreement, the Joint Committee of NIHRC and the Irish Human Rights and Equality Commission acts as a forum for the consideration of human rights issues on the island of Ireland. In the context of the Article 2 commitment, ECNI, NIHRC and IHREC will work together 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. This arrangement, however, does not alter the constitutional status of the Joint Committee as set out in the Agreement. This work of the Joint Committee is consistent with its core function as set out in the Agreement, and any activities undertaken and reports produced jointly by the three bodies will respect existing reporting structures and statutory roles and responsibilities.” [para 19]

“In addition and, as indicated in paragraph 19 above, in the context of the Article 2 commitment ECNI, NIHRC and IHREC will work together 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. It is the UK Government’s view that the Agreement does not require North-South equivalence of rights and equality protections; nevertheless the UK Government recognises that there is a role for the dedicated mechanism in considering best practice in the area of human rights and equalities issues insofar as they have an island of Ireland dimension. This is fully consistent with the provisions of the Agreement.” [para 23]

“Consistent with current reporting and accountability structures, NIHRC and ECNI will provide regular reports to the UK Government and the Northern Ireland Executive ... Similarly, NIHRC, ECNI and IHREC will be able to report separately to the Governments of the UK and Ireland, as appropriate, on any issues with an island of Ireland rights and equalities dimension that they have jointly addressed in the context of monitoring the ‘no diminution’ commitment.” [para 24]

“In addition, NIHRC, ECNI and the Joint Committee of NIHRC and IHREC will also be able to bring any matter of relevance to the attention of the Specialised Committee established under Article 14(c) of the Protocol.” [para. 25]