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# About Us

The Northern Ireland Human Rights Commission (the Commission) protects and promotes the human rights of everyone in NI. We do this by:

* keeping under review the adequacy and effectiveness in NI of law and practice relating to the protection of human rights;
* monitoring the implementation of Windsor Framework Article 2;
* reporting to the Secretary of State for NI and the NI Executive Office on the implementation of Windsor Framework Article 2;
* advising the Secretary of State for NI and the Executive Committee of the NI Assembly of legislative and other measures which ought to be taken to protect human rights and/or implement Windsor Framework Article 2;
* advising the NI Assembly whether proposed legislation is compatible with human rights standards and/or Windsor Framework Article 2;
* promoting understanding and awareness of the importance of human rights and Windsor Framework Article 2 in NI, for example, by undertaking or commissioning or otherwise assisting research and educational activities;
* giving assistance to individuals who apply to it for help in relation to proceedings involving law or practice concerning the protection of human rights and/or involving an alleged breach (or potential future breach) of Windsor Framework Article 2;
* bringing proceedings involving law or practice concerning the protection of human rights;
* taking judicial review proceedings in respect of an alleged breach (or potential future breach) of Windsor Framework Article 2;
* intervening in legal proceedings concerning human rights where it need not be a victim or potential victim of the unlawful act to which the proceedings relate;
* intervening in legal proceedings concerning an alleged breach (or potential future breach) of Windsor Framework Article 2;
* conducting investigations;
* requiring a person to provide information and documents in their possession, and to give oral evidence, in respect of an investigation;
* entering a specified place of detention in NI, in respect of an investigation;
* bringing any appropriate matters of relevance to Windsor Framework Article 2 to the attention of the Specialised Committee on issues related to the implementation of the Windsor Framework, established by the UK-EU Withdrawal Agreement; and
* publishing advice and the outcome of research and investigations.

## Our Mission Statement

The Commission champions and guards the rights of all those who live in NI

**Chief Commissioner:** Alyson Kilpatrick BL

**Commissioners:**  Helen Henderson

Jonathan Kearney

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**Chief Executive:** Dr David Russell

# Abbreviations

|  |  |
| --- | --- |
| CJEU | Court of Justice of the European Union |
| CoE | Council of Europe |
| ECHR | European Convention on Human Rights |
| ECtHR | European Court of Human Rights |
| EEA | European Economic Area |
| EU | European Union |
| NI | Northern Ireland |
| UK | United Kingdom |
| UN | United Nations |
| UN CAT | United Nations Convention Against Torture, Inhuman or Degrading Treatment or Punishment |
| UN CERD | United Nations Convention on the Elimination of All Forms of Racial Discrimination |
| UN CEDAW | United Nations Convention on the Elimination of All Forms of Discrimination Against Women |
| UN CRC | United Nations Convention on the Rights of the Child |
| UN CRPD | United Nations Convention on the Rights of Persons with Disabilities |
| UN ICCPR | United Nations International Covenant on Civil and Political Rights |
| UN ICESCR | United Nations International Covenant on Economic, Social and Cultural Rights |

# Understanding the Annual Statement

The Commission’s annual statement uses a traffic light system to assist readers.

**Red** identifies a subject that on human rights grounds requires immediate action by the UK Government, NI Executive or relevant public authority, where the issue may be an ongoing violation or abuse of human rights within NI.

**Amber** identifies a subject that on human rights grounds requires action by the UK Government, NI Executive or relevant public authorities. Amber means initial steps have already been taken or been acknowledged as necessary by the relevant public authority, but the necessary action has not yet been completed.

**Green** identifies a subject that on human rights grounds requires action by the UK Government, NI Executive or relevant public authority and a firm commitment has been made, followed by an effective response.

**Contents**

[About Us 1](#_Toc150772843)

[Abbreviations 5](#_Toc150772845)

[Understanding the Annual Statement 6](#_Toc150772846)

[Foreword 8](#_Toc150772847)

[Chapter 1 – Introduction 10](#_Toc150772848)

[Chapter 2 – Significant Developments 19](#_Toc150772852)

[Chapter 3 – Issues Requiring Immediate Action 119](#_Toc150772931)

[Chapter 4 – Issues With No Significant Progress in 2023 191](#_Toc150772960)

[Annex - Traffic Light Summary of Issues for 2023 206](#_Toc150772974)

# Foreword

I am pleased to offer this (my third) annual statement covering the discharge by the Commission of its statutory functions, as prescribed by the Northern Ireland Act (NI) 1998. This has been a year of enormous challenge, but also of success.

I am proud to have overseen the work of the Commission and privileged to have been selected to speak on behalf of a team of people who have dedicated themselves to the pursuit of human rights for everyone in Northern Ireland. Our challenge has been to respond to an ever increasing number and range of issues that have threatened fundamental rights. Our success has been to raise awareness of those issues and in some instances to act as a bulwark against their erosion. That work is far from complete, so we continue unabashed to identify and meet the needs of the people of Northern Ireland.

Last year, we reported on the risk to our ‘A’ status accreditation before the United Nations, which resulted from a protracted and critical reduction in our resources. The long-term under-funding of the Commission and its obvious impact upon our ability to function was recognised in an independent review report, published earlier this year. That report made a number of recommendations to ensure the future of the Commission’s operational independence. The Commission has now been reaccredited as an ‘A’ status NHRI. That reflects some progress made in respect of our funding arrangements, but continued oversight is required to ensure that continues next year.

A short-term measure has been implemented to protect the Commission for the next six to 12 months. A further commitment is needed to secure its longer term sustainability. We will work with the UK Government to achieve that. We want to do the job we were set up to do, efficiently and effectively. We need to reinforce our foundation - as an arrangement central to the Belfast (Good Friday) Agreement 1998 – we need to hold government and all public authorities to account. That requires courage and resilience, but also support.

This statement outlines the work we have completed in year and the work that is ongoing. I cannot do justice to the range and complexity of the issues tackled this year, or forthcoming, but special mention should be made of our ‘own motion’ judicial review of the Illegal Migration Act 2023 and our intervention in the judicial review of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023.

These are significant challenges, which stretch an organisation such as the Commission, but which also signal the strength of its purpose and are a demonstration of its independence. Such steps are not taken lightly; when necessary the Commission will exercise the full remit of its powers to protect its privileged place as a protector of human rights for each and every human being who resides, for however long, in Northern Ireland.

# Chapter 1 – Introduction

The Commission was established following the Belfast (Good Friday) Agreement 1998. It is a national human rights institution with ‘A status’ accreditation at the Global Alliance of National Human Rights Institutions.

Having assessed developments affecting human rights protections in NI throughout 2023, the Commission publishes this annual statement, operating in accordance with the NI Act 1998, and recalling its mandate to:

* keep under review the adequacy and effectiveness in NI of law and practice relating to the protection of human rights; and
* advise the Secretary of State for NI and the Executive Committee of the NI Assembly of legislative and other measures which ought to be taken to protect human rights.[[1]](#footnote-2)

The Commission is mandated in accordance with Article 2(1) of the Windsor Framework,[[2]](#footnote-3) formerly known as the Protocol on Ireland/Northern Ireland, to the UK-EU Withdrawal Agreement[[3]](#footnote-4) to oversee the UK Government’s commitment to rights and equality in NI after UK Withdrawal from the EU.[[4]](#footnote-5)

Following the Joint Declaration by the UK and the EU and the decision of the Joint Committee in March 2023, the Protocol on Ireland/NI has been renamed as the Windsor Framework.[[5]](#footnote-6) For historic reasons some of the references in the report still mention the Protocol on Ireland/NI and where such references occur, these should be understood as concerning the Windsor Framework.

The Commission exercises this mandate alongside the Equality Commission for NI, and, together with the Irish Human Rights and Equality Commission, the three Commissions provide oversight of, and reporting on Windsor Framework Article 2 issues with an island of Ireland dimension. This is in addition to its role under the Belfast (Good Friday) Agreement as part of the Joint Committee of representatives of the Commission and the Irish Human Rights and Equality Commission.

The Commission’s statutory functions for this purpose in accordance with the EU (Withdrawal Agreement) Act 2020 are:

* to monitor the implementation of Article 2 of the Windsor Framework (formerly known as the Protocol on Ireland/NI) to the UK-EU Withdrawal Agreement (Windsor Framework Article 2);[[6]](#footnote-7) and
* to advise the Secretary of State for NI and the Executive Committee of the NI Assembly of legislative and other measures which ought to be taken to implement Windsor Framework Article 2.[[7]](#footnote-8)

The Commission operates under the UN Paris Principles and, in particular, respects the responsibility of a national human rights institution to:

submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights.[[8]](#footnote-9)

The Commission has assessed developments during 2023 against domestic human rights standards and treaty obligations of the UN and European systems that are legally binding in NI.[[9]](#footnote-10) Moreover, since 1 January 2021, the Commission assesses developments against the requirements of Windsor Framework Article 2.[[10]](#footnote-11)

### Domestic standards

The ECHR is given direct domestic effect across the UK by virtue of the Human Rights Act 1998. Subject to limited exceptions, all public authorities in NI must ensure that their actions are compatible with the Human Rights Act and therefore with the ECHR.

The definition of a public authority includes a court or tribunal, and any person certain of whose functions are of a public nature.[[11]](#footnote-12)

Windsor Framework Article 2 is given domestic effect through the EU (Withdrawal) Act 2018 and the EU (Withdrawal Agreement) Act 2020, which confirm that all rights, obligations and remedies from the Withdrawal Agreement, including Windsor Framework Article 2, are recognised and available in domestic law.[[12]](#footnote-13)

Human rights law applies directly in NI by virtue of section 24(1) of the NI Act 1998. This means that Ministers of the Executive Committee of the NI Assembly (NI Executive) and NI Executive departments are required to ensure that all legislation and actions are compatible with the ECHR and Windsor Framework Article 2.[[13]](#footnote-14)

The NI Assembly is prohibited from making any law that is incompatible with the ECHR or with Windsor Framework Article 2.[[14]](#footnote-15)

Moreover, section 26 of the NI Act 1998 requires compliance with other international human rights obligations. For that purpose, the Secretary of State for NI may, by direct order, prohibit any proposed action by Ministers of the NI Executive and devolved Executive departments.[[15]](#footnote-16)

### Binding international standards

The treaties which the UK has ratified and is bound by include:

* CoE European Convention on Human Rights 1950 (ECHR);[[16]](#footnote-17)
* CoE European Social Charter 1961;[[17]](#footnote-18)
* UN Convention on the Elimination of All Forms of Racial Discrimination 1965 (UN CERD);[[18]](#footnote-19)
* UN International Covenant on Civil and Political Rights 1966 (UN ICCPR);[[19]](#footnote-20)
* UN International Covenant on Economic, Social and Cultural Rights 1966 (UN ICESCR);[[20]](#footnote-21)
* UN Convention on the Elimination of All Forms of Discrimination Against Women 1981 (UN CEDAW);[[21]](#footnote-22)
* UN Convention Against Torture, Inhuman or Degrading Treatment or Punishment 1984 (UN CAT);[[22]](#footnote-23)
* UN Convention on the Rights of the Child 1989 (UN CRC);[[23]](#footnote-24)
* CoE European Charter for Regional or Minority Languages 1992;[[24]](#footnote-25)
* CoE Framework Convention for the Protection of National Minorities 1998;[[25]](#footnote-26)
* UN Optional Protocol to the UN CRC on the Involvement of Children in Armed Conflict 2000;[[26]](#footnote-27)
* UN Optional Protocol to the UN CRC on the Sale of Children, Child Prostitution and Child Pornography 2000;[[27]](#footnote-28)
* CoE Convention on Action against Trafficking in Human Beings 2005;[[28]](#footnote-29)
* UN Educational, Scientific and Cultural Organisation Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005;[[29]](#footnote-30)
* UN Convention on the Rights of Disabled Persons 2006 (UN CRPD);[[30]](#footnote-31)
* CoE Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse 2007 (Lanzarote Convention);[[31]](#footnote-32) and
* CoE Convention on Preventing and Combating Violence Against Women and Domestic Violence 2011 (Istanbul Convention).[[32]](#footnote-33)

### Human rights monitoring

The Commission, in assessing compliance with international human rights standards, takes account of the findings of international monitoring bodies that are directed to or otherwise apply to NI, as well as the general comments and other interpretative texts adopted by such bodies.[[33]](#footnote-34)

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| --- |
| **Human rights monitoring in 2023**  **CoE Framework Convention for the Protection of National Minorities**  In 2022, the Commission provided written evidence to inform the CoE Advisory Committee on the Framework Convention for the Protection of National Minorities’ fifth cycle monitoring of the UK’s implementation of the Framework Convention.[[34]](#footnote-35) In 2022, the CoE Advisory Committee also conducted a country-visit meeting with the Commission, government officials, parliamentarians, representatives of minorities, civil society organisations and other relevant bodies across the UK, including NI. In May 2023, the CoE Advisory Committee published its adopted opinion.[[35]](#footnote-36) In July 2023, the CoE Committee of Ministers adopted a resolution, which contains recommendations on the UK’s implementation on the Framework Convention.[[36]](#footnote-37) In August 2023, the UK Government’s comments on the CoE Advisory Committee’s report were published.[[37]](#footnote-38)  **CoE European Commission Against Racism**  In May 2023, the Commission provided written evidence to the CoE European Commission Against Racism and Intolerance to inform its sixth cycle monitoring of the UK.[[38]](#footnote-39) In November 2023, the CoE European Commission visited the UK, including NI, and met with several stakeholders, including the Commission.  **CoE Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention)**  In December 2023, the Commission provided written evidence to the CoE Group of Experts on Action against Violence Against Women and Domestic Violence as part of its first monitoring cycle of the UK’s compliance with the Istanbul Convention. The CoE Group of Experts is due to conduct an in-country visit to the UK, including NI, in early 2024. A report of the CoE Group of Experts’ findings and recommendations is to follow thereafter.  **UN Convention against Torture**  In 2022, the UN CAT Committee published its List of Issues prior to reporting in respect of the seventh periodic report of the UK on its compliance with the UN CAT.[[39]](#footnote-40) Disappointingly, the list of issues stage of the process took place without meaningful engagement with the Commission, the UK National Preventive Mechanism or civil society organisations. In June 2023, the UK Government submitted its written report to the UN CAT Committee.[[40]](#footnote-41) The Commission, the UK National Preventive Mechanism and civil society organisations are to have an opportunity to provide written and oral evidence to the UN CAT Committee in response to the UK Government’s report. However, due to broader pressures on the UN CAT Committee, the process is not expected to progress until Autumn 2024, at the earliest.  **UN Convention on the Rights of the Child**  In 2022, the Commission provided written evidence to the UN CRC Committee to inform its examination of the UK’s sixth and seventh periodic report on its compliance with the UN CRC.[[41]](#footnote-42) In February 2023, the Commission also provided oral evidence to the UN CRC Committee. In June 2023, the UN CRC Committee published its concluding observations on how the UK can improve compliance with the UN CRC.[[42]](#footnote-43)  **Universal Periodic Review**  In 2022, the Commission made written and oral submissions to the fourth cycle of the UN Human Rights Council’s Universal Periodic Review of the UK.[[43]](#footnote-44) In January 2023, the UN Working Group on the Universal Periodic Review’s report was adopted by the UN Human Rights Council.[[44]](#footnote-45) The outcome report includes several recommendations for the UK Government on how the human rights situation can be improved in the UK, including NI.  **UN Convention on the Elimination of All Forms of Discrimination against Women**  In 2018, the UN CEDAW Committee published its inquiry report on abortion services in NI.[[45]](#footnote-46) In January 2023, the UK Government submitted a follow-up written report on the steps it has taken to address the UN CEDAW Committee’s inquiry recommendations.[[46]](#footnote-47) The Commission and civil society organisations involved in the initial inquiry have also provided written observations.[[47]](#footnote-48) In early 2024, the UN CEDAW Committee is to consider what the next steps are in the follow-up process.  **UN Convention on the Rights of Persons with Disabilities**  In 2017, the UN CRPD Committee published its inquiry report on the cumulative impact of the legislation, policies and measures adopted by the UK Government relating to social security schemes and to work and employment, from 2010 to October 2017, directed to persons with disabilities or affecting their enjoyment of their rights under Articles 19, 27 and 28 of the UN CRPD.[[48]](#footnote-49) In 2022, the UK Government submitted a follow-up written report on the steps it had taken to address the UN CRPD Committee’s inquiry recommendations.[[49]](#footnote-50) In August 2023, under the umbrella of the UK Independent Mechanism to the UN CRPD, the Commission, the Equality Commission for NI, the Equality and Human Rights Commission, and the Scottish Human Rights Commission provided written and oral evidence to the UN CRPD Committee as part of this process.[[50]](#footnote-51) In 2024, a follow-up report from the UN CRPD Committee is anticipated, following engagement between the UK Government and the UN CRPD Committee.  **UN Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity**  In April 2023, the Commission met with the UN Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity, Victor Madrigal-Borloz, during his visit to the UK. In May 2023, the UN Independent Expert published an end of mission statement on his visit to the UK.[[51]](#footnote-52) The UN Independent Expert’s full report on his visit to the UK is expected by June 2024. |

# Chapter 2 – Significant Developments

In 2023, there were two ‘green’ issues, concerning the Armed Forces Covenant and safe access zones. Green issues are those that identify a subject that on human rights grounds requires action by the UK Government, NI Executive or relevant public authorities and a firm commitment has been made, followed by an effective response.

The remainder of the issues raised in this chapter have been categorised as ‘amber’ for 2023. These are issues that identify a subject that on human rights grounds requires action by the UK Government, NI Executive or relevant public authorities. Amber means initial steps have already been taken or been acknowledged as necessary by the relevant body, but the necessary action has not yet been completed.

There have been several significant developments in 2023, some are positive and others are negative – this chapter provides an overview. For details that provide the context to these, please see the Annual Statement 2022[[52]](#footnote-53) and the Annual Report on the Implementation of Article 2 of the Windsor Framework.[[53]](#footnote-54)

This chapter covers significant developments between 1 December 2022 and 10 November 2023.

## Constitutional Protections

### [AMBER] Human Rights Act and administrative law reform

In 2023, the UN Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity, Victor Madrigal-Borloz, expressed concern about the then proposed Bill of Rights Bill’s “potential to impact detrimentally existing human rights protections against violence and discrimination based on sexual orientation and gender identity”.[[54]](#footnote-55) This is additional to the recommendation from several human rights bodies that the UK Government should ensure that there is no regression of human rights in any potential reform of the Human Rights Act 1998.[[55]](#footnote-56) Furthermore, that any reform “does not diminish access to justice” and “complies with the duty under the… [Belfast (Good Friday) Agreement] to ensure full incorporation of the ECHR into NI law”.[[56]](#footnote-57) Additionally, that the UK Government undertakes “broad” and “meaningful” public consultation on its proposals to revise human rights legislation within the UK.[[57]](#footnote-58)

In 2022, the Bill of Rights Bill was introduced to the UK Parliament. In 2023, the House of Commons and House of Lords Joint Committee of Human Rights published its legislative scrutiny of the Bill of Rights Bill.[[58]](#footnote-59) It found that the proposed Bill of Rights Bill undermined the universality of human rights, weakened human rights protection and that there was an overwhelming lack of support for the proposed reforms.[[59]](#footnote-60) The Joint Committee on Human Rights concluded that the UK Government “should not progress the… [Bill of Rights Bill] in its current form through Parliament”.[[60]](#footnote-61) This conclusion echoes the advice provided by the Commission.[[61]](#footnote-62)

In June 2023, the UK Government confirmed that it was not proceeding with the Bill of Rights Bill, instead seeking to reform the UK’s human rights framework through a piecemeal approach, such as the now Illegal Migration 2023 Act and the now NI Troubles (Legacy and Reconciliation) Act 2023.[[62]](#footnote-63) The Commission has raised additional concerns with the compatibility of these proposed pieces of legislation with human rights law and Windsor Framework Article 2.[[63]](#footnote-64) Specific to NI, the Commission remains concerned that the proposed changes, among other measures, will reduce access to domestic courts for individuals seeking human rights-based remedy, which is contrary to the ECHR and the Belfast (Good Friday) Agreement 1998.[[64]](#footnote-65) Moreover, the protections in Windsor Framework Article 2, while an important safeguard against the diminution of rights following UK withdrawal from the EU, are not a substitute for the comprehensive framework of human rights protections under the Human Rights Act.

### [AMBER] National human rights institutions

The Global Alliance of National Human Rights Institutions Sub-Committee on Accreditation reviews the Commission’s compliance with the UN Paris Principles every five years.

In 2021, when considering whether the Commission should retain its accreditation as an ‘A status’ national human rights institution, the Sub-Committee on Accreditation identified funding, financial autonomy, diversity and pluralism, and the inability to visit places of deprivation of liberty without notice as areas of concern.[[65]](#footnote-66) The Sub-Committee on Accreditation sought for these areas to be “improved” and for the Commission to be placed in a "sustainable position".[[66]](#footnote-67)

In 2022, the NI Office commissioned an independent review of the Commission. To enable time for the outcome of the independent review to be considered, the Sub-Committee on Accreditation decided to defer its decision on the Commission’s reaccreditation. However, in March 2023, the Sub-Committee on Accreditation confirmed that it had made its final deferral.

In September 2023, the independent review’s report and the response by the UK Government were published.[[67]](#footnote-68) The UK Government accepted most of the independent review’s recommendations.[[68]](#footnote-69)

The Commission had advised that there would be a potential breach of Windsor Framework Article 2(2) if its ‘A status’ was not retained.[[69]](#footnote-70)

In October 2023, the Sub-Committee on Accreditation decided that the Commission should retain its ‘A-status’.[[70]](#footnote-71) Consequently, the Commission has retained its voting rights at the Global Alliance of National Human Rights Institutions and has speaking rights at the UN Human Rights Council. The Commission’s accreditation is due to be reviewed again in 2028.

### [AMBER] Common Travel Area

Section 75 of the Nationality and Borders Act 2022 provides for the introduction of Electronic Travel Authorisations for all non-British citizens who require leave to enter the UK when travelling from Ireland to the UK. Irish citizens are excluded as individuals not requiring leave to enter the UK.[[71]](#footnote-72) However, a significant number of individuals who do not hold recognised UK immigration status will be affected despite free travel across the island of Ireland being available to them under the current system.

In March 2023, the UK Government updated its guidance on Electronic Travel Authorisations confirming that such non-visa nationals, who are lawfully resident in Ireland, will be exempt from the requirement.[[72]](#footnote-73) This partially addressed the Commission’s concerns. However, as they come into effect, non-visa nationals not resident in Ireland will still need to apply for an Electronic Travel Authorisation when travelling from Ireland to NI.[[73]](#footnote-74)

In October 2023, the Sovereign Affairs Committee to the British Irish Parliamentary Assembly published a report on the Common Travel Area post-Brexit.[[74]](#footnote-75) The Committee raised concerns about the incompatibility of the Electronic Travel Authorisation system with tourism on the island of Ireland and recommended that all permanent residents in NI or Ireland be exempt from the requirement to obtain a visa for short visits to other jurisdictions.[[75]](#footnote-76)

Following research published in 2020 which identified a range of significant concerns,[[76]](#footnote-77) in September 2023, the Commission published a briefing on access to healthcare in NI, and on the island of Ireland, after the UK’s withdrawal from the EU.[[77]](#footnote-78) The Commission made several recommendations, including that the Common Travel Area and associated rights are enshrined in law by a comprehensive bilateral treaty and incorporated into domestic legislation; and that the residency requirements for Common Travel Area entitlements relating to cross-border and all-island healthcare are reviewed to ensure that the rights of access are clear, comprehensible and generous.[[78]](#footnote-79)

### [AMBER] EU Settlement Scheme and frontier workers

In December 2022, the High Court of England and Wales confirmed that applicants with pre-settled status have the right to reside permanently in the UK after they have resided there for the required five-year period.[[79]](#footnote-80) In February 2023, the Home Office confirmed that it would not appeal the High Court’s decision.[[80]](#footnote-81)

In May 2023, a new interim policy was introduced by the Department of Work and Pensions.[[81]](#footnote-82) This allows any EU citizen in NI with pre-settled status who is unable to work, to be assessed individually to establish whether they, or their children, are living in hardship and unable to meet their most basic needs and if so, then they will be entitled to Universal Credit.[[82]](#footnote-83) This is in line with the decision in *CG v Department for Communities* (2021).[[83]](#footnote-84) In November 2023, the requirement to undertake an individual assessment for EU citizens with Pre-settled Status who apply for Universal Credit was upheld by the England and Wales Court of Appeal.[[84]](#footnote-85) The Court of Appeal found that the EU Charter of Fundamental Rights applies to the interpretation and application the UK-EU Withdrawal Agreement and that the approach taken by the CJEU in the *CG* case should be the benchmark for determining whether there is a breach of the right to human dignity in the EU Charter.[[85]](#footnote-86)

In June 2023, the Independent Monitoring Authority’s inquiry into EU Settlement Scheme Certificate of Application delays found that in some cases the Home Office failed to comply with the obligation under the Withdrawal Agreement to issue a Certificate of Application on time.[[86]](#footnote-87) Obtaining a Certificate of Application protects the applicant’s rights pending a decision on their status.[[87]](#footnote-88) In September 2023, the UK Government published a response to the report and agreed to consider whether the extraction of meaningful data from systems would enhance the ability to monitor and manage the process for issuing Certificates of Application. It did not accept the recommendations in respect of adopting a five working day time frame from point of application to issue of certificates.[[88]](#footnote-89) In September 2023, the Independent Monitoring Authority responded to the UK Government reiterating its view that establishing a timescale for issuing Certificates of Application would be helpful as it would provide clarity for applicants.[[89]](#footnote-90) The Independent Monitoring Authority launched a further inquiry to investigate EU Settlement Scheme application delays.[[90]](#footnote-91)

From September 2023, people with pre-settled status under the EU Settlement Scheme will automatically have their status extended by two years before it expires.[[91]](#footnote-92) This extension will be automated, the applicant will be notified and it will be reflected on their digital status. In addition, from 2024, the Home Office has committed to automatically convert applicants from pre-settled to settled status, if they are eligible. The Independent Monitoring Authority noted the changes, but expressed disappointment at the lack of engagement and clarity.[[92]](#footnote-93)

In July 2023, the Home Office announced several further changes to the EU Settlement Scheme application process.[[93]](#footnote-94) From August 2023, the Home Office closed the Family Member and the Qualifying British Citizen routes for applications to the EU Settlement Scheme, on the basis that they were temporary measures.[[94]](#footnote-95) On late applications to the scheme, the new guidelines stipulate that previous reasonable grounds for late applications, such as serious illness or undergoing significant medical treatment, will no longer be considered.[[95]](#footnote-96) Further, an applicant who has had an in-time application refused will not be able to make a late application based on reasonable grounds for delay.[[96]](#footnote-97)

The Commission will continue to monitor the application process under the EU Settlement Scheme and its implementation.

Following research published in 2020 which identified a range of significant concerns,[[97]](#footnote-98) in September 2023, the Commission published a briefing on access to healthcare in NI, and on the island of Ireland, after the UK’s withdrawal from the EU.[[98]](#footnote-99) The Commission’s recommendations include that steps are taken to ensure that frontier workers continue to enjoy at least the same rights as before the UK’s withdrawal from the EU; and that the relationship between the Frontier Workers’ Permit Scheme and the Common Travel Area rules that govern access to healthcare for frontier workers is clarified.[[99]](#footnote-100)

In October 2023, the Commission published research on Article 2 of the Windsor Framework and the rights of frontier workers and their families.[[100]](#footnote-101) The report highlights the complex, layered way in which rights of frontier workers are protected following UK withdrawal from the EU and the pre-existing and current gaps in the legal framework, including potential diminutions under Windsor Framework Article 2.[[101]](#footnote-102) The research recommends several changes to clarify and implement rights including through a new, domestically enforceable, UK-Ireland bilateral treaty on the Common Travel Area, better guidance directed at frontier workers and advisers and definitions of different categories of frontier workers.[[102]](#footnote-103)

### [AMBER] Human Rights after UK Exit from the EU

The Commission is mandated in accordance with Windsor Framework Article 2 of the UK-EU Withdrawal Agreement to oversee the UK Government’s commitment on rights and equality in NI after UK withdrawal from the EU. The UK signed the UK-EU Withdrawal Agreement in January 2020 and the Protocol on Ireland/NI (now known as the Windsor Framework), which is part of the treaty, took effect from 1 January 2021.[[103]](#footnote-104)

Article 2 of the Windsor Framework requires the UK Government to ensure that there is no diminution of rights, safeguards and equality of opportunity as set out in the relevant chapter of the Belfast (Good Friday) Agreement 1998, as a result of the UK’s withdrawal from the EU.

This commitment to ensure ‘no diminution’ is measured by and against the relevant EU standards on 31 December 2020.[[104]](#footnote-105) Windsor Framework Article 2 provides specific protection against discrimination with reference to six EU equality directives specified in Annex 1 to the Windsor Framework. By virtue of Article 13 of the Windsor Framework, NI law must keep pace with any changes made by the EU to improve minimum levels of protection, on or after 1 January 2021, including monitoring relevant current and future CJEU case law.

In December 2022, following engagement with key stakeholders, the Commission, together with the Equality Commission for NI, published a working paper on the scope of Windsor Framework Article 2.[[105]](#footnote-106) This paper provides an initial assessment of what Windsor Framework Article 2 means in practice for the protection of human rights and equality in NI. Appendix 1 to the working paper sets out the EU law which the Commissions have identified, as of that date, as falling within the scope of Article 2.[[106]](#footnote-107) A definitive interpretation of Windsor Framework Article 2 will ultimately be determined by the courts and the oversight bodies established by the UK-EU Withdrawal Agreement 2020. The Commission takes the view that this is a reasoned and robust interpretation of the ‘non-diminution’ and ‘keep pace’ obligation and that it provides an essential contribution to our understanding of the UK Government commitment in Windsor Framework Article 2.[[107]](#footnote-108)

In February 2023, UK Supreme Court dismissed an appeal on the legality of the Windsor Framework, noting that:

the answer to any conflict between the Protocol and any other enactment whenever passed or made is that those other enactments are to be read and have effect subject to the rights and obligations which are to be recognised and available in domestic law by virtue of section 7A(2) [of the EU (Withdrawal) Act 2018].[[108]](#footnote-109)

In February 2023, the UK Government and EU Commission reached a political agreement on a new way forward to address concerns relating to the operation on the Protocol on Ireland/NI.[[109]](#footnote-110) In March 2023, the Joint Committee which oversees the implementation, application and interpretation of the UK-EU Withdrawal Agreement, met to formally adopt a decision to give effect to this political agreement.[[110]](#footnote-111) The Joint Committee agreed amendments to the text of the original Protocol and a series of recommendations and declarations, and confirmed that the Protocol, as amended, would be renamed the Windsor Framework.

In 2022, the NI Protocol Bill sought to empower Ministers to disapply the original Protocol and relevant parts of the EU-UK Withdrawal Agreement in domestic law. The Commission, along with the Equality Commission for NI, raised concerns that the Bill provided some safeguards for Windsor Framework Article 2, but that this protection was incomplete.[[111]](#footnote-112) In 2022, following an exchange of correspondence with the House of Lords Sub-Committee on the Ireland/NI Protocol, the UK Government stated it had no intention of undermining the provisions of Windsor Framework Article 2.[[112]](#footnote-113) However, this response failed to fully address the Commission's concerns.[[113]](#footnote-114) In March 2023, following the political agreement between the UK and the EU on the Windsor Framework, the UK Government confirmed its intention not to proceed with the Protocol Bill.[[114]](#footnote-115) The Commission welcomed this development.[[115]](#footnote-116)

In March 2023, the UK Government introduced [Windsor Framework (Democratic Scrutiny) Regulations 2023](https://www.legislation.gov.uk/ukdsi/2023/9780348246322/contents), to implement aspects of the UK-EU political agreement relating to the ‘Stormont brake’ in domestic law. The ‘Stormont brake’, allows the UK Government to potentially stop the application of EU legal provisions in NI which amend or replace measures in Annex 2 of the original Protocol.[[116]](#footnote-117) Where Members of the NI Assembly can show 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, the ‘Stormont brake’ can be invoked.[[117]](#footnote-118)

In May 2023, the Commission and Equality Commission for NI, in evidence to the House of Lords Sub-Committee on the Ireland/NI Protocol, welcomed the exclusion of the Annex 1 Equality Directives from the changes to Article 13 of the original Protocol and raised a number of concerns.[[118]](#footnote-119) The Commission is concerned that there is potential for the ‘Stormont brake’ mechanism to have implications for equality and human rights in NI and for divergence of rights in so far as it relates to EU law in Annex 2 of the Windsor Framework. The Commission is also concerned that new procedural hurdles may impede the inclusion of new EU equality and human rights measures in Annex 1.[[119]](#footnote-120) The Commission has called for equality and human rights considerations to be built into the revised process under Article 13(4) of the original Protocol.[[120]](#footnote-121)

In May 2023, the Court of Appeal in NI considered Windsor Framework Article 2 in the context of a challenge to the regulations which empowered the Secretary of State for NI to direct the Department of Health to commission abortion services.[[121]](#footnote-122) The Court of Appeal was not convinced that the commissioning of abortion services fell within scope of Windsor Framework Article 2 and welcomed the interventions from the Commission and Equality Commission for NI, including the working paper on the Scope of Windsor Framework Article 2.[[122]](#footnote-123) Nevertheless, the Court of Appeal confirmed that the UN CRPD was a part of the EU legal order prior to UK withdrawal and as such, the Assembly was prohibited from legislating contrary to the UN CRPD as EU law where matters fell within the competence of the EU.[[123]](#footnote-124) The Court of Appeal also set out a six point test to establish a breach of Windsor Framework Article 2.[[124]](#footnote-125)

In October 2023, an asylum seeker challenged the lawfulness of the decision to remove him from NI to Scotland on several grounds including Windsor Framework Article 2.[[125]](#footnote-126) While the applicant was unsuccessful, the High Court of Justice in NI reiterated that Windsor Framework Article 2 has direct effect, which can be relied on in the domestic courts.[[126]](#footnote-127) The High Court further confirmed that the EU Charter on Fundamental Rights falls within the ambit of Article 2(1) of the Windsor Framework and remains enforceable in NI.[[127]](#footnote-128) The High Court also rejected the argument that the rights and safeguards in the relevant part of the Belfast (Good Friday) Agreement 1998 are frozen in time and limited to the political context of 1998.[[128]](#footnote-129)

#### Embedding consideration of Windsor Framework Article 2

In March 2023, the Leader of the House of Commons, Penny Mordaunt MP, advised that updated Explanatory Memorandum guidance for statutory instruments has been circulated to departments to ensure consideration of compliance with Windsor Framework Article 2 and that the next update of the Guide to Making Legislation will reference the importance of compliance with Article 2.[[129]](#footnote-130) This guidance is not yet publicly available.

In July 2023, the Executive Office launched a consultation on the Draft Strategic Framework to End Violence Against Women and Girls and published an accompanying Windsor Framework Article 2 Impact Assessment.[[130]](#footnote-131) In its response, the Commission welcomed this impact assessment and set out its initial views, highlighting that it would welcome further engagement with the Executive Office on the impact assessment.[[131]](#footnote-132) The Commission recommended that when screening for compliance, the Impact Assessment should consider all provisions of EU law engaged under the Windsor Framework Article 2 relevant to the legislation or policy being assessed, including EU law which underpins relevant ECHR rights. The Commission also recommended that the Executive Office develop and implement training and guidance for departmental officials on Windsor Framework Article 2, including Impact Assessments, to embed consideration of Article 2 throughout legislative and policy processes.[[132]](#footnote-133)

In November 2023, the NI Executive Office delivered an initial webinar for civil servants on the screening of Windsor Framework Article 2. The NI Executive Office has established an interdepartmental working group which meets on a monthly basis to share information and learning on Windsor Framework Article 2.[[133]](#footnote-134)

#### Island of Ireland dimension of Windsor Framework Article 2

In January 2023, the Equality Commission for NI, on behalf of the Commission and Irish Human Rights and Equality Commission, published a research report on the impact of UK withdrawal from the EU on the divergence of rights and best practice on the island of Ireland.[[134]](#footnote-135) The research report analysed the effect, and potential effect, of withdrawal on the divergence of equality and human rights protections and EU best practice on the island of Ireland.[[135]](#footnote-136) It highlighted EU law, policy and best practice developments from 1 January 2021 that have the potential to result in divergence of rights on the island of Ireland.[[136]](#footnote-137) In April 2023, the three Commissions published key policy recommendations arising from this research.[[137]](#footnote-138) The Equality Commission for NI has commissioned an update to the research on the divergence of rights on the island of Ireland on behalf of the three Commissions, which is to be finalised in 2024.

In June 2023, the three Commissions gave evidence to the Joint Oireachtas Committee on the Implementation of the Good Friday Agreement on its work on divergence of rights on the island.[[138]](#footnote-139) The three Commissions also sought the support of the Joint Oireachtas Committee in considering divergence of rights on the island as part of its mandate.[[139]](#footnote-140)

### [AMBER] Retained EU law

The EU (Withdrawal) Act 2018 repealed the European Communities Act 1972, which gave effect to EU law within the UK domestic legal framework before 1 January 2021. The 2018 Act then provided for the body of existing EU law to be ‘retained’ in the UK, so that it would continue to have effect after 1 January 2021, subject to amendment or repeal over time.

In 2022, the Retained EU Law (Revocation and Reform) Bill was introduced to the UK Parliament. In January 2023, the Commission, jointly with the Equality Commission for NI, raised several concerns with the then Retained EU Law (Revocation and Reform) Bill, including the sunset clause for all EU-derived subordinate legislation and retained direct EU law by 31 December 2023.[[140]](#footnote-141) In March 2023, speaking on behalf of the UK Government, Lord Callanan, stated that the then Bill would not disturb Section 7A of the European Union (Withdrawal) Act 2018, and gave assurances that “the [UK] Government will ensure that all necessary legislation is in place by the [Retained EU Law (Revocation and Reform)] Bill’s sunset date to uphold all the commitments made under Article 2”.[[141]](#footnote-142)

In May 2023, the UK Government brought forward an amendment to the then Retained EU Law (Revocation and Reform) Bill. The amendment replaced the sunset clause with a list of retained EU law measures in a Schedule to the Bill, which are intended to be revoked at the end of 2023. The Secretary of State for Business and Trade, Kemi Badenoch MP, acknowledged that this would provide clarity for businesses by making it clear which laws would remain in statute and which would be revoked.[[142]](#footnote-143) In June 2023, the Retained EU Law (Revocation and Reform) Act 2023 received Royal Assent.

In June 2023, Secretary of State for Business and Trade, in a letter to the House of Lords Sub-Committee on the Ireland/NI Protocol, stated that the then Retained EU Law (Revocation and Reform) Bill did not disturb sections 7A and 7C of the EU Withdrawal Act 2018 and that the Bill includes a restatement power, enabling the UK Government to restate relevant retained rights and obligations where required by Windsor Framework Article 2.[[143]](#footnote-144) The letter further stated that Windsor Framework Article 2 “does not itself apply EU law, and so domestic law giving effect to Article 2 rights may be affected by the abolition of retained EU interpretive effects”.[[144]](#footnote-145) The Secretary of State for Business and Trade asserted that it may be necessary to restate a number of instruments within scope of Windsor Framework Article 2 “to codify any required effects”.[[145]](#footnote-146)

In July 2023, House of Lords Sub-Committee on the Ireland/NI Protocol replied to the Secretary of State for Business and Trade setting out a number of questions.[[146]](#footnote-147) These included why the UK Government did not amend the now Retained EU Law (Revocation and Reform) Act 2023 to signpost that a distinct interpretive approach is required under sections 7A and 7C of the EU Withdrawal Act 2018; whether the process of codification was unnecessarily complex and time-consuming; and what was the risk of incomplete, inaccurate or out-of-date codification.[[147]](#footnote-148) The Sub-Committee also asked what consideration the UK Government had given to the working paper on the scope of Windsor Framework Article 2 published by the Commission and the Equality Commission for NI.[[148]](#footnote-149)

In September 2023, the Minister for Industry and Economic Security, Nusrat Ghani MP, responded stating that the EU (Withdrawal) Act 2018, as amended by the Retained EU Law (Revocation and Reform) Act 2023, is sufficiently clear that the loss of EU interpretive effects is subject to relevant separation agreement law and no further legislative signpost was required.[[149]](#footnote-150) The Minister for Industry and Economic Security further stated that codifying EU interpretive effects from case law will provide legal certainty and clarity by consolidating specific effects resulting from EU principles of interpretation. The Minister for Industry and Economic Security also confirmed that UK Government departments are working to compile an authoritative account of where retained EU law sits across policy areas and sectors, including identifying where retained EU law falls within scope of Windsor Framework Article 2.

In October 2023, the House of Lords Sub-Committee on the Ireland/NI Protocol replied to the Minister for Industry and Economic Security asking the UK Government to consider producing a central list of EU measures falling in scope of Windsor Framework Article 2 and further information on the coordination of monitoring of Article 2 across departments.[[150]](#footnote-151) In addition, the Sub-Committee sought confirmation from the UK Government that any identification of measures within scope of Article 2 cannot be definitive at this time.[[151]](#footnote-152) The Sub-Committee further requested that the UK Government publish guidance on the methodology, scope and approach in respect of the codification of EU interpretive effects from caselaw.[[152]](#footnote-153)

In October 2023, the High Court of Justice in NI confirmed that the effect of sections 5(4)-5(5) of the EU Withdrawal Act 2018, which restrict the EU Charter of Fundamental Rights and EU General Principles, is limited by the domestic incorporation of the UK-EU Withdrawal Agreement by section 7A of the 2018 Act. The High Court concluded that the EU Charter of Fundamental Rights remains enforceable in NI and falls within the ambit of Article 2(1) of the Windsor Framework.[[153]](#footnote-154)

In May 2023, the Department for Business and Trade published a consultation on proposed reforms and repeal of several provisions of retained EU employment law.[[154]](#footnote-155) The Commission identified two provisions where changes could apply to NI.[[155]](#footnote-156) In response to the consultation, the Commission advised that consideration of Windsor Framework Article 2 should be embedded at all stages of policy and decision making to ensure compliance.[[156]](#footnote-157) The Department for Business and Trade was considering responses to this consultation and will publish its response once this is completed.

## Equality and Non-Discrimination

### [AMBER] Age discrimination

In December 2022, the EU Commission published proposals for two EU Directives on standards for equality bodies.[[157]](#footnote-158) The Commission, alongside the Equality Commission for NI, consider that the proposed Directives amend provisions of EU Employment Equality (Framework) Directive which protects against discrimination on grounds of age.[[158]](#footnote-159) As this is one of the directives listed in Annex 1 to the Windsor Framework, NI equality law should be amended to keep pace with these changes, if the proposals are adopted.[[159]](#footnote-160)

In September 2023, the Minister of State for NI, Steve Baker MP, confirmed that it is the UK Government’s view that the proposals fall within scope of Windsor Framework Article 2 and it will work with the Executive Office and the UK Mission to the EU to understand what changes to NI law the proposals may require.[[160]](#footnote-161)

### [AMBER] Business and human rights

In June 2023, the UN CRC Committee issued revised recommendations that the UK Government and NI Executive should:

1. ensure the legal accountability of business enterprises and their subsidiaries operating in or managed from the State Party’s territory in relation to international and national human rights, labour, environmental and other standards;
2. require companies to undertake assessments of, consultations on and full public disclosure of the environmental, health-related and children’s rights impacts of their business activities and their plans to address such impacts.[[161]](#footnote-162)

The Commission continues to support the NI Business and Human Rights Forum. In 2023, issues discussed by the Forum included public procurement, modern slavery and human trafficking, transparency in supply chains and the Sustainable Development Goals. The Forum, in conjunction with the Labour Relations Agency and the Commission, was also considering a toolkit to assist in assessing issues around compliance and good practice in the area of employment rights.

In 2023, the Commission received small grant funding from the European Network of National Human Rights Institutions to work with Queen’s University Belfast to develop a NI Business Human Rights Index. The index is expected to be completed by March 2024.

### [AMBER] Discrimination on grounds of sexual orientation

In June 2023, the UN CRC Committee noted that it remained concerned about “persistent discrimination… against children in disadvantaged situations including… lesbian, gay, bisexual and transgender children”.[[162]](#footnote-163) The UN CRC Committee issued a revised recommendation that the UK Government and NI Executive should “ensure that children who experience discrimination, bullying and harassment in relation to their sexual orientation or gender identity receive protection and support, including through targeted anti-bullying measures”.[[163]](#footnote-164)

In December 2022, the EU Commission published proposals for two EU Directives on standards for equality bodies.[[164]](#footnote-165) To the extent that the final Directives amend provisions of the EU Employment Equality (Framework) Directive, which protects against discrimination on grounds of sexual orientation,[[165]](#footnote-166) NI equality law must be amended to keep pace with these changes.[[166]](#footnote-167) In September 2023, the Minister of State for NI, Steve Baker MP, confirmed that it is the UK Government’s view that the proposals fall within scope of Windsor Framework Article 2.[[167]](#footnote-168)

Under the Criminal Justice (No 2) (NI) Order 2004, sexual orientation is recognised as a ground for inciting hatred. In 2020, the Independent Hate Crime Review recommended that statutory aggravations should be added to all existing offences in NI, including homophobic hate crime, following the model adopted in Scotland.[[168]](#footnote-169) The Department of Justice is considering how to implement the Independent Hate Crime Review’s recommendations.[[169]](#footnote-170) A two-staged consultation process is underway, but any progress on outcomes is subject to the return of the NI Executive and NI Assembly.[[170]](#footnote-171)

In 2023, the Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy did not progress due to the absence of a functioning NI Executive.[[171]](#footnote-172)

### [AMBER] Gender Equality Strategy

In December 2022, the EU Commission published proposals for two EU Directives on standards for equality bodies.[[172]](#footnote-173) The Commission, alongside the Equality Commission for NI, consider that the proposed Directives amend provisions of the gender equality directives specified in Annex 1 to the Windsor Framework.[[173]](#footnote-174) Therefore, NI equality law should be amended to keep pace with these changes, if the proposals are adopted.[[174]](#footnote-175)

In September 2023, the Minister of State for NI, Steve Baker MP, confirmed that it is the UK Government’s view that the proposals fall within scope of Windsor Framework Article 2.[[175]](#footnote-176)

### [AMBER] Gender recognition

In December 2022, the EU Commission published proposals for two EU Directives on standards for equality bodies.[[176]](#footnote-177) To the extent that the final Directives adopted amend provisions of the gender equality directives specified in Annex 1 to the Windsor Framework,[[177]](#footnote-178) NI equality law should be amended to keep pace with these changes.[[178]](#footnote-179)

In September 2023, the Minister of State for NI, Steve Baker MP, confirmed that it is the UK Government’s view that the proposals fall within scope of Windsor Framework Article 2.[[179]](#footnote-180)

### [AMBER] Hate crime

In June 2023, the UN CRC Committee issued revised recommendations that the UK Government and NI should ‘‘encourage the reporting of hate crimes against children; investigate and prosecute cases of racially, ethnically and religiously motivated crime; punish perpetrators with commensurate sanctions; and provide adequate compensation to the victims, as appropriate’’.[[180]](#footnote-181)

In 2023, there have been increased reports of ‘organised’ hate crimes in NI, particularly racist hate crimes.[[181]](#footnote-182) In November 2023, a follow-up public meeting on tackling racist hate crimes in Belfast was cancelled due to persistent intimidation and concern for the safety of attendees.[[182]](#footnote-183)

In 2021, the Independent Hate Crime Review Team published its report on improving hate crime legislation in NI.[[183]](#footnote-184) In 2022, the Department of Justice put in place a dedicated Hate Crime Branch to take forward the Independent Review’s recommendations in a two-stage consultation process.[[184]](#footnote-185) Phase one of the consultation process has been completed. The Commission submitted a response highlighting the importance of carefully considering the provisions of the EU Victims’ Directive within the context of Windsor Framework Article 2 in the development of hate crime legislation.[[185]](#footnote-186) In 2023, work continued on drafting a Hate Crime Bill and final policy positions, however implementation was not possible without a functioning NI Executive and NI Assembly.[[186]](#footnote-187)

### [AMBER] Persons with disabilities

#### Autism Strategy

The Autism (Amendment) Act NI 2022 provides for a regional autism strategy, which includes training for staff, an autism information service, an early intervention service, adult support services, measurable targets, and an independent autism reviewer to oversee implementation.

In 2023, the autism strategy and the appointment of the independent autism reviewer could not progress without a functioning NI Executive.[[187]](#footnote-188)

#### Windsor Framework Article 2 and disability rights

In May 2023, the Court of Appeal in NI considered Windsor Framework Article 2 and confirmed that since UN CRPD was a part of the EU legal order prior to UK withdrawal, the NI Assembly was prohibited from legislating contrary to the UN CRPD as EU law where matters fell within the competence of the EU.[[188]](#footnote-189)

In December 2022, the EU Commission published proposals for two EU Directives on standards for equality bodies.[[189]](#footnote-190) The Commission, alongside the Equality Commission for NI, consider that the proposed Directives amend provisions of the EU Employment Equality (Framework) Directive, which protects against discrimination on grounds of disability.[[190]](#footnote-191) Therefore, NI equality law should be amended to keep pace with these changes, if the proposals are adopted. In September 2023, the Minister of State for NI, Steve Baker MP, confirmed that it is the UK Government’s view that the proposals fall within scope of Windsor Framework Article 2.[[191]](#footnote-192)

In March 2023, the Commission, along with the Equality Commission for NI and the Irish Human Rights and Equality Commission, published research on divergence of rights on the island of Ireland following the UK’s withdrawal from the EU.[[192]](#footnote-193) This research highlighted developments in CJEU caselaw of relevance to the EU Employment Equality (Framework) Directive.[[193]](#footnote-194) The research highlighted the CJEU ruling in the case of *Szpital Kliniczny* (2021),[[194]](#footnote-195) which elaborated on the concept of disability within the EU Employment Equality (Framework) Directive.[[195]](#footnote-196) Further CJEU rulings in the cases of *Jurors* (2021)[[196]](#footnote-197) and *Tartu Vangla* (2021)[[197]](#footnote-198) highlighted that justifications for the exclusion of persons with a disability from certain professional roles, including public service roles, must be scrutinised closely. NI equality law must keep pace with any changes made by the EU to these rights to improve the minimum levels of protection available, on or after 1 January 2021, including monitoring relevant current and future CJEU case law.[[198]](#footnote-199)

In May 2023, the Court of Appeal in NI considered Windsor Framework Article 2 and confirmed that since UN CRPD was a part of the EU legal order prior to UK withdrawal, the NI Assembly was prohibited from legislating contrary to the UN CRPD as EU law where matters fell within the competence of the EU.[[199]](#footnote-200)

#### Assistance dogs

In 2021, the Commission and Equality Commission for NI raised concerns about the equality and human rights implications of changes to rules around taking pets, including assistance dogs, from Great Britain to NI.[[200]](#footnote-201) Checks on pets and assistance dogs entering NI from Great Britain were subsequently delayed indefinitely to allow for the UK and EU to find a long-term solution.[[201]](#footnote-202) In February 2023, the UK and EU reached a resolution on pet passports which allows pets to “easily accompany” their owners when travelling within the UK.[[202]](#footnote-203) The UK Government has confirmed that “for NI pet owners there will be no new requirements of any kind” and “pet owners can come and go from Great Britain without ever having to think about any paperwork process”.[[203]](#footnote-204) The Commission welcomes this development and the UK Government’s commitment to work with ferry companies to ensure their online guidance reflects these new arrangements and gives travellers confidence to travel once again with their pets.[[204]](#footnote-205)

#### Access to medicines

In February 2023, the UK and EU announced that a permanent resolution had been found to ensure that patients in NI “will have access to new medicines at the same time and under the same conditions as Great Britain”.[[205]](#footnote-206) The UK and EU confirmed that this would result in “fully safeguarding the supply of medicines from Great Britain into NI”.[[206]](#footnote-207) The Commission welcomed the announcements by the UK and EU and will continue to monitor the changes to ensure there is no diminution of rights in breach of Windsor Framework Article 2 and to ensure the right to the highest attainable standard of health is upheld.

### [AMBER] Racial equality

In June 2023, the UN CRC Committee issued a revised recommendation that the UK Government and NI Executive “address the overrepresentation of children belonging to minority groups in detention and develop measures, in consultation with affected children and their families, to prevent racial profiling by law enforcement authorities”.[[207]](#footnote-208)

In December 2022, the EU Commission published proposals for two EU Directives on standards for equality bodies.[[208]](#footnote-209) The Commission, alongside the Equality Commission for NI, consider that the proposed Directives will amend provisions of the EU Race Equality Directive,[[209]](#footnote-210) which is specified in Annex 1 to the Windsor Framework. Therefore, NI equality law should be amended to keep pace with these changes, if the proposals are adopted.[[210]](#footnote-211) In September 2023, the Minister of State for NI, Steve Baker MP, confirmed that it is the UK Government’s view that the proposals fall within scope of Windsor Framework Article 2.[[211]](#footnote-212)

In 2015, the Executive Office committed to reviewing the Race Relations (NI) Order 1997.[[212]](#footnote-213) In March 2023, the Executive Office published a consultation on its review of the Race Relations (NI) Order 1997, with the view to bringing forward stronger legislation to protect minority ethnic communities from racism and discrimination.[[213]](#footnote-214) The review consulted on several proposals, including provision of goods and services, education and employment.[[214]](#footnote-215) It also proposed to introduce a provision to enact Ethnic Equality Monitoring through secondary legislation after it pushes forward with Public Sector Ethnic Equality Monitoring.[[215]](#footnote-216) In June 2023, the Commission responded to the consultation, noting the importance of a human rights-based approach and compliance with Windsor Framework Article 2, including the obligation to keep pace with any changes to the EU Race Equality Directive.[[216]](#footnote-217)

In 2022, the Nationality and Borders Act introduced Electronic Travel Authorisations, which will be required for all non-British citizens who require leave to enter the UK.[[217]](#footnote-218) Irish citizens are excluded as individuals not requiring leave to enter the UK.[[218]](#footnote-219) The Commission expressed concern about associated checks, and the risk of increased racial profiling.[[219]](#footnote-220) In March 2023, the UK Government announced that individuals who are lawfully resident in Ireland and from a nationality that does not usually require a visa to visit the UK, would be exempt from requiring an Electronic Travel Authorisation to enter the UK, which partially addresses the Commission’s concerns. However, such individuals not resident in Ireland do still need to apply for an Electronic Travel Authorisation when travelling from Ireland to NI.[[220]](#footnote-221)

In 2015, the Executive Office committed to an independent review of the progress of implementation of the Racial Equality Strategy 2015-2025.[[221]](#footnote-222) In August 2023, the Executive Office commissioned an Independent Review of progress on the implementation of the Racial Equality Strategy 2015-2025. In November 2023, the Commission met with the Independent Review team and raised several issues including ethnic equality monitoring, multiple intersectional discrimination, racial profiling and the UK Government and NI Executive’s commitment under Windsor Framework Article 2, particularly in relation to the obligation to ‘keep pace’ with the EU Racial Equality Directive.[[222]](#footnote-223)

### [AMBER] Sectarianism

In 2021, following a recommendation from Judge Marrinan,[[223]](#footnote-224) the Department of Justice agreed in principle that there should be a definition of sectarian offences provided in legislation and acknowledged the merit in considering the Scots law definition carefully in relation to its implementation in NI.[[224]](#footnote-225) The Department of Justice also agreed in principle to include a new statutory aggravation for sectarian prejudice (subject to an agreed definition of sectarianism), which could be monitored by the Victims of Crime Commissioner.[[225]](#footnote-226)

In 2023, work on drafting a Hate Crime Bill and final policy positions, including on sectarianism, continued. As part of this process, the Commission provided advice in support of the Department of Justice’s proposals on sectarianism and highlighting the need to ensure compliance with Windsor Framework Article 2 and the EU Victims’ Directive.[[226]](#footnote-227) However, the Hate Crime Bill cannot progress without a functioning NI Executive and NI Assembly.[[227]](#footnote-228)

### [AMBER] Sport and human rights

In June 2023, the UN CRC Committee issued revised recommendations that the UK Government and NI Executive:

1. develop a strategy, with sufficient resources, aimed at ensuring children’s right to rest, leisure and recreation, including free outdoor play;
2. integrate children’s right to play into school curricula and ensure that children have sufficient time to engage in play and recreational activities that are inclusive and age-appropriate;

1. strengthen measures to ensure that all children, including children with disabilities, young children, children in rural areas and children in disadvantaged socioeconomic backgrounds, have access to accessible, safe, public outdoor play spaces;

1. involve children in decisions regarding urban-planning processes, including public transportation, and in the development of spaces for children to play.[[228]](#footnote-229)

The NI Sport and Human Rights Forum is supported by the Commission. It enables sporting bodies, grassroots sporting groups, public authorities, government representatives and civil society to engage with each other on sport and human rights issues.

In March 2023, in response to requests from the NI Sport and Human Rights Forum, a guide on including transgender people in grassroots sports was published.[[229]](#footnote-230) This resource was developed by Gendered Intelligence and funded by the Commission. It was accompanied by a legal analysis developed by the Commission.[[230]](#footnote-231)

## Right to Life

### [AMBER] Rule of law: Non-State actors

In June 2023, the UN CRC Committee issued a revised recommendation that the UK Government and NI Executive “strengthen measures to protect children from intimidation, racist attacks and other forms of violence committed by non-State actors, including so-called ‘paramilitary organisations’ in NI, and from recruitment by such actors into violent activities”.[[231]](#footnote-232)

In 2022, the Independent Reporting Commission published its fifth annual report, which concluded that:

2022 has been another mixed year in respect of efforts to bring paramilitarism to an end. As was the case in 2021, some of the data around paramilitary activity showed reductions again in 2022 and there has been good progress in several of the initiatives being developed by the [NI Executive] Programme [for Tackling Paramilitary Activity and Organised Crime]. In particular Phase Two of the Programme is demonstrating tangible benefits. On the other hand, reaction to political developments, particularly relating to the Protocol on Ireland and NI of the EU-UK Withdrawal Agreement, led to new instability at political level, which in turn fed speculation about the potential for a resurgence of paramilitary activity. A number of paramilitary-related incidents served to heighten that speculation. Overall, we have not altered our view that the risks posed to society by the continuing existence of paramilitary groups and structures mean that paramilitarism remains a clear and present danger in and for NI.[[232]](#footnote-233)

The Independent Reporting Commission also found that the Paramilitary Crime Task Force “continued to have an impact on paramilitary criminality”.[[233]](#footnote-234) It also welcomed “the increased focus on co-operation taking place between the Police Service of NI and others”.[[234]](#footnote-235)

In 2023, the Executive Programme on Paramilitarism and Organised Crime was allocated £16.3 million.[[235]](#footnote-236) Of this £8 million was ring-fenced funding from the Executive Office’s budget and £8.3 million was provided by the UK Government.[[236]](#footnote-237) Additionally, the Communities in Transition project continued to be funded by the Department of Justice.[[237]](#footnote-238)

## Freedom from Torture, Inhuman and Degrading Treatment

### [AMBER] Abuse in health and social care settings

In March 2023, following a public consultation,[[238]](#footnote-239) the Department of Health published a new regional policy on the use of restrictive practices in health and social care settings, and regional operational procedures for the use of seclusion.[[239]](#footnote-240) The policy aims to eliminate the use of restrictive practices, starting by ensuring the use of restrictive practices is minimised and only used when absolutely necessary.[[240]](#footnote-241)

Between 2020 and 2022, several reports were published following an independent review of the health and social care system’s response to care failings at Dunmurry Manor Care Home.[[241]](#footnote-242) In 2022, a Care Homes Working Group was established to monitor and report on the implementation of recommendations made by the Independent Review Team.[[242]](#footnote-243) In 2023, the Care Homes Working Group’s work continued.

In 2022, the Muckamore Abbey Hospital Inquiry commenced.[[243]](#footnote-244) In February 2023, the Chair of the Inquiry, Tom Kark KC, advised that “it is unlikely that all of that evidence will finish before the end of 2023, and it is probable that some evidence will need to be called in the early part of 2024”.[[244]](#footnote-245) By June 2023, 38 people had been arrested in connection with the investigation into Muckamore Abbey Hospital.[[245]](#footnote-246)

The UK COVID-19 Inquiry is looking at resilience and preparedness, core UK decision-making and political governance, impact of the COVID-19 pandemic on healthcare, and vaccines and therapeutics.[[246]](#footnote-247) Each module is investigating issues within health and social care settings across the UK, including in NI. In 2023, the work of the UK COVID-19 Inquiry continued, which included the Commission providing a written statement. In October 2023, the Commission was notified that is a provisional oral witness for a UK COVID-19 Inquiry public hearing in April and May 2024.[[247]](#footnote-248)

### [AMBER] Deprivation of citizenship

In June 2023, the UN CRC Committee issued a revised recommendation that the UK Government:

amend the Nationality and Borders Act of 2022 to ensure that the best interests of the child are taken as a primary consideration in all proceedings related to deprivation of nationality, that the [2022] Act is not applied to any children who would be put at risk of statelessness or would otherwise be stateless, and that citizens are not deprived of their citizenship as a result of actions they allegedly committed as children.[[248]](#footnote-249)

In 2023, following a dismissed appeal at the UK Supreme Court,[[249]](#footnote-250) the UK Special Immigration Appeals Commission upheld the UK Government’s decision to strip Shamima Begum of British citizenship.[[250]](#footnote-251) Ms Begum travelled to Syria to join the Islamic State in Iraq and the Levant when she was 15 years old.[[251]](#footnote-252) In dismissing her appeal, the Special Immigration Appeals Commission stated that there was reasonable suspicion that Ms Begum had been trafficked and there were arguable failures in the positive duty to protect the applicant by allowing her to travel to Syria.[[252]](#footnote-253)

### [AMBER] Domestic and sexual violence and abuse

In September 2023, research found that 98 per cent of surveyed women in NI and 73 per cent of surveyed girls aged 12 to 17 years in NI reported having experienced at least one form of violence in their lifetime.[[253]](#footnote-254)

In 2023, the Department of Health and Department of Justice consulted on a draft domestic and sexual abuse strategy.[[254]](#footnote-255) In its consultation response, the Commission recommended that human rights standards are embedded into the strategy’s priorities, including the EU Victims’ Directive[[255]](#footnote-256) and highlighted compliance with Windsor Framework Article 2.[[256]](#footnote-257) The Commission further recommended that the final strategy explicitly adopts a gender-sensitive approach, including providing for specialised, gender-sensitive, accessible support for victims of domestic and sexual abuse.[[257]](#footnote-258)The Commission also recommended that the necessary resources are ring-fenced for the development and effective implementation of the strategy.[[258]](#footnote-259)

In 2023, the Executive Office consulted on a strategic framework and action plan for ending violence against women and girls.[[259]](#footnote-260) The Commission provided a response welcoming the proposed framework and action plan. However, the Commission highlighted the need to adopt the Barnahus model and for there to be greater consideration of specific needs, disaggregated data and adequate funding.[[260]](#footnote-261) The Commission also welcomed the inclusion of a Windsor Framework Impact Assessment regarding the proposed strategic framework. However, the Commission recommended that the Impact Assessment consider all relevant provisions of EU law engaged under the Windsor Framework Article 2 including the EU Victims’ Directive,[[261]](#footnote-262) the Child Sexual Exploitation Directive[[262]](#footnote-263) and the EU Trafficking Directive.[[263]](#footnote-264)

In June 2023, the new stand-alone offence of non-fatal strangulation came into force.[[264]](#footnote-265) The offence will apply to any case where intentional asphyxiation or strangulation occurs.[[265]](#footnote-266) Where it results in serious harm, the fact that the victim consented in the context of a sexual act will not be a defence.[[266]](#footnote-267)

In September 2023, anonymity laws came into force.[[267]](#footnote-268) The laws exclude the public from court in serious sexual offence cases and extend anonymity for victims of sexual offending for a period of 25 years after the victim has died.[[268]](#footnote-269) The anonymity of suspects in sexual offence cases is also protected up to the point of charge.[[269]](#footnote-270) Individuals not subsequently charged will have anonymity for their lifetime and for 25 years after their death.[[270]](#footnote-271) The laws further prohibit the publication of information which leads to the identification of a victim or suspect in a sexual offence case.[[271]](#footnote-272)

### [AMBER] Female genital mutilation

The Female Genital Mutilation Protection Order (Relevant Third Party) Order (NI) 2021 enables health and social care trusts in NI to obtain a third-party protection order without the need to seek the leave of a court. It is intended to speed up the process of obtaining a protection order should a Health and Social Care Trust in NI have concerns about the safety of any girl or woman under its care.[[272]](#footnote-273)

Section 116 of the Adoption and Children (NI) Act 2022, amends Article 8(4) of the Children (NI) Order 1995, so that proceedings for Female Genital Mutilation Protection Orders will be classified as family proceedings.

Beginning in 2022/2023, the 2022 Act is to be implemented on a phased basis over a period of five years. By March 2024, section 116 of the 2022 Act is due to be commenced under phase two.[[273]](#footnote-274)

### [AMBER] Historical abuse of children and adults

In 2017, the Historical Institutional Abuse Inquiry report on abuse in residential institutions in NI between 1922 and 1995 was published.[[274]](#footnote-275) In 2020, the establishment of a Historical Institutional Abuse Redress Board followed for the purposes of receiving and processing applications for compensation from those who experienced abuse covered by the Historical Institutional Abuse Inquiry.[[275]](#footnote-276) These initiatives did not extend to adult residents of Magdalene laundry type institutions or those abused in private settings.

In 2021, following a research report,[[276]](#footnote-277) the Department of Health committed to conducting an independent investigation into Mother and Baby and Magdalene Laundry Institutions.[[277]](#footnote-278) A Truth Recovery Design Panel worked with victims and survivors to recommend the most appropriate form of investigation. It recommended that a non-statutory independent panel of experts was appointed, which included individuals with personal experience.[[278]](#footnote-279) The purpose of the independent panel was to gather information, support victims, survivors and relatives to receive information previously denied, investigate human rights violations, and inform the terms of reference for a statutory public inquiry.[[279]](#footnote-280) The NI Executive agreed to implement the recommendations in full.[[280]](#footnote-281)

In April 2023, a Truth Recovery Independent Panel consisting of experts and victim-survivor representatives was appointed.[[281]](#footnote-282) It is due to complete its work by April 2025.

In 2023, draft legislation for the purposes of introducing a statutory public inquiry on Mother and Baby and Magdalene Laundry Institutions was in development, with a public consultation expected in due course.[[282]](#footnote-283) However, the legislation cannot progress without a functioning NI Executive and NI Assembly.

### [AMBER] Prison conditions

In 2023, the NI Prison Service and Department of Justice informed the Commission of concerns regarding overcrowding in NI prisons.[[283]](#footnote-284) The NI Prison Service has been actively recruiting to ensure that the number of prison staff is sufficient for the number of prisoners.[[284]](#footnote-285) However, the NI Prison Service has stated that there is a limit to what can be done with current budgets.[[285]](#footnote-286) Recruiting additional staff also will not address the reasons for the rising numbers of prisoners, including the significant increase in prisoners on remand.[[286]](#footnote-287)

In March 2023, the Criminal Justice Inspection NI published a report examining how effectively Probation Board approved premises are operating across NI regarding resettlement, rehabilitation and public protection outcomes.[[287]](#footnote-288) The Criminal Justice Inspection NI found that the demand for approved premises was high and that decisions about placements were being taken too close to the planned release date.[[288]](#footnote-289) This has implications on other processes to support transition, such as registering with a General Practitioner, opening a bank account or applying for benefits. The Criminal Justice Inspection NI noted a lack of sustainable long-term accommodation is hampering efforts to support individuals to move on from approved premises.[[289]](#footnote-290)

In June 2023, the Criminal Justice Inspection NI published its latest inspection of Maghaberry Prison.[[290]](#footnote-291) It highlighted concerns regarding access to psychologically informed treatments and how the social care needs of prisoners are being met. It also identified “a serious drug problem”, with 41 per cent of prisoners indicating it was easy to obtain drugs and 28 per cent having developed a drug problem while there. The Criminal Justice Inspection NI found a lack of governance or effective action to reduce the demand for, and supply of, drugs. In response, the NI Prison Service advised that the introduction of x-ray body scanners in March 2023 is having a significant effect on detecting and deterring drug trafficking.[[291]](#footnote-292)

Additionally, the Criminal Justice Inspection NI highlighted that purposeful activity, rehabilitation and release planning had been badly affected as a result of the COVID-19 pandemic in Maghaberry Prison.[[292]](#footnote-293) Many prisoners were released without adequate plans and concerns were also identified regarding the adequacy of safeguarding.[[293]](#footnote-294) The Criminal Justice Inspection NI highlighted access to education, skills and work activities as a priority and further recommended that prisoners are provided with effective support to address their offending behaviour and prepare for release.[[294]](#footnote-295)

Furthermore, the Criminal Justice Inspection NI found that when prisoners had died at Maghaberry Prison, prison governors waited for the Prisoner Ombudsman for NI’s and Coroner’s report to be delivered before taking action, rather than conducting their own immediate investigation and putting mitigating measures in place.[[295]](#footnote-296) The NI Prison Service is in the process of developing new arrangements in consultation with the Prisoner Ombudsman for NI.[[296]](#footnote-297)

### [AMBER] Spit and bite guards

In June 2023, the UN CRC Committee issued a revised recommendation that the UK Government and NI Executive “take legislative measures to explicitly prohibit, without exception, the use of harmful devices including spit hoods… against children”.[[297]](#footnote-298)

In 2023, spit and bite guards were permitted to be used on children aged ten years old and upwards, in line with the current age of criminal responsibility in NI.[[298]](#footnote-299) The Police Service of NI's policy on the use of spit and bite guards includes requirements to consider the best interests of the child as a primary concern when deciding whether to use a spit and bite guard on children.[[299]](#footnote-300) It also states that “where officers or staff are aware or believe that a member of the public is under 18 [years old], the presumption will be that a spit and bite guard should not be used”.[[300]](#footnote-301) However, in 2022/2023, spit and bite guards were used seven times on children under 18 years old in NI.[[301]](#footnote-302) Four instances involved a child under 16 years old and three instances were on a child aged between 16 and 17 years old.[[302]](#footnote-303)

The Police Service of NI’s policy does not set out specific circumstances in which a spit and bite guard can be used on a child in NI.[[303]](#footnote-304) The policy instead states that “in all cases where a spit and bite guard was deployed on a person under 18, officers must be able to demonstrate that it was absolutely necessary in the circumstances”.[[304]](#footnote-305)

Within the Police Service of NI, the use of spit and bite guards is monitored through utilising officers’ body worn video and a dip sampling of recordings by line managers.[[305]](#footnote-306) In instances where a spit and bite guard is used on a child, the video footage must be reviewed by the deploying officer’s supervisor and an officer of at least the rank of Chief Inspector.[[306]](#footnote-307)

In terms of an independent review, the Police Ombudsman for NI is no longer reviewing each instance of the use of a spit and bite guard.[[307]](#footnote-308) However, the Police Ombudsman for NI has agreed to review all footage that involves a child.[[308]](#footnote-309) In 2023, the Policing Board NI’s Independent Human Rights Advisor continued to review the use of spit and bite guards through a dip sampling process that will be reported on within the Human Rights Advisor’s annual report.[[309]](#footnote-310)

### [AMBER] Strip searches

#### Children

In June 2023, the UN CRC Committee issued a revised recommendation that the UK Government and NI Executive, “take legislative measures to explicitly prohibit, without exception…the use of strip searches on children”.[[310]](#footnote-311)

Prior to October 2022, data was not systematically collected for strip searches occurring outside of custody in NI.[[311]](#footnote-312) However, a new record-keeping system has been implemented and police officers are required to seek the approval of a supervisor and to request the presence of an appropriate adult before proceeding with a strip search outside of the custody setting.[[312]](#footnote-313)

In 2023, the NI Policing Board’s Human Rights Advisor, John Wadham, recommended that the Police Service of NI updated its guidance and reevaluated its governance frameworks on strip searches in police custody.[[313]](#footnote-314) The Human Rights Advisor also recommended amending the legal framework to increase the likelihood of compliance with Article 8 of the ECHR and ensure that fewer children are strip searched. This included making sure that the ‘reasonable suspicion’ test applies “both to search and seizure in custody so custody officers are required to have an honest and objective basis for their belief that the detained person has concealed a prohibited item before a strip search can be authorised”.[[314]](#footnote-315) That it is “clear that strip searches of children should only occur when the new proposed reasonable suspicion test is met and when there is no other alternative available to find the item or protect the detained person or others”.[[315]](#footnote-316) Furthermore, child safeguarding should be a primary consideration during strip searches.[[316]](#footnote-317)

#### Prisons

In March 2023, the NI Prison Service began introducing new x-ray body scanners into Maghaberry, Magilligan and Hydebank.[[317]](#footnote-318) Currently these can only be used on male prisoners in NI aged 18 years and older for a maximum of 50 times per calendar year.[[318]](#footnote-319) Prisoners will only be scanned where there is justification for using the technology and where the prisoner has consented to its use, otherwise strip searches may be conducted.[[319]](#footnote-320) The NI Prison Service has developed bespoke policy and guidance on the deployment and operation of the x-ray scanners.[[320]](#footnote-321) This is accompanied by staff training and new risk assessment and safeguarding procedures.[[321]](#footnote-322) In respect of oversight arrangements, the NI Prison Service advised there will be spot checking, a post-implementation review and regular external inspections, such as those conducted by the Criminal Justice Inspection NI.[[322]](#footnote-323) However, there are currently no longer-term arrangements for regular internal reviews.[[323]](#footnote-324)

In April 2023, the High Court of Justice in NI endorsed the lawfulness and proportionality of the deployment policy following a judicial review on the operational management of x-ray scanners in Maghaberry.[[324]](#footnote-325) However, the High Court noted that there was insufficient evidence to determine whether the policy was properly implemented in respect of the applicant.[[325]](#footnote-326) It recommended any potential outstanding issues are addressed through civil action.[[326]](#footnote-327)

### [AMBER] Victims’ payments

In 2021, following the Victims’ Payments Regulations 2020, the Troubles Permanent Disablement Payment Scheme was established. This Scheme aims to provide "those living with permanent disablement (either physical or psychological) caused by injury through no fault of their own in a Troubles-related incident with payments primarily in acknowledgement of the harm they have suffered".[[327]](#footnote-328) The Victims' Payments Board was also established, which makes decisions on applications to the Troubles Permanent Disablement Payment Scheme.[[328]](#footnote-329) The Scheme is due to run until August 2026.[[329]](#footnote-330)

As of 31 March 2022, the Victims’ Payments Scheme had received 2,047 applications, of which 61 were withdrawn.[[330]](#footnote-331) Of these, 21 determinations have been made.[[331]](#footnote-332) Six of these cases concluded with a payment being recommended and 15 of these cases were deemed ineligible.[[332]](#footnote-333) Four cases have been adjourned and a further 75 cases have been listed for hearing.[[333]](#footnote-334) As of 31 March 2022, £150,135 had been paid to successful applicants.[[334]](#footnote-335)

By September 2023, approximately 90 appeals had been lodged against a determination made by the Victims’ Payments Board.[[335]](#footnote-336) There have been criticisms of the Victims’ Payments Board’s decision-making process and the length of time it takes.[[336]](#footnote-337) The Secretary of the Victims’ Payments Board, Paul Bullick, has acknowledged the frustrations, but has stated that:

this is not a scheme that you apply to, and you have a decision or a determination or a payment out the door in six weeks. We are going back some 50 years in some cases, if not more. We have many multiple incident applications… and we are at the mercy of our evidence providers.[[337]](#footnote-338)

The Victims’ Payments Board is changing the application form in a bid to make it easier for victims to initially provide more information and have their case assessed quicker.[[338]](#footnote-339)

## Freedom from Slavery

### [AMBER] Modern slavery and human trafficking

#### Modern Slavery and Human Trafficking Strategy

In 2022, the Department of Justice consulted on its three-year strategy on Modern Slavery and Human Trafficking, which sought to operationalise the measures brought in under the Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022.[[339]](#footnote-340) In January 2023, the Commission’s response highlighted the need to ensure that Windsor Framework Article 2, including the EU Trafficking Directive,[[340]](#footnote-341) is built into and actively considered during the development and implementation of policy and legislation on modern slavery and human trafficking.[[341]](#footnote-342) The Commission also emphasised the importance of specialist support being made available to victims of modern slavery, appropriately tailored to take account of age, gender and culture.[[342]](#footnote-343)

As part of this consultation on a range of tools to tackle modern slavery and human trafficking, the Department of Justice sought views on the use of Slavery and Trafficking Risk Orders.[[343]](#footnote-344) In responding to the consultation, the Commission recommended that Slavery and Trafficking Risk Orders are promptly introduced and accompanied by robust statutory guidance in line with international human rights obligations, which explicitly acknowledges the best interests of the child principle.[[344]](#footnote-345) In addition, the Commission stressed the need for cross-departmental working to tackle human trafficking and the need for regular consultation with victims.[[345]](#footnote-346)

In 2023, implementation of the Department of Justice’s proposals, including the use of Slavery and Trafficking Risk Orders, was unable to progress without a functioning NI Executive and NI Assembly.[[346]](#footnote-347)

#### Illegal Migration Act 2023

In March 2023, the UK Government introduced the then Illegal Migration Bill which made provisions regarding modern slavery and human trafficking in respect of people who have entered the UK in breach of immigration control.[[347]](#footnote-348) The Commission provided initial advice on the then Illegal Migration Bill to the House of Commons and House of Lords Joint Committee on Human Rights and a more detailed briefing to House of Lords peers.[[348]](#footnote-349)

In July 2023, the Illegal Migration Act 2023 received Royal Assent. The Commission remains concerned that the 2023 Act denies victims of modern slavery, who have arrived in the UK irregularly, access to existing support.[[349]](#footnote-350) The Commission notes that the EU Trafficking Directive[[350]](#footnote-351) remains relevant for determining the minimum standards for protecting victims of human trafficking in NI under Windsor Framework Article 2 and that a systematic denial of support and assistance to potential victims of human trafficking, without individual consideration, does not appear to be compliant with Windsor Framework Article 2.[[351]](#footnote-352)

In September 2023, the Commission issued a judicial review against the Secretary of State for the Home Department, Suella Braverman MP, and the Secretary of State for NI, Chris Heaton-Harris MP, arguing that the Illegal Migration Act 2023 is not compliant with the ECHR and Windsor Framework Article 2. In January 2024, the case is due to be heard in the High Court of Justice in NI.

## Right to Liberty and Security of the Person

### [AMBER] Women in detention

#### Separate facility

In 2021, the Department of Justice and NI Prison Service confirmed they remain committed to the development of a separate new women’s facility on the site of Hydebank Wood and expenditure for the first phase had been approved by the Department of Finance.[[352]](#footnote-353) In 2023, the target date for the delivery of the new women’s facility, subject to the necessary funding being made available, remained mid-2025.

#### Domestic abuse and offending

UK-wide research indicates a strong link between domestic abuse and women offenders.[[353]](#footnote-354) In 2023, the Department of Justice and Department of Health consulted on a new domestic and sexual abuse strategy.[[354]](#footnote-355) The Commission responded to the consultation, highlighting the need for measures to prevent online-based and technology-related domestic and sexual abuse.[[355]](#footnote-356) The Commission further recommended provisions for gender-sensitive training of criminal justice professionals with a specific focus on the links between domestic abuse and offending.[[356]](#footnote-357)

#### Women immigration detainees

Women immigration detainees are held with men in Larne House short-term holding facility. Women are accommodated in a separate area, but this area cannot be locked off from the men’s section and there is no separate communal room available.[[357]](#footnote-358) In 2023, Larne House submitted tenders to the Home Office for alterations, including a separate communal room for women immigration detainees.[[358]](#footnote-359)

The Illegal Migration Act 2023 allows for pregnant women to be detained for up to 72 hours, or up to seven days if “authorised personally by a Minister of the Crown”.[[359]](#footnote-360) A pregnant woman who has been released, can be detained again for the specified periods.[[360]](#footnote-361) The Royal College of Midwives previously stated that even a 72-hour detention period can be harmful and that the practice of detaining pregnant women for immigration purposes must end.[[361]](#footnote-362)

## Right to Fair Trial and Administration of Justice

### [AMBER] Access to justice

#### Litigants in person

In 2018, University of Ulster in conjunction with the Commission published research on the experience of individuals who take or defend civil and family law cases without legal representation and how this impacts their human rights.[[362]](#footnote-363)

In 2019, a Litigant in Person Reference Group was established by the Department of Justice that comprised of litigants in person, statutory bodies, academics, and legal professionals.[[363]](#footnote-364) In 2023, the Reference Group continued to meet quarterly and published progress reports.[[364]](#footnote-365)

Additionally, the Department of Justice has added a new page to its website to assist individuals without representation.[[365]](#footnote-366) In 2023, the Department of Justice considered several initiatives for improving access to justice, including videos on practical elements of attending court.[[366]](#footnote-367)

#### New technologies

In 2020 and 2022, the Department of Justice and NI Court and Tribunals Service published digital strategies, which commit to embracing technological advancements and new ways of working.[[367]](#footnote-368) Additionally, the Department of Justice has consulted on the use of new technologies by the Police Service of NI and NI Court and Tribunals Service.[[368]](#footnote-369) This work is linked to implementing the Gillen review’s recommendations on improving law and procedures regarding serious sexual offences in NI.[[369]](#footnote-370)

In its consultation responses, the Commission highlighted that the adoption of new technologies and ways of working should not inadvertently hinder access to justice for individuals with specific needs, including children, persons with disabilities and unrepresented litigants.[[370]](#footnote-371) This includes ensuring there is clear guidance and safeguards in place to ensure technology and ways of working for the purpose of promoting access to justice are accessible and used appropriately.[[371]](#footnote-372) The Commission also highlighted the relevance of Windsor Framework Article 2 and advised the Department of Justice to carefully consider the provisions of the EU Victims’ Directive[[372]](#footnote-373) and the EU Directive on Interpretation and Translation in Criminal Proceedings[[373]](#footnote-374) in respect of the person suspected or accused, victims with disabilities and people who do not speak English as a first language.[[374]](#footnote-375)

In September 2023, the Department of Justice laid regulations extending the provisions relating to live links for courts and tribunals for a further six months.[[375]](#footnote-376)

In September 2023, the Department of Justice introduced a Belfast Remote Evidence Centre.[[376]](#footnote-377) Drawing from the Gillen Review’s recommendations, this aims to ensure that certain witnesses will not meet defendants within a court building.[[377]](#footnote-378) It provides a space for witnesses to give evidence via video link and to have direct access to support from Victims Support and the Young Witness Service.[[378]](#footnote-379)

### [AMBER] Avoidable delay

Since 2014, the Criminal Justice Inspection NI has raised concerns with there being no statutory custodial time limits in NI.[[379]](#footnote-380) These findings have been supported by Sir John Gillen’s review into how the NI criminal justice system handles cases of serious sexual assault.[[380]](#footnote-381)

In 2020, the New Decade, New Approach Agreement included a commitment to implement the Criminal Justice Inspection NI and Gillen review recommendations on avoidable delay.[[381]](#footnote-382) Consequently, an Implementation Team was established to co-ordinate phased actions aimed at addressing Gillen Review’s recommendations, as agreed by the Criminal Justice Board.[[382]](#footnote-383)

It has been slow progress,[[383]](#footnote-384) however in 2022, phase one of commencement of the Criminal Justice (Committal Reform) Act 2022 was completed.[[384]](#footnote-385) This phase focused on removing the use of oral evidence as part of the committal process, which means that victims and witnesses cannot be put on the stand to be examined and cross-examined in a committal hearing before the actual trial.

By March 2024, phase two of commencing the 2022 Act is due to be implemented.[[385]](#footnote-386) This phase focuses on allowing cases involving some of the most serious offences to bypass a traditional committal hearing ensuring that those cases are transferred to the NI Crown Court at an earlier stage.

### [AMBER] Non-jury trials

In 2023, following a public consultation,[[386]](#footnote-387) the Justice and Security (NI) Act 2007 was extended for a seventh time extending the use of non-jury trials in NI until July 2025.[[387]](#footnote-388) The Secretary of State for NI, Chris Heaton-Harris MP, stated that “the continued need for the provisions is regrettable. However, the concerns raised during the consultation of the potential risk to the administration of justice and to individuals if the non-jury trial provisions were to expire imminently, cannot be ignored”.[[388]](#footnote-389) The UK Government “does not want these temporary measures to become normalised, and remains fully committed to seeing an end to their use, when it is safe to do so and compatible with the interests of justice”.[[389]](#footnote-390)

In 2021, a Non-Jury Trial Working Group, which included the Commission, was established by the Home Office to identify practical measures which could help reduce the number of non-jury trials taking place, and identifying elements indicating that non-jury trials should no longer be deemed necessary.[[390]](#footnote-391) In 2022, the Non-jury Trial Working Group provided its report to the Independent Reviewer of the Justice and Security Act (NI) Act 2007, Marie Breen-Smyth.[[391]](#footnote-392) In June 2023, the Independent Reviewer publicly supported indicators proposed by the Non-jury Trial Working Group to assist the Secretary of State in NI in determining whether non-jury trials remain necessary.[[392]](#footnote-393)

## Right to Private and Family Life

### [AMBER] Alternative care arrangements for children

#### Social care reform

In June 2023, the Independent Review of Children’s Social Care Services made 54 recommendations outlining how children’s social care services in NI should be reshaped.[[393]](#footnote-394) In particular, the Independent Review reiterated a range of issues in NI foster care including placement stability, children having many moves between foster and residential care, shortage of placements, high vacancy rates, retention issues, the need for regulations and standards and an inspection regime.[[394]](#footnote-395)

The Independent Review’s core proposal is for a single region-wide children and families’ arms-length body to be created that would replace all children’s services across the current five Health and Social Care Trusts in NI.[[395]](#footnote-396) In welcoming the Independent Review, the Department of Health has committed to undertaking “a public consultation on the organisational and service changes recommended, and make the necessary preparations for an incoming Minister”.[[396]](#footnote-397)

#### Secure accommodation

In 2022, the NI Executive advised that the plans for a new regional campus will not go ahead and that the secure care and justice centres will continue to operate independently.[[397]](#footnote-398) Consequently, the Department of Health commenced roll-out of a new Integrated Therapeutic Care Framework across both centres.[[398]](#footnote-399)

Reflecting the Criminal Justice Inspection NI’s concerns,[[399]](#footnote-400) the Independent Review also stated concerns regarding the “significant waste of the funding” in maintaining two secure care and justice centres.[[400]](#footnote-401) The Independent Review recommended that the Regional Justice and Care Campus was integrated within the much better resourced Woodlands site,[[401]](#footnote-402) and that Lakewood was repurposed to provide either a step-down service or to provide services for children who would otherwise be placed in residential services outside of NI.[[402]](#footnote-403)

### [AMBER] Climate change and environmental regulation

In 2022, a report on air pollution found that “some pollutants in some parts of NI continue to exceed air quality objectives”.[[403]](#footnote-404) In March 2023, further research estimated that air pollution was attributable to 900 premature deaths annually in NI.[[404]](#footnote-405)

In April 2023, the UK’s Climate Change Committee said that planning for climate change in NI “remains at an early stage” with very limited evidence of delivery and implementation.[[405]](#footnote-406) The Climate Change Committee is of the view that the lack of an NI Executive threatens to seriously hamper NI’s ability to meet the net zero target unless "radical action" is taken.[[406]](#footnote-407) In 2023, the Department of Agriculture, Environment and Rural Affairs consulted on ways to become net zero in NI.[[407]](#footnote-408) The Commission provided a response which highlighted that all decisions taken by NI Executive Departments in relation to climate action should be informed by international human rights standards.[[408]](#footnote-409) The Commission also underlined the need to give consideration to Windsor Framework Article 2.[[409]](#footnote-410) The outcome of the consultation cannot progress without a functioning NI Executive and NI Assembly.

In July 2023, the Department for Agriculture, Environment, and Rural Affairs missed the deadline for publishing its first Environmental Improvement Plan, a statutory requirement under the UK Environment Act 2021. The Department for Agriculture, Environment, and Rural Affairs stated that “officials are very conscious of the deadline for publication of a new Environmental Improvement Programme and are currently working through the decision-making process to determine what action is possible in the absence of ministers and an Executive”.[[410]](#footnote-411)

### [AMBER] Health and Social Care (Control of Data Processing) Act 2016

Encompass is a single digital health and social care record, whereby all health and care records are brought together in digital form. The Department of Health has stated that “having one health record will reduce the need for information to be stored across multiple, ageing systems and minimise paper records”.[[411]](#footnote-412)

In November 2023, the South Eastern Health and Social Care Trust was the first Health and Social Care Trust in NI to go live with encompass. Other Health and Social Care Trusts will follow on a phased basis, with all scheduled to be live by mid-2025.[[412]](#footnote-413)

### [AMBER] Stop and search

In June 2023, the UN CRC Committee issued revised recommendations that the UK Government and NI Executive:

1. effectively enforce the prohibition of the use of non-statutory stop and search checks against children, prohibit their use in NI…;
2. ensure that their statutory use is proportionate and non-discriminatory, including by implementing the best use of stop and search scheme, and conducting mandatory training for law enforcement officials;
3. improve the monitoring of the use of stop and search checks on children, including through the collection and publication of related data, and investigate all allegations of their disproportionate or discriminatory use on children.[[413]](#footnote-414)

In 2022, the Independent Reviewer of the Justice and Security (NI) Act 2007, Marie Breen-Smyth, highlighted a lack of progress on the provision of safeguards for the use of these ‘no-suspicion’ powers against children.[[414]](#footnote-415) In June 2023, the Independent Reviewer recommended that the Police Service of NI conduct a review of its policies and practices in relation to stops and searches of children between the ages of 10 and 14 years of age.[[415]](#footnote-416)

### [AMBER] Visitation in health and social care settings

In 2022, a UK COVID-19 Inquiry commenced under the Inquiries Act 2005 to examine, consider and report on preparations and the response to the COVID-19 pandemic in England, Wales, Scotland and NI.[[416]](#footnote-417) The UK-wide inquiry will consider aspects related to NI, but an additional NI-specific COVID-19 inquiry has not been established.[[417]](#footnote-418) The inquiry includes a review of the response of the health and care sector across the UK, including the management of the pandemic in care homes and other care settings.[[418]](#footnote-419)

In 2023, the Commission submitted a written statement to the UK COVID-19 inquiry. In October 2023, the Commission was notified that it is a provisional oral witness for a UK COVID-19 Inquiry public hearing in April and May 2024.[[419]](#footnote-420)

## Freedom of Religion and Belief, Expression, Association and Right to Participate in Public and Political Life

### [AMBER] Freedom of expression of journalists

In 2023, the UN Working Group on the Universal Periodic Review issued recommendations that the UK Government and NI Executive “continue efforts within the Media Freedom Coalition to defend media freedom at home and abroad, and improve the safety of journalists and media workers who report across the world”.[[420]](#footnote-421) The UN Working Group on the Universal Periodic Review also recommended that the UK Government and NI Executive “take concrete steps to improve the safety of journalists, investigate incidents of attacks on journalists and implement the UN Plan of Action on the Safety of Journalists and the Issue of Impunity”.[[421]](#footnote-422)

In 2019, NI-based journalist Patricia Devlin received a threatening direct message to her personal social media account regarding her newborn baby.[[422]](#footnote-423) In 2020, a complaint was filed with the Police Ombudsman for NI alleging that the Police Service of NI had inadequately investigated the threat made towards her newborn baby.[[423]](#footnote-424) In 2021, the Police Ombudsman for NI upheld the complaint.[[424]](#footnote-425) In March 2023, the Public Prosecution Service NI decided not to pursue prosecution due to insufficient evidence.[[425]](#footnote-426) Amnesty International NI raised concerns that the Public Prosecution Service NI’s decision “showed a system failing to protect press freedom in NI”.[[426]](#footnote-427)

In March 2023, it was confirmed that the UK Investigatory Powers Tribunal was investigating whether the Police Service of NI acted lawfully in monitoring the phones of the journalist Barry McCaffery in 2013. It is alleged that the Police Service of NI started monitoring the journalist’s phone to identify a whistleblower after Mr McCaffrey contacted the Police Service of NI’s press office to make an inquiry regarding a story he was investigating. However, the journalist was unaware until recently that the Investigatory Powers Tribunal had authorised this investigation ten years ago.[[427]](#footnote-428) This followed an earlier High Court of Justice in NI judgment that search warrants issued against journalists Barry McCaffery and Trevor Birney were “disproportionate”.[[428]](#footnote-429)

In 2022, the then Economic Crime and Corporate Transparency Bill was introduced to the UK Parliament. In June 2023, the UK Government introduced amendments to the then Bill which aimed to provide additional safeguards for free speech and investigative journalism by addressing exploitation of the legal system. The proposed amendments sought to strengthen judges' abilities to dismiss unfounded claims or Strategic Lawsuits Against Public Participation. The UK Government is of the view that these legal actions were frequently wielded in an aggressive manner by affluent individuals or large corporations with the aim of intimidating and financially draining their adversaries, putting them at risk of incurring exorbitant expenses while defending against the claims.[[429]](#footnote-430) In October 2023, the Economic Crime and Corporate Transparency Act 2023 received Royal Assent.

## Right to Work and to Just and Favourable Conditions of Work

### [AMBER] Accessible childcare

In June 2023, the Department of Education published an independent review of childcare services in NI.[[430]](#footnote-431) It involved a survey of parents/carers conducted in 2022, which received 4,751 responses.[[431]](#footnote-432) The findings of the independent review indicated that parents spend on average £542 per month on formal childcare, which is equivalent to a quarter of the average NI household income in 2019/2020 (before housing costs).[[432]](#footnote-433) The independent review revealed that issues with the cost and accessibility of childcare in NI are having a significant effect on parents’ employment, particularly for women, one parent families, low-income households and parents whose children have additional needs.[[433]](#footnote-434) 51 per cent of parents/carers surveyed said that there was not enough information about childcare provision.[[434]](#footnote-435) This has a particular effect on parents whose main language is not English.[[435]](#footnote-436)

The independent review reinforced the need for a comprehensive childcare strategy to tackle the range of issues facing the sector.[[436]](#footnote-437) It identified nine key areas to address, including centralised childcare data for parents; alternative models of wrap-around care for school aged children; professionalising the sector; pay and conditions; access to multidisciplinary support; more training on a range of needs; more work-based learning; centralised register for childcare professionals; and centralised information on financial support for providers.[[437]](#footnote-438)

### [GREEN] Armed Forces Covenant

In 2020, commitments were made to introduce UK-wide legislation to further incorporate the Armed Forces Covenant and support its implementation, to appoint a NI Veterans' Commissioner, to initiate a review of the aftercare service for veterans in NI, and to ensure the work of the War Memorials Trust is better promoted and understood in NI.[[438]](#footnote-439) Consequently, the Armed Forces Act 2021 aims to ensure service personnel and veterans are not disadvantaged when accessing essential services like healthcare, education and housing, as well as to improve access to justice.

In 2021 and 2022, a review of aftercare service for veterans in NI was undertaken.[[439]](#footnote-440) It considered whether the remit of the aftercare service should be widened to cover all British Armed Forces veterans living in NI with service-related injuries and conditions.[[440]](#footnote-441)

In April 2023, a new expanded service, which incorporates Veterans UK Welfare Managers, was introduced. All veterans in NI have access to this service, irrespective of cap badge or service.[[441]](#footnote-442) In 2023, the NI Office also regularly engaged with the NI Veterans Commissioner, Danny Kinahan, which included discussions on legacy issues and health and welfare support for veterans in NI.[[442]](#footnote-443)

### [AMBER] Employment equality

In March 2023, the Commission, along with the Equality Commission for NI and the Irish Human Rights and Equality Commission, published research on the divergence of rights on the island of Ireland following the UK’s withdrawal from the EU.[[443]](#footnote-444) This research highlighted developments in CJEU caselaw of relevance to the EU Employment Equality (Framework) Directive.[[444]](#footnote-445) The research highlighted that in *WABE* *and Müller* the CJEU found that differentiating between religious symbols based on characteristics such as size or scale, amounts to direct discrimination under Article 2(2) of the EU Employment Equality (Framework) Directive, and cannot be justified, except by reference to a narrow list of occupational requirements, rather than by a commercial policy of neutrality.[[445]](#footnote-446) The CJEU also found that the EU Directive must be interpreted as meaning that a rule prohibiting workers from wearing any visible sign of political, philosophical or religious beliefs in the workplace, does not constitute direct discrimination on the grounds of religion or belief, provided that this rule is applied in a general and undifferentiated way.[[446]](#footnote-447)

In December 2022, the EU Commission published proposals for two Directives on standards for equality bodies.[[447]](#footnote-448) The Commission, alongside the Equality Commission for NI, consider that the proposed EU Directives amend provisions of EU Employment Equality (Framework) Directive,[[448]](#footnote-449) EU Race Equality Directive,[[449]](#footnote-450) the EU Equal Treatment (Employment) Directive[[450]](#footnote-451) and EU Equal Treatment (Self-Employment) Directive.[[451]](#footnote-452) Therefore, NI equality law should be amended to keep pace with these changes, if the proposals are adopted. In September 2023, the Minister of State for NI, Steve Baker MP, confirmed that it is the UK Government’s view that the proposals fall within scope of Windsor Framework Article 2.[[452]](#footnote-453)

### [AMBER] Gender pay gap

In May 2023, the EU adopted the Pay Transparency Directive.[[453]](#footnote-454) The proposed EU Directive is designed to “strengthen the application of the principle of equal pay for equal work or work of equal value between men and women”.[[454]](#footnote-455) It also aims to give effect to the ‘principle of equal pay’, enshrined in Article 157 of the Treaty on Functioning of the EU and the prohibition of discrimination laid down in Article 4 of the EU Gender Equality (Employment) Directive, in particular through pay transparency and reinforced enforcement mechanisms.[[455]](#footnote-456)

The obligation under Windsor Framework Article 2 to ‘keep pace’ with the Annex 1 Equality Directives includes the EU Gender Equality (Employment) Directive which protects against discrimination in employment on the grounds of gender.[[456]](#footnote-457) NI equality law must align with any improvements made by the EU to these rights, on or after 1 January 2021, including monitoring relevant current and future CJEU case law.[[457]](#footnote-458) The Commission, with the Equality Commission for NI, has initiated ongoing work to explore the extent to which this proposed EU Pay Transparency Directive[[458]](#footnote-459) amends or replaces the EU Gender Equality (Employment) Directive.

In March 2023, in response to a call for evidence by the Joint Committee on Human Rights inquiry on human rights at work, the Commission called on the UK Government and NI Executive to commit to ensuring that, where the EU Pay Transparency Directive[[459]](#footnote-460) amends or replaces the Annex 1 EU Gender Equality (Employment) Directive,[[460]](#footnote-461) NI law is amended to keep pace with that change.[[461]](#footnote-462)

In March 2023, the Commission, along with the Equality Commission for NI, published research on divergence of rights across the island of Ireland, which noted that the EU Pay Transparency Directive will have to be reflected by Ireland, potentially creating a divergence of rights.[[462]](#footnote-463) The research also identified that NI legislation already lags behind Great Britain.[[463]](#footnote-464)

### [AMBER] Menopause

Equality laws in NI protect against discrimination relating to pregnancy and maternity.[[464]](#footnote-465) In addition, the obligation under Windsor Framework Article 2 to ‘keep pace’ with the Annex 1 Equality Directives includes the EU Gender Equality (Employment) Directive which protects against discrimination in employment on the grounds of gender.[[465]](#footnote-466) NI equality law must align with any improvements made by the EU to these rights, on or after 1 January 2021, including monitoring relevant current and future CJEU case law.[[466]](#footnote-467)

There is currently no specific protection against discrimination relating to menopause. Menopause-related claims in the UK are often argued on the grounds of sex, age and disability discrimination.[[467]](#footnote-468) The current law does not reflect the intersectional nature of menopause in many cases.[[468]](#footnote-469) Certain groups may face particular challenges related to menopause including lesbian, gay, bisexual, transgender, queer, intersex+ people, younger women and ethnic minority women.[[469]](#footnote-470)

In 2023, the British Standards Institute published guidance on menstruation, menstrual health and menopause in the workplace.[[470]](#footnote-471) This is additional to guidance on promoting equality in employment for women affected by menopause in NI that was published in 2021.[[471]](#footnote-472) The British Standards Institute’s guidance aims “to support the health and well-being of all employees who menstruate or experience peri/menopause”.[[472]](#footnote-473) It aims to “encourage a more open and inclusive work culture around menstrual health and peri-menopause”.[[473]](#footnote-474) It is viewed as particularly beneficial to “managers, human resources, diversity and inclusion specialists, health and safety personnel, occupational health, architects and designers of office spaces”.[[474]](#footnote-475)

## Right to an Adequate Standard of Living and to Social Security

### [AMBER] Access to food

In June 2023, the UN CRC issued revised recommendations that the UK Government and NI Executive:

strengthen measures to address child malnutrition, food insecurity and growing trends in overweight and obesity, including by:

1. ensuring all children’s access to nutritious foods and reducing their reliance on food banks, regardless of their or their parents’ migration status;
2. expanding the free school meals programme to all children in disadvantaged situations, including children whose parents receive Universal Credit;
3. addressing the root causes of food insecurity including poverty;
4. providing nutrition services in schools and communities; and
5. promoting healthy lifestyles and physical activity.[[475]](#footnote-476)

In 2023, there was a notable rise in food insecurity in NI, meaning that individuals are likely to experience reduced food quality, variety or desirability of diet, or disrupted eating patterns and reduced food intake.[[476]](#footnote-477)

Trussell Trust and Ipsos research has found that people with disabilities, working age adults, particularly individuals living alone, people with caring responsibilities, women, and children are overrepresented among individuals using foodbanks in NI.[[477]](#footnote-478) It has also been reported that individuals with food allergies or intolerances are particularly affected by the rise in food costs and face challenges in accessing appropriate foods, including in foodbanks.[[478]](#footnote-479)

In 2023, following a review of free school meal eligibility in NI,[[479]](#footnote-480) the Department of Education was finalising proposals and is expected to undertake a public consultation in due course.[[480]](#footnote-481) However, any progress in implementation requires a functioning NI Executive.

Unlike elsewhere in the UK, there is no long-term commitment to continue free school meals during school holidays as standard.[[481]](#footnote-482) Between 2020 and 2022, the School Holiday Food Grant scheme provided direct payments to families in receipt of free school meals during COVID-19 term-time school closures and across summer holidays.[[482]](#footnote-483) However, in March 2023, the Department of Education ended free school meals during school holidays in NI, in light of significant budgetary pressures.[[483]](#footnote-484)

### [AMBER] Asylum and refugee law and resettlement

In June 2023, the UN CRC Committee issued revised recommendations that the UK Government and NI Executive:

1. urgently amend the Illegal Migration Bill to repeal all draft provisions that would have the effect of violating children’s rights under the Convention and the 1951 Refugee Convention[…];
2. amend the Nationality and Borders Act to abolish the designation of “Group 2” status to certain groups of refugee children, and ensure that all asylum-seeking and refugee children, including unaccompanied children, are not criminalized and have access to necessary support and services;
3. review and strengthen the asylum process to ensure that children receive age-appropriate information and legal advice […]; that their best interests are given primary consideration in all asylum processes; that their views are heard, taken into account and given due weight; and that they have access to child-friendly justice mechanisms and remedies.[[484]](#footnote-485)

In respect of unaccompanied children seeking asylum, the UN CRC Committee recommended that the UK Government ends the use of “unreliable and invasive procedures for determining a child’s age”.[[485]](#footnote-486) The UN CRC Committee also reiterated its recommendation that the UK Government “review its system of family reunification involving unaccompanied children, with a view to ensuring that children have an unqualified right to apply for family reunification”.[[486]](#footnote-487) The UN CRC Committee further recommended that the UK Government “strengthen measures to phase out temporary and “contingency” accommodation schemes”.[[487]](#footnote-488)

In July 2023, the UN High Commissioner for Human Rights, Volker Türk, and the UN High Commissioner for Refugees, Filippo Grandi, advised that the Illegal Migration Act 2023:

will exacerbate the already vulnerable situation of people who arrive irregularly in the UK, drastically limiting the enjoyment of their human rights, and putting them at risk of detention and destitution. As a result, their rights to health, an adequate standard of living, and to work are at risk, exposing them to the risk of exploitation and abuse…

In addition to raising very serious legal concerns from the international perspective, this Bill sets a worrying precedent for dismantling asylum-related obligations that other countries, including in Europe, may be tempted to follow, with a potentially adverse effect on the international refugee and human rights protection system as a whole.[[488]](#footnote-489)

#### Reform of UK asylum system

In July 2023, the High Court of England and Wales found that the Home Office acted unlawfully in routinely and systematically accommodating newly arrived unaccompanied asylum-seeking children in hotels since 2021.[[489]](#footnote-490)

In July 2023, the Illegal Migration Act 2023 received Royal Assent. The 2023 Act denies access to the UK asylum system for those who arrive through unofficial routes.[[490]](#footnote-491) It prevents such individuals from presenting claims for protection, no matter how compelling their case may be.[[491]](#footnote-492) Instead, individuals could face detention before being removed to another country.[[492]](#footnote-493) The Commission remains concerned regarding the 2023 Act’s compliance with human rights obligations and Windsor Framework Article 2, including the limitations on judicial oversight, the removal of support to victims and potential victims of modern slavery and human trafficking, and the weakening of child protection arrangements.[[493]](#footnote-494) The Commission continues to advise that pursuant to Windsor Framework Article 2, EU asylum law remains relevant and raised concerns about the compliance of several provisions of the Act with the EU Procedures Directive,[[494]](#footnote-495) EU Reception Directive,[[495]](#footnote-496) EU Qualification Directive[[496]](#footnote-497) and the Dublin III Regulation.[[497]](#footnote-498)

In September 2023, the Commission issued a judicial review against the Secretary of State for the Home Department, Suella Braverman MP, and the Secretary of State for NI, Chris Heaton-Harris MP, arguing that the Illegal Migration Act 2023 is not compliant with the ECHR and Windsor Framework Article 2. In January 2024, the case is due to be heard in the High Court of Justice in NI.

#### Use of contingency accommodation

The Mears Group PLC is sub-contracted by the Home Office to provide accommodation and support for people seeking asylum in NI.[[498]](#footnote-499) It is intended that there are two types of asylum accommodation – initial accommodation (short-term housing for first three to four weeks) and dispersal accommodation (longer-term housing while awaiting determination of asylum claim).[[499]](#footnote-500) However, in 2020, the use of ‘contingency accommodation’ increased significantly across the UK.[[500]](#footnote-501) In 2023, the UK Government started to introduce alternative forms of accommodation, such as barges and tents on former military bases.[[501]](#footnote-502)

To date, hotels have primarily been used as ‘contingency accommodation’ in NI. Contingency accommodation in the form of hotels is being used for much longer than three to four weeks in NI, often with no set timeframe for being moved to dispersal accommodation.[[502]](#footnote-503) There have also been reports that when the move from contingency to dispersal accommodation occurs it is conducted in a threatening way, without any form of advance notice and without any meaningful support to ensure access to education, healthcare and support services.[[503]](#footnote-504)

In 2022, the Commission conducted two site visits to hotels being used as contingency accommodation in NI.[[504]](#footnote-505) During the visits, hotel managers and Mears Welfare Officers confirmed awareness of the difficulties people seeking asylum are having in accessing healthcare, education and Migrant Help, but advised that delays often come down to capacity in local services, which they are unable to resolve in isolation.[[505]](#footnote-506)

In May 2023, the Independent Chief Inspector of Borders and Immigration commenced an inspection of contingency asylum accommodation for families with children in NI.[[506]](#footnote-507) The inspection aims to examine key safeguarding concerns, provider compliance with safeguarding requirements, reporting of data and governance processes for safeguarding. The report is awaited.

In October 2023, an asylum seeker challenged the lawfulness of the decision to remove him from NI to Scotland on several grounds including procedural fairness, Article 8 of the ECHR and Windsor Framework Article 2.[[507]](#footnote-508) While the applicant was unsuccessful, the High Court of Justice in NI confirmed that Article 7 of the EU Reception Directive is capable of falling within scope of Windsor Framework Article 2, insofar as it seeks to protect the human rights of asylum seekers.[[508]](#footnote-509)

### [AMBER] Asylum financial support

In July 2023, the High Court of England and Wales found that the Secretary of State for the Home Department, Suella Braverman MP, acted unlawfully in failing to promptly provide basic support to people seeking asylum, including young children and pregnant women.[[509]](#footnote-510) This followed an earlier mandatory order requiring the Secretary of State for the Home Department to increase support payments after they unlawfully failed to act on internal advice to increase the rate to keep pace with inflation and mitigate the consequential rises in the cost of living throughout 2022.[[510]](#footnote-511)

Under section 9 of the Illegal Migration Act 2023, individuals who are not detained and whose cases have been declared inadmissible under the UK asylum process will be eligible for support on similar terms as those whose asylum claims have been finally refused. However, it is anticipated that the 2023 Act will significantly increase the number of people reliant on this support, which may increase the number at risk of destitution and exploitation.[[511]](#footnote-512)

In 2023, the ‘no recourse to public funds’ condition remained a particular concern in NI.[[512]](#footnote-513) In such scenarios, the UK Government is relying on local authority provision as an alternative source of support, however NI local councils do not have responsibility for housing, social services or education.[[513]](#footnote-514) No steps have been taken to address this.

### [AMBER] Homelessness

In June 2023, the UN CRC Committee issued revised recommendations that the UK Government and NI Executive:

address the root causes of homelessness among children, strengthen measures to phase out temporary and ‘contingency’ accommodation schemes…;

ensure that the best interests of the child are given primary consideration in all eviction matters, that evictions are not targeted at families belonging to minority groups and that any evictions are always subject to adequate alternatives.[[514]](#footnote-515)

In 2023, research by the NI Commissioner for Children and Young People found that “the right to family life and an adequate standard of living is the basic minimum a child should expect… [but] for too many NI has a long way to go to achieve the basic minimum for its children”.[[515]](#footnote-516) The Simon Community NI also published a report about mental health and homelessness in NI which found difficulties in people accessing mental health support and registering with a General Practitioner.[[516]](#footnote-517)

In 2023, the NI Housing Executive’s Chief Executive, Grainia Long, stated that:

our statutory obligation is to provide solutions for homelessness, when it has occurred. However, demands for services meant that too often we are in ‘emergency’ or ‘response’ mode. A holistic approach to homelessness requires a strategic shift towards prevention. Widening NI Housing Executive’s statutory obligations to ‘prevention’ of homelessness would enable use to focus and invest more in preventative measures.[[517]](#footnote-518)

The Private Tenancies Act (NI) 2022 committed the Department for Communities to holding a consultation on rent decreases and controls within six months of the legislation coming into force.[[518]](#footnote-519) In March 2023, following a consultation on the new intermediate rent policy,[[519]](#footnote-520) the Department for Communities released a new housing policy.[[520]](#footnote-521) The new policy aims to increase the availability of affordable rented homes, with a specific focus on generating a fresh supply of ‘intermediate rent’ homes.[[521]](#footnote-522)

### [AMBER] Social housing

In June 2023, the UN CRC Committee issued revised recommendations that the UK Government and NI Executive “significantly increase the availability of adequate and long-term social housing for families in need, with a view to ensuring that all children have access to affordable quality housing”.[[522]](#footnote-523)

In March 2023, following a public consultation,[[523]](#footnote-524) the Department for Communities published a new affordable housing policy, which aims to create an additional supply of ‘intermediate rent’ homes and provide a new affordable housing option.[[524]](#footnote-525) The intermediate rent policy aims to develop a framework for more high quality, secure and affordable housing in the long-term.

### [AMBER] Social security

In 2023, the UN CRC Committee revised its recommendations that the UK Government:

assess the impact of welfare changes on children with disabilities and their families, and increase social welfare payments accordingly to ensure that policies do not have a discriminatory effect on them and that such payments are sufficient in ensuring their right to an adequate standard of living.[[525]](#footnote-526)

The UN CRC Committee also expressed concern at the level of child poverty, food insecurity and homelessness in the UK, recommending that the UK Government and NI Executive:

develop or strengthen existing policies, with clear targets, measurable indicators and robust monitoring and accountability mechanisms, to end child poverty and ensure that all children have an adequate standard of living, including by increasing social benefits to reflect the rising cost of living and abolishing the two-child limit and benefit cap for social security benefits.[[526]](#footnote-527)

#### Mitigation package

In 2022, the Department for Communities published a review of social security mitigations by an Independent Advisory Panel.[[527]](#footnote-528) The review made several recommendations to further mitigate the adverse impact of tax and social security changes, targeting need at those who had been most negatively impacted by these changes.[[528]](#footnote-529) These recommendations included offsetting the two-child limit in Universal Credit, Child Tax Credit and Housing Benefit.[[529]](#footnote-530) In 2023, the Department for Communities indicated that its bid for further funding for a new mitigations package was not met in the 2023/2024 budget and, in the absence of funding, the Department is unable to progress this work.[[530]](#footnote-531) The Department for Communities acknowledged that this means that opportunities to improve the financial circumstances of section 75 groups, especially women, will be lost.[[531]](#footnote-532)

#### Five-week wait for Universal Credit

In 2023, there continues to be a five-week wait for applicants to receive their first Universal Credit Payment.[[532]](#footnote-533) In 2022, the Independent Advisory Panel recommended an interim solution to deal with the five-week wait by “increasing the Universal Credit Contingency Fund budget for paying grants during the five week wait to at least £5million”.[[533]](#footnote-534) The Advisory Panel made several additional recommendations to mitigate the impact of the wait.[[534]](#footnote-535) The Advisory Panel also proposed a longer-term solution “through urgently setting up a Departmental led working party to examine alternative solutions”.[[535]](#footnote-536) In June 2023, the Department for Communities identified that it had received full funding for existing social security mitigations in its 2023/2024 budget, and this included funding for the Universal Credit Contingency Fund.[[536]](#footnote-537)

#### Personal Independent Payment

In May 2023, the NI Public Services Ombudsman published a follow-up report to its 2021 review on the Personal Independence Payment.[[537]](#footnote-538) The follow-up report welcomed the work done to progress recommendations to date, but noted further work was required.[[538]](#footnote-539) In the follow-up report, the NI Public Services Ombudsman recommended that the Department of Communities should liaise with Capita to revise the initial information pack for claimants, to ensure that claimants are correctly informed as to whether or not health professionals have been contacted, and the specific details of health professionals who have been contacted when processing their claims. The follow-up report identifies that this recommendation has not been met, and claimants “continue to not be adequately informed at the assessment stage whether, or not, their health professionals have been contacted”.[[539]](#footnote-540)

#### Budget allocation

In 2023, the Department for Communities consulted on its 2023/2024 Budget Equality Impact Assessment.[[540]](#footnote-541) The Department for Communities identified that it was facing “the most challenging budget allocation in recent history” noting that “the 2023/2024 Budget allocations result in a Non-Ring-Fenced Resource funding gap of £111.2m (15.5 per cent) and a £59m (27.3 per cent) shortfall in Capital required for 2023/2024”.[[541]](#footnote-542) To deal with the constrained budget, the Department for Communities made several proposed cuts to services, including closing departmental offices one day a week, scaling back Discretionary Support Grants, employment support and cuts to the baseline budget of the NI Housing Executive.[[542]](#footnote-543) In its response, the Commission recommended that all final mitigations to budget constraints should be compliant with international human rights standards.[[543]](#footnote-544)

Prior to the consultation period ending, the Department for Communities published a response to consultation responses it received in the initial four weeks of the consultation, to “allow decisions to be made on final allocations to support the Department in living within its 2023-24 Budget Settlement”.[[544]](#footnote-545) The Commission noted in its response disappointment at the short timeframe and deviation from effective consultation approaches.[[545]](#footnote-546)

## Right to Health

### [AMBER] Access to healthcare for migrants

In May 2023, the Independent Monitoring Authority identified as part of their monitoring work that some EU citizens might have been wrongfully charged for National Health Service treatment.[[546]](#footnote-547) Furthermore, in June 2023, the Independent Monitoring Authority concluded that the Home Office “failed to comply with its obligation under the Withdrawal and Separation Agreements to issue a Certificate of Application immediately to EU Settlement Scheme applicants, for particular types of application”.[[547]](#footnote-548) The Independent Monitoring Authority stated that a delay in issuing a Certificate of Application immediately would put the applicant at risk of not being able to receive free healthcare.[[548]](#footnote-549)

In 2022, the High Court of England and Wales confirmed that applicants with pre-settled status have the right to reside permanently in the UK after they have resided there for the required five-year period.[[549]](#footnote-550) In February 2023, the Home Office confirmed that an appeal against the decision would not be pursued.[[550]](#footnote-551)

In July 2023, the Home Office announced changes to the EU Settlement Scheme, confirming that from September 2023, people with pre-settled status will automatically have their status extended by two years before it expires.[[551]](#footnote-552) This extension will be automated, the applicant will be notified and it will be reflected on their digital status. In addition, the Home Office has committed to automatically converting applicants from pre-settled to settled status, if they are eligible from 2024. The Independent Monitoring Authority noted how the Home Office aims to comply with the High Court of England and Wales’ decision, but expressed disappointment at the lack of meaningful engagement and the lack of clarity in the proposals.[[552]](#footnote-553)

In August 2023, the Home Office published guidelines which include changes to procedures, such as a further restriction on what will be accepted as reasonable grounds for a late application.[[553]](#footnote-554) There are concerns that this change might lead to further delays in issuing a Certificate of Application and inhibit further access to healthcare for EU Settlement Scheme applicants.[[554]](#footnote-555)

In 2022, the Commission published research which examined health in the context of UK withdrawal from the EU and identified a range of significant concerns.[[555]](#footnote-556) In September 2023, the Commission published a briefing which sets out next steps in ensuring that access to healthcare is protected in NI and on the island of Ireland after the UK’s withdrawal from the EU.[[556]](#footnote-557) The Commission made several recommendations, including clarifying existing rules on accessing cross-border and all-island health services for EU and third-country nationals living in NI and ensuring there are no immigration or visa recognition barriers impeding access to these services. The Commission further recommended that the Department of Health took effective steps to clarify and promote awareness amongst health practitioners, individuals, and representative groups of the rights of potential and confirmed victims of human trafficking. The Commission also recommended that the Department of Health and Health and Social Care Trusts in NI undertake effective steps to identify and minimise procedural barriers to migrant people accessing to health services.[[557]](#footnote-558)

In 2023, the Commission continued to monitor the barriers to accessing healthcare for all migrants, including irregular migrants and EU Settlement Scheme applicants.

### [AMBER] Emergency healthcare

In January 2023, the Royal College of Emergency Medicine warned that delays in emergency care could be causing the deaths of up to 500 deaths in the UK each week.[[558]](#footnote-559) In 2022/2023, the number of patients waiting more than 12 hours to be seen in NI emergency departments had risen by 25 per cent, with the Royal College of Emergency Medicine noting that patient safety was at high-risk.[[559]](#footnote-560)

In July 2023, the Regulation and Quality Improvement Authority published its report on an unannounced inspection of the Royal Victoria Hospital’s emergency department.[[560]](#footnote-561) The report identified several issues within the emergency department which were affecting the provision of safe, effective patient care, including staffing, crowding, infection prevention control/environmental issues, patient care, medicines management and governance.[[561]](#footnote-562) However, while agreeing that the Royal Victoria Hospital’s emergency department was “unsafe”, staff at the hospital have stated that the Regulation and Quality Improvement Authority’s report is “wholly unsatisfactory” with a lack of “explicit focus on patient safety”.[[562]](#footnote-563)

### [AMBER] Mental health

In June 2023, the UN CRC Committee issued revised recommendations that the UK Government and NI Executive “develop adequately funded mental health services that are tailored to the specific needs of lesbian, gay, bisexual, transgender and intersex children, migrant children, children with disabilities and ‘young carers’, including through sufficient investments in specialist services” and “strengthen measures to address the underlying causes of poor mental health, eating disorders and other self-harming behaviours among children, and invest in preventive measures”.[[563]](#footnote-564)

#### Mental Health Strategy

In 2021, a new ten-year mental health strategy was launched setting the strategic direction for mental health in NI.[[564]](#footnote-565)

In March 2023, the NI Mental Health Champion, Siobhán O’Neill who has advised that "poor mental health costs NI £3.4 billion annually. A piecemeal or reduced implementation cannot achieve the necessary reform. People in NI will wait longer or never receive the treatments and support they urgently need”.[[565]](#footnote-566)

In May 2023, the NI Audit Office found that the mental health strategy will require sustained additional investment throughout its lifetime, and that without dedicated long-term funding, the delivery of the strategy was at risk.[[566]](#footnote-567) The NI Audit Office further noted that “mental Health funding in NI represents around six per cent of the overall health and social care budget and, over time, has not kept pace with increases in the wider health budget”[[567]](#footnote-568) and that “bringing funding levels in NI closer to that elsewhere in the UK would require substantial additional investment of £80 - £190 million per annum”.[[568]](#footnote-569)

#### Suicide prevention

The current suicide prevention strategy was due to expire in 2024.[[569]](#footnote-570) In September 2023, the Department of Health announced that the strategy would be extended until the end of 2027.[[570]](#footnote-571) The Department of Health stated that:

while solid progress has been made in delivering on the strategy’s objectives since it was published in September 2019, challenges in relation to the budget and the impact of the COVID-19 pandemic have prevented full delivery. The three year extension will allow more time for fuller implementation and for the existing actions to be delivered.[[571]](#footnote-572)

The Department of Health has committed to undertaking a review of the strategy and action plan “to help identify areas where additional priority is required and if there are any new actions which should be considered”.[[572]](#footnote-573) The review is expected to be completed by Spring 2024.[[573]](#footnote-574)

#### Perinatal mental health

In 2021, funding was approved by the Department of Health for a new perinatal mental health delivery model for the development of a new specialist perinatal mental health service for NI.[[574]](#footnote-575)

In 2022/2023, there was a commitment to progress scoping work for a Mother and Baby Unit.[[575]](#footnote-576) During 2023, the Department of Health commissioned an independent team to develop a detailed report outlining recommendations for a suitable model for a Mother and Baby Unit that aimed to best meet the needs of the population, as well as to identify the Trust in NI best placed to deliver this service.[[576]](#footnote-577) The next stage, following receipt of the report, is for the identified Health and Social Care Trust to develop a strategic outline case for the Department of Health’s consideration.[[577]](#footnote-578)

In June 2023, all Health and Social Care Trusts in NI had fully operational community perinatal mental health team in place, offering a referral and consultancy service for mothers experiencing mental health issues during the perinatal period.[[578]](#footnote-579) Additionally, a regional implementation team, hosted by the Public Health Agency has been established to oversee implementation and to ensure regional consistency.[[579]](#footnote-580) In 2023, the Department of Health was working to embed the new provision into existing services and to develop clear and consistent referral pathways.[[580]](#footnote-581)

#### Monitoring

In 2023, a judicial review was brought against the Regulation and Quality Improvement Authority for allegedly failing in its role as an independent watchdog to scrutinise community-based mental health treatment.[[581]](#footnote-582)

In May 2023, the High Court of Justice in NI declared that the Regulation and Quality Improvement Authority has a statutory duty to regulate the provision of mental health services to patients in the community by keeping their care and treatment under review.[[582]](#footnote-583) The High Court also declared that there is an obligation under the Mental Health (NI) Order 1986 for the Regulation and Quality Improvement Authority to make inquiries into cases where it appears there may be a deficiency in care or treatment.[[583]](#footnote-584)

### [AMBER] Oral health

In May 2023, the Department of Health published its budget cut proposals.[[584]](#footnote-585) The British Dental Association raised concerns about the vulnerable state of dental services and warned that the proposed cuts could further undermine National Health Service dentistry in NI.[[585]](#footnote-586)

### [AMBER] Period poverty

The Period Products (Free Provision) Act 2022 requires that relevant NI Departments must ensure that period products are obtainable free of charge by all persons who need to use them. This includes there being sufficient products to meet the person’s needs while in NI. At minimum free period products must be available in health and education settings.

Regulations are required to clarify which public bodies and premises have duties under the 2022 Act.[[586]](#footnote-587) In 2022, the Department of Education conducted a public consultation on this issue.[[587]](#footnote-588) In 2023, the required regulations were due to be operational, however they could not progress without a functioning NI Executive and NI Assembly.[[588]](#footnote-589) Furthermore, in May 2023, in response to broader cuts to the Department of Education’s budget,[[589]](#footnote-590) the Department of Education announced that it was reducing funding to schools for the provision of free period products by more than 40 per cent.[[590]](#footnote-591)

### [AMBER] Relationships and sexuality education

In June 2023, the UN CRC Committee issued revised recommendations that the UK Government and NI Executive:

integrate comprehensive, age-appropriate and evidence-based education on sexual and reproductive health into mandatory school curricula at all levels of education and into teacher training, and ensure that it includes education on sexual diversity, sexual and reproductive health rights, responsible sexual behaviour and violence prevention, without the possibility for faith-based schools or parents to opt out of such education.[[591]](#footnote-592)

In 2019, the UN CEDAW Committee reiterated its inquiry recommendations.[[592]](#footnote-593) In 2018, the UN CEDAW Committee’s Inquiry into the impact of restrictive access to termination of pregnancy for women and girls in NI, found that “NI youth are denied the education necessary to enjoy their sexual and reproductive health and rights”[[593]](#footnote-594) and “that access to abortion services and contraceptives are not statutory requirements of the advisory curriculum”.[[594]](#footnote-595) The UN CEDAW Committee stated that “these factors point to State negligence in pregnancy prevention through failure to implement its recommended curriculum on relationship and sexuality education and ensure age-appropriate, culturally sensitive, comprehensive and scientifically accurate sexuality education”.[[595]](#footnote-596)

The UN CEDAW Committee recommended that the UK Government and NI Executive “make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights a compulsory component of curriculum for adolescents, covering prevention of early pregnancy and access to abortion, and monitor its implementation”.[[596]](#footnote-597)

In June 2023, the Commission published an investigation report into relationships and sexuality education in schools in NI.[[597]](#footnote-598) The report found that there are some positive examples of post-primary schools providing comprehensive and scientifically accurate relationships and sexuality education. However, in most NI schools this is not the case, where resources are not always considered to be comprehensive, pluralistic and objective and do not comply with the UN CEDAW Committee’s recommendations. The Commission made 13 recommendations that primarily focused on amending the Education (Curriculum Minimum Content) Order (NI) 2007 and proposed steps that are necessary for ensuring the recommended reforms are implemented effectively.[[598]](#footnote-599)

In June 2023, the UK Government introduced the Relationships and Sexuality Education (NI) (Amendment) Regulations 2023. These regulations amended the Education (NI) Order 2006, and the Education (Curriculum Minimum Content) Order (NI) 2007 to make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights, covering prevention of early pregnancy and access to abortion, a compulsory component of curriculum.[[599]](#footnote-600)

The 2023 Regulations place a duty on the Department of Education to issue guidance on the content and delivery of relationships and sexuality education by 1 January 2024[[600]](#footnote-601) and to publish a report on the implementation of relationships and sexuality education by September 2026.[[601]](#footnote-602) The Commission is to be consulted in the drafting of this report.[[602]](#footnote-603)

The 2023 Regulations further require the Department of Education to make provision about the circumstances in which, at the request of a parent, a pupil may be excused from receiving relationships and sexuality education, or specified elements of that education.[[603]](#footnote-604)

In September 2023, the Department of Education conducted a public consultation on the arrangements for pupils to be excused from relationships and sexuality education and the content of the statutory guidance.[[604]](#footnote-605)

### [GREEN] Safe access zones

In 2018, the UN CEDAW Committee recommended that the NI Executive “protect women from harassment by pro-life protesters by investigating complaints and prosecuting and punishing perpetrators”.[[605]](#footnote-606)

In 2021, a Private Member’s Bill was introduced to the NI Assembly which aimed to “introduce safe access zones around registered pregnancy advisory bureaux and clinics, in which anti-termination activity could not take place”. It aimed to ensure individuals have “access to sexual and reproductive healthcare services without impediment or harassment, while carefully balancing the right to freedom of assembly”.

In 2022, the Attorney General for NI referred the then Abortion Services (Safe Access Zones) (NI) Bill to the UK Supreme Court for clarity on whether the offence created by the Bill was a proportionate interference with the rights of individuals who wished to express opposition to abortion services. The Commission intervened in this case. The UK Supreme Court concluded that it was satisfied that the restrictions in the then Bill were “justifiable” and did not “interfere disproportionately with a protestor’s rights under Articles 9, 10 and 11 of the [ECHR]”.[[606]](#footnote-607) The UK Supreme Court found the restrictions were “required to protect the rights of women seeking treatment or advice, and are also in the interests of the wider community, including other patients and staff of clinics and hospitals”.[[607]](#footnote-608)

In February 2023, the Abortion Services (Safe Access Zones) (NI) Act received Royal Assent. The 2023 Act enables safe access zones to be established in the vicinity of healthcare premises providing lawful abortions, as well as at premises where information, advice or counselling about abortion treatments are provided. The safe access zone will include the premises where the services are provided, as well as an area between 100 metres and 250 metres from entrances or exits of the protected premises. Once a safe access zone has been established, designated activities including anti-abortion protests are prohibited within the protected area.

Until September 2023, except for a brief reprieve when COVID-19 restrictions were in place, protestors carrying graphic placards and being abusive towards individuals and staff outside family planning and abortion clinics in NI continued.[[608]](#footnote-609) In September 2023, safe access zones were introduced by all Trusts in NI.[[609]](#footnote-610) In October 2023, the first arrests were made for violations of the 2023 Act.[[610]](#footnote-611)

The Department of Health has also developed a process for non-Trust premises to establish their safe access zones.[[611]](#footnote-612) Information on the location of each safe access zone is to be displayed at all protected premises and published on the Department of Health and Trusts’ websites.[[612]](#footnote-613) The Department of Health has also published a policy statement on safe access zones and is committed to publishing an annual report on implementation.[[613]](#footnote-614) All safe access zones must be formally logged with the Department of Health.[[614]](#footnote-615) A Special Task and Finish Group will monitor implementation.[[615]](#footnote-616) The Police Service of NI has been training officers and ensuring the necessary protocol is in place.[[616]](#footnote-617)

These are significant developments that will hopefully resolve the issue. However, some concerns have emerged that will need to be monitored to ensure they do not hinder implementation. For example, there is no financial support in place to establish a safe access zone.[[617]](#footnote-618)

## Right to Education

### [AMBER] Academic selection

In June 2023, the UN CRC Committee issued a revised recommendation that the UK Government and NI Executive “end practices, including academic selection and testing measures, which contribute to the high levels of stress felt by students owing to academic pressure, and ensure that children benefit from a creative learning environment”.[[618]](#footnote-619)

In November 2023, a common transfer test is due to replace the current dual testing system in NI.[[619]](#footnote-620) Currently, children can sit up to five exam papers. This will be the biggest change to the post-primary transfer system since 2008.[[620]](#footnote-621)

### [AMBER] Bullying in schools

In June 2023, the UN CRC Committee issued revised recommendations that the UK Government and NI Executive “ensure that children who experience discrimination, bullying or harassment in relation to their sexual orientation or gender identity receive protection and support, including through targeted anti-bullying measures”.[[621]](#footnote-622) The UN CRC Committee also recommended that the UK Government and NI Executive:

increase efforts to eliminate discrimination and bullying, including cyberbullying, on the grounds of race, sexual orientation, gender identity or sex characteristics, disability, migration or other status in the school context, and ensure that such measures:

1. are adequately resourced and developed in consultation with children;
2. address the root causes of bullying; and
3. encompass prevention, early detection mechanisms, awareness-raising on its harmful effects, the empowerment of children, mandatory training for teachers, intervention protocols and consistent and robust recording and monitoring of bullying behaviour.[[622]](#footnote-623)

In 2023, the CoE Advisory Committee on the Framework Convention for the Protection of National Minorities recommended that the UK Government and NI Executive:

take priority measures to tackle racist bullying in schools, in particular against Gypsies, Roma and Travellers, including through… adding ethnic identifiers on [the recording of racist bullying] in NI, strengthening mechanisms and remedies in cases of racist bullying, and collecting data disaggregated by gender, geographical location and ethnicity on absenteeism.[[623]](#footnote-624)

In 2023, despite the Addressing Bullying in Schools (NI) Act 2016 coming into force,[[624]](#footnote-625) Queen’s University Belfast reported that racist bullying remains prevalent and that schools’ responses to such incidents were often considered inadequate.[[625]](#footnote-626) The final report recommends several measures to ensure that schools are properly identifying racist bullying, including by strengthening monitoring arrangements and introducing anti-racism and anti-bias training as a core component of Initial Teacher Education and in-service professional development.[[626]](#footnote-627)

### [AMBER] Educational needs of specific groups of children

In June 2023, the UN CRC Committee issued revised recommendations that the UK Government and NI Executive:

strengthen measures to address inequalities in educational attainment and improve educational outcomes for children in disadvantaged situations, including children in socioeconomically disadvantaged situations, children belonging to ethnic minority groups, asylum-seeking, refugee and migrant children, children with disabilities and ‘young carers’, including by:

1. providing financial and other support for such children to finish school;
2. developing guidelines for responding to cases of school absenteeism; and
3. collecting and analysing data disaggregated by ethnic origin, educational outcomes and other relevant indicators on completion rates, educational outcomes and exclusions to inform policies and programmes.[[627]](#footnote-628)

The UN CRC Committee also recommended that the UK Government and NI Executive “remove ‘colonising’ and discriminatory language from textbooks and curricula and develop educative materials that foster respect for and appreciation of racial, cultural, gender and other diversities”.[[628]](#footnote-629)

In May 2023, the CoE Advisory Committee on the Framework Convention for the Protection of National Minorities issued revised recommendations that the UK Government and NI Executive explore “possibilities for sharing education data between the UK and Ireland, in order to ensure continuity in access to education for Gypsies, Roma and Travellers across jurisdictions”.[[629]](#footnote-630) The Advisory Committee also recommended that the UK Government and NI Executive “introduce training for teachers on Gypsy, Roma and Traveller cultures, their way of life and dealing with instances of anti-gypsyism in schools”.[[630]](#footnote-631)

In 2021, the Expert Panel on Educational Underachievement in NI identified socio-economic inequalities, boys underachieving in comparison to girls, inequalities between and within religiously defined groups.[[631]](#footnote-632) The Expert Panel also found that children from Traveller communities, Roma children and children with experience of care have some of the lowest levels of attainment of all equality groups.[[632]](#footnote-633) The final report and accompanying action plan contain 47 actions needed to address educational underachievement at all levels, outlining a cumulative cost of over £180 million across five years.[[633]](#footnote-634) In June 2023, the Department of Education advised that 67 per cent of the Expert Panel’s actions are underway.[[634]](#footnote-635) However, due to budget cuts, the Department of Education has only been able to allocate £2.5 million of the recommended £21 million funding for the second year of the action plan.[[635]](#footnote-636) The Department of Education acknowledged that this “will invariably have a significant limiting impact on the scale and pace of change that can be achieved”.[[636]](#footnote-637)

In June 2023, Queen’s University Belfast reported on the challenges within education that remain distinctive to minority ethnic and migrant families, including individuals who seeking sanctuary in NI.[[637]](#footnote-638) These include:

school admissions processes that may indirectly discriminate against children from migrant backgrounds; racism and discrimination at school, which is often not appropriately addressed (and is sometimes perpetuated) by staff; a curriculum that some experience as lacking representation of increasing cultural pluralism or diversity in literature, religion and historical perspectives; the absence of a coordinated, system-wide approach to the teaching of English as an additional language or to support for home languages; and ongoing barriers to home-school relationships, particularly in the form of language differences.[[638]](#footnote-639)

### [AMBER] Integrated education

In May 2023, the CoE Advisory Committee on the Framework Convention on the Protection of National Minorities issued a revised recommendation that the UK Government and NI Executive “increase the share of pupils and students attending integrated schools, and seek to actively motivate parents and provide incentives for pupils and students studying in such schools, with a view to creating a fully integrated education system in NI”.[[639]](#footnote-640)

The Integrated Education Act 2022 amends the statutory duty on the Department of Education to encourage, facilitate and the development of Integrated Education.[[640]](#footnote-641) It also provides a more inclusive definition for integrated education, relating to the education together pupils of different cultures, religions, socio-economic backgrounds and abilities.[[641]](#footnote-642)

In April 2023, the Department of Education published an updated strategy for integrated education in NI, as required by the Integrated Education Act 2022.[[642]](#footnote-643) However, the strategy does not set specific and measurable targets for increasing pupil or school numbers in integrated education and does not specify budget allocations for its implementation.[[643]](#footnote-644) The Department of Education intends to conduct a public consultation on an action plan in due course.[[644]](#footnote-645)

In May 2023, the Integrated Education Fund’s report emphasised that integrated education is a complex issue and that no single data source will provide the type or range of information needed.[[645]](#footnote-646) It recommended a suite of measures for a mixed-method approach to assessing demand, including survey and qualitative research and policy analysis.[[646]](#footnote-647) The report also highlighted that the preferences of children and young people need to be considered and taken more seriously, as current approaches are primarily targeted at parents.[[647]](#footnote-648)

In June 2023, the Department of Education announced the establishment of 26 part-time places in pre-school provision at Enniskillen Integrated Primary School, a statutory nursery unit at Rowandale and a statutory nursery unit at Drumlins Integrated Primary Schools.[[648]](#footnote-649) NI’s largest school, Bangor Academy, also voted for the school to change to integrated status.[[649]](#footnote-650)

### [AMBER] Religious education

In June 2023, the UN CRC Committee issued revised recommendations that the UK Government and NI Executive repeal “legal provisions for compulsory attendance in collective worship and establishing statutory guidance to ensure the right of all children, including children under 16 years of age, to withdraw from religious classes without parental consent”.[[650]](#footnote-651) The UN CRC Committee also recommended that the UK Government and NI Executive revise “the religious education syllabus in NI to include education on and respect for a diversity of religion”.[[651]](#footnote-652)

Article 11 of the Education (NI) Order 2006, as implemented through Article 3 of the Education (Core Syllabus for Religious Education) Order (NI) 2007, enables the Department of Education to “specify a core syllabus for the teaching of religious education in grant-aided schools”.

In 2022, a case was brought to the High Court of Justice in NI by non-religious parents that were concerned that, by the time their daughter was seven years old, she had “absorbed and adopted a religious (specifically Christian) worldview which was not consistent with their own views and beliefs”.[[652]](#footnote-653) The parents’ specific concern was that their daughter was “learning Christianity and not learning ‘about’ Christianity in a school context that effectively assumes its absolute truth and which, whether intentionally or otherwise, encourages her to do the same”.[[653]](#footnote-654) Considering the domestic law and the provisions for religious education teaching in the child’s primary school, the High Court ruled that the core religious education syllabus in NI is not of an objective, pluralist and critical manner, as required by Article 2 of Protocol No 1 of the ECHR.[[654]](#footnote-655) However, the High Court stressed that “the school is statutorily obliged to adhere to… [the] syllabus and has no powers to amend it… The school’s hands are tied in terms of its mandatory obligation to deliver the core syllabus in accordance with the relevant legislation”.[[655]](#footnote-656)

Regarding guidance provided by the Department of Education, the High Court stated that:

there can be no doubt that the guidelines demonstrate an awareness of the types of criticism identified by the applicants in terms of the core syllabus. Guidelines seek to guide teachers away from any risk of religious instruction or indoctrination. However, these efforts ultimately flounder on the mandatory obligation to teach the core curriculum which by statute requires that religious education must be based upon the Holy Scriptures. The guidelines, whilst helpful, do not take away from the court’s analysis of what the core curriculum and collective worship requires.[[656]](#footnote-657)

In 2023, the Religious Education Advisory Committee, which was established by the Department of Education, was working with the Council for the Curriculum Examinations and Assessment to produce guidance for schools on ensuring that religious education is inclusive.[[657]](#footnote-658) However, any change is subject to the approval of a functioning NI Executive.[[658]](#footnote-659)

In October 2023, the Court of Appeal in NI heard an appeal from the Department of Education to the High Court’s decision.[[659]](#footnote-660) The Department of Education will consider further action pending the outcome of the appeal.[[660]](#footnote-661) If required, any policy or legislative change is subject to approval of a functioning NI Executive and NI Assembly.[[661]](#footnote-662)

### [AMBER] Shared education

In May 2023, the CoE Advisory Committee on the Framework Convention on the Protection of National Minorities issued a revised recommendation that the UK Government and NI Executive:

provide further guidance to schools implementing shared education to address their large discretionary power with the aim of improving the consistency of shared education, guaranteeing a more uniform approach to it across schools and ensuring its positive contribution to the integration of society.[[662]](#footnote-663)

In 2022/2023, 35,595 children in NI were engaged in shared learning projects linked to PEACE IV funding, which involved two projects.[[663]](#footnote-664) This was additional to the 121,000 children recorded since the projects began.[[664]](#footnote-665) The CASE project had a target of 135,000 children being involved in shared education classrooms and the Sharing from the Start project had a target of engaging 9,914 children in shared education.[[665]](#footnote-666) Despite difficulties in delivering shared education during the COVID-19 pandemic, the combined target of 141,000 is expected to be exceeded.[[666]](#footnote-667) Additionally, in 2022/2023, it is predicted that over 42,500 pupils have benefited from shared learning experiences funded by phase one of implementing the Department of Education’s strategy on mainstreaming shared education.[[667]](#footnote-668)

In September 2023, the PEACE IV programme ended. The PEACE PLUS 2021-2027 programme is intended as the successor to PEACE IV.[[668]](#footnote-669) In June 2023, the PEACE PLUS 2021-2027 programme opened to applications.[[669]](#footnote-670) However, successful projects are not expected to be operational until 2024/2025.[[670]](#footnote-671) It remains unclear how shared education programmes that relied on PEACE IV funding will be sustained in the 2023/2024 academic year and if there are any delays to PEACE PLUS funding.

There is an additional concern that will affect the funding of programmes under the Department of Education’s mainstreaming shared education strategy. In 2023, cuts to the NI budget placed the Department of Education in a constrained financial position.[[671]](#footnote-672) In May 2023, the Education Authority NI advised that the funding provided to schools for shared education provision will be about 50 per cent less than the budget provided in 2022/2023.[[672]](#footnote-673) It is hoped that further resourcing will become available in 2024/2025.[[673]](#footnote-674)

### [AMBER] Special educational needs

In June 2023, UN CRC Committee issued a revised recommendation that the UK Government and NI Executive:

ensure inclusive education in mainstream schools for all children with disabilities, including by adapting curricula and training and assigning specialised teachers and professionals in integrated classes, so that children with disabilities and learning difficulties receive individual support and due attention.[[674]](#footnote-675)

In July 2023, it was reported that 390 children with special educational needs in NI were still waiting for a suitable school place for the 2023/2024 academic year.[[675]](#footnote-676) This is a similar situation to that which occurred in 2022.[[676]](#footnote-677) In August 2023, it was reported that most of the children affected had been provided with a place, but 20 children were not expected to receive a school place before the start of the new academic year.[[677]](#footnote-678) Furthermore, in October 2023, 42 nursery school children were being educated in the community and voluntary sector due to a lack of special school places.[[678]](#footnote-679) Yet, determining the exact number of children affected by the present situation is difficult. Several parents reported that, even where places have been provided, the placement identified by the Education Authority NI may not be deemed appropriate for the specific needs of the child involved.[[679]](#footnote-680) The delay and lack of communication experienced while awaiting a decision by the Education Authority NI has caused the parents and children affected “huge anxiety” and has been reported to be “mentally, emotionally and physically draining”.[[680]](#footnote-681) Without the necessary supports in place before the start of the school term parents are not able “plan accordingly”, which can result in children not being able to avail of or continue with their school placement.[[681]](#footnote-682)

In 2022, following a series of critical reviews,[[682]](#footnote-683) Ipsos was commissioned to conduct an independent review of special educational needs services and processes in NI.[[683]](#footnote-684) In May 2023, the Independent Review report was published.[[684]](#footnote-685) The Independent Review reported that effective steps have been taken to improve services, with only nine per cent of statements taking longer than 26 weeks, compared to the 85 per cent previously reported by the NI Audit Office.[[685]](#footnote-686) However, the Independent Review reiterated the need for further improvements, including more effective use of the substantial expenditure, a focus on earlier intervention, improved access to educational psychologists, accessible information and advice for parents, and improved staff training and development, among others.[[686]](#footnote-687) A formal response from the Department of Education is awaited.[[687]](#footnote-688)

In June 2023, the Department of Education announced proposed budget reductions to special educational needs services and the Education Authority NI’s block grant to live within the budget settlement 2023/2024.[[688]](#footnote-689) In August 2023, the Department of Education consulted on its Equality Impact Assessment of the proposed cuts, but the effects were already being felt.[[689]](#footnote-690) In 2023, funding for school staff who support pupils with special educational needs was halved from £22 million to £11 million.[[690]](#footnote-691) In October 2023, the Education Authority NI stated that “significant additional investment” was needed to transform the special educational needs system in NI.[[691]](#footnote-692)

### [AMBER] Use of restraint in educational settings

In June 2023, the UN CRC Committee issued a revised recommendation that the UK Government and NI Executive:

explicitly prohibit the use of restraint and seclusion in educational settings and adopt a child rights-based approach to addressing violence or other disturbances in schools, including by prohibiting the presence of police in schools and providing regular training for teachers on relevant guidance for addressing such disturbances in a child-sensitive manner.[[692]](#footnote-693)

In 2022, the Department of Education published its review of the use of restraint and seclusion practices in educational settings.[[693]](#footnote-694) The former Minister of Education, Michelle McIllveen MLA, accepted all recommendations. This included the development of new statutory guidance to provide clear definitions on the use of restrictive practices in educational settings.

In September 2023, the Department of Education launched a public consultation on draft statutory guidance for the reduction and management of restrictive practices in educational settings in NI.[[694]](#footnote-695) The draft guidance was informed by the Department of Education’s Review of Restraint and Seclusion Reference Group, which includes the Commission.[[695]](#footnote-696) The draft guidance proposes definitions and clarifies requirements regarding recording, training and monitoring.[[696]](#footnote-697) It is anticipated that the revised guidance will be published within the 2023/2024 academic year.[[697]](#footnote-698) The Department of Education has confirmed that, without direction from the NI Executive and potential legislative change by the NI Assembly, the revised guidance will be unable to follow the most recent UN CRC Committee’s concluding observations that recommend the use of restraint and seclusion in educational settings is explicitly prohibited.[[698]](#footnote-699)

In March 2023, the Department of Health published a new regional policy on minimising the use of restrictive interventions, restraint and seclusion in health and social care settings.[[699]](#footnote-700) It advises that children and young people should never be subject to seclusion.[[700]](#footnote-701) However, the Department of Education’s draft statutory guidance proposes that seclusion “should never be used in educational settings, unless in a crisis situation where it is necessary for the prevention of serious physical harm to individuals”.[[701]](#footnote-702) The Commission outlined its concerns with this proposal, including that the updated position does not reflect previous consultations, healthcare guidance, or the majority view among members of the Restraint and Seclusion Reference Group.[[702]](#footnote-703)

## Right to Participate in the Cultural Life of the Community

### [AMBER] Minority culture and languages

In 2023, the CoE Committee of Ministers, following a report from the CoE Advisory Committee on the Framework Convention for the Protection of National Minorities,[[703]](#footnote-704) issued a revised recommendation that the UK Government and NI Executive immediately “intensify efforts to develop and increase the offer and support to Irish-medium education in NI, including for children with special educational needs”.[[704]](#footnote-705) The CoE Committee of Ministers also recommended that the UK Government and NI Executive:

ensure the implementation of the Identity and Language (NI) Act [2022], and work with representatives of the Irish-speaking community to further develop Irish language policy in NI. The authorities should also consider revising the [2022] Act in consultation with the Ulster Scots minority representatives to address the conflation of Ulster Scots and Ulster British identities.[[705]](#footnote-706)

In 2017, the High Court of Justice in NI held that “the Executive Committee has failed in its statutory duty, under section 28D(1) of the NI Act 1998, to adopt a strategy setting out how it proposes to enhance and protect the development of the Irish language".[[706]](#footnote-707) In 2020, a commitment was made to publish an Irish Language Strategy and an Ulster Scots Strategy.[[707]](#footnote-708)

In 2021, following several delays, a Co-Design Group for the Irish Language Strategy and a Co-Design Group for the Ulster Scots Strategy were established by the Department for Communities.

In 2023, the Co-Design Group for the Irish Language Strategy and the Co-Design Group for the Ulster Scots Strategy continued to consider the recommendations of their respective expert panel reports. However, the proposals from both co-design groups cannot progress without a functioning NI Executive.

# Chapter 3 – Issues Requiring Immediate Action

In 2023, there were 18 red issues. Red issues are those that identify a subject that on human rights grounds requires immediate action by the UK Government, NI Executive or relevant public authorities, where the issue may be an ongoing violation or abuse of human rights within NI.

Since the traffic light system was introduced to the annual statement in 2014, when there were five red issues, the number of issues requiring immediate action has been increasing relatively steadily year on year.[[708]](#footnote-709)

This chapter sets out the updates from 2023 in relation to the red issues and the Commission’s respective recommendations in detail. It covers significant developments between 1 December 2022 and 10 November 2023.

## Equality and Non-discrimination

### [RED] Conversion therapy

In June 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

prohibit the promotion, facilitation and delivery of so-called ‘conversion therapies’ aimed at changing the sexual orientation and gender identity of children, in line with its commitment made in 2018, with particular attention paid to the vulnerabilities of children who may be subject to such harm.[[709]](#footnote-710)

In February 2023, the CoE Commissioner for Human Rights, Dunja Mijatović, stated that conversion therapies “conflict with an overwhelming consensus of international human rights and scientific bodies”.[[710]](#footnote-711) The CoE Commissioner for Human Rights clarified that “it is important to underscore that properly drafted conversion practice bans should not interfere with the right to hold a belief or express an opinion on lesbian, gay, bisexual, transgender and intersex issues”.[[711]](#footnote-712) The CoE Commissioner for Human Rights called for “a comprehensive, human rights based approach to eliminating” conversion therapies, which includes mapping the problem, ensuring accountability, delegitimising conversion therapies in society, and ensuring participation, support and rehabilitation of victims.[[712]](#footnote-713)

In 2020, the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz, called for a global ban on conversion therapy, with particular protections required for children.[[713]](#footnote-714) The Independent Expert defines conversion therapy as:

an umbrella term to describe interventions of a wide-ranging nature, all of which are premised on the belief that a person’s sexual orientation and gender identity, including gender expression, can and should be changed or suppressed when they do not fall under what other actors in a given setting and time perceive as the desirable norm, in particular when the person is lesbian, gay, bisexual, trans or gender diverse. Such practices are therefore consistently aimed at effecting a change from non-heterosexual to heterosexual and from trans or gender diverse to cisgender. Depending on the context, the term is used for a multitude of practices and methods, some of which are clandestine and therefore poorly documented.[[714]](#footnote-715)

In 2021, the Expert Advisory Panel on a Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy for NI defined conversion therapy as:

any practice designed to change a person’s sexual orientation or gender identity. It can be distinguished from other practices designed to provide guidance and support to [lesbian, gay, bisexual, transgender, queer (or questioning), intersex +]… people provided by psychotherapists, counsellors or faith leaders because it operates under the premise that a specific sexual orientation, gender identity, or gender expression is pathological and/or evidence of a mental illness that can be cured. Unlike therapies that facilitate a person’s open and autonomous exploration of their sexual and gender futures, these therapies are discriminatory from the outset because [conversion therapy]… designates identities into normal and abnormal categories. As such, it is proscriptive because it attempts to modify identity into traditional heterosexual and cis-gendered models. It includes both pseudo-psychological treatments and physical interventions. In its ‘therapeutic’ forms it is a scientifically discredited, unprofessional and dangerous practice.[[715]](#footnote-716)

The Expert Advisory Panel concluded that any such practices should be made illegal.[[716]](#footnote-717) It also recommended that steps are taken to ensure such practices are not commissioned or funded and that appropriate medical services are created to provide free access to support for victims.[[717]](#footnote-718)

In 2021, the NI Assembly also passed a motion calling on the then Minister for Communities, Deirdre Hargey MLA, to commit to bringing forward legislation to ban conversion therapy in all its forms before the end of the current NI Assembly mandate.[[718]](#footnote-719) The Commission wrote to the then Minister for Communities in support of the motion.[[719]](#footnote-720)

In 2023, the Department for Communities was developing a policy for the purposes of introducing legislation to end conversion therapy to the NI Assembly.[[720]](#footnote-721) The resulting policy will be subject to consideration by a future NI Executive and to public consultation, before legislation will be introduced. The policy cannot progress beyond the drafting stages in the absence of a functioning NI Executive and NI Assembly.

#### Recommendations

The Commission recommends that the Department for Communities, with the support of the NI Executive, promptly introduces legislation in NI to ban all practices of conversion therapy aimed at changing or suppressing a person’s sexual orientation or gender identity, by any person or group of persons. The Department for Communities should be guided by the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the Expert Advisory Panel on a Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy for NI’s definitions of conversion therapy in developing this legislation and its broader work related to this issue.

## Right to Life

### [RED] Conflict related investigations: transitional justice and individual cases

Between 2021 and 2023, several UN and CoE institutions expressed “grave concern” at the UK Government’s plans for Troubles-related offences, including the NI Troubles (Legacy and Reconciliation) Act 2023.[[721]](#footnote-722)

In September 2023, commenting on the 2023 Act, the CoE Committee of Ministers noted that “a number of issues relating to independence disclosure and the initiation of reviews remain uncertain”.[[722]](#footnote-723) The Committee of Ministers:

urged the authorities therefore to provide additional information on the planned practical and other measures to ensure that these issues are fully addressed, including: to ensure the independence of the Independent Commission on Reconciliation and Information Recovery appointment process; to further strengthen in practice the procedural safeguards for victims and their families; to develop clear disclosure protocols form all relevant authorities to the Independent Commission on Reconciliation and Information Recovery; and to ensure referral to the Independent Commission on Reconciliation and Information Recovery of all cases that might engage Articles 2 and 3 of the ECHR.[[723]](#footnote-724)

The Committee of Ministers underlined “again the importance for the success of any new investigative body, particularly if aimed at achieving truth and reconciliation, of gaining the confidence of victims, families of victims and potential witnesses”.[[724]](#footnote-725) The Committee of Ministers acknowledged “the steps taken by the authorities in an attempt to engage with victims and stakeholders” since the 2023 Act was introduced to Parliament, but “noted with deep regret nevertheless that despite those efforts, support for the Independent Reconciliation and Information Recovery remains minimal”.[[725]](#footnote-726) Consequently, the Committee of Ministers “strongly encouraged the authorities to take all necessary additional measures to garner public trust and the confidence of victims, their families and all stakeholders”.[[726]](#footnote-727)

The Committee of Ministers also reiterated its:

serious concern about the proposed conditional immunity scheme which risks breaching obligations under Article 2 of the ECHR to prosecute and punish serious grave breaches of human rights, and seriously undermining the Independent Commission on Reconciliation and Information Recovery’s capacity to carry out effective investigations within the meaning of Article 2 of the ECHR.[[727]](#footnote-728)

The Committee of Ministers continued that it “deeply regretted therefore the authorities’ decision not to support the House of Lords’ amendment to remove the scheme from the [then NI Troubles (Legacy and Reconciliation)] Bill and its subsequent rejection”.[[728]](#footnote-729) The Committee of Ministers “strongly urged the authorities to consider repealing the immunity provisions”.[[729]](#footnote-730) The Committee of Ministers has sent a letter to the UK authorities raising its concerns and will re-examine the issue by June 2024 at the latest.[[730]](#footnote-731)

In 2022 and 2023, the CoE Commissioner for Human Rights, Dunja Mijatović, echoed the CoE Ministers’ concerns. In June 2023, the Commissioner for Human Rights emphasised that the now NI Troubles (Legacy and Reconciliation) Act 2023 “ignores the many warnings that this legislation would violate the UK’s international obligations and put victims’ rights at risk”.[[731]](#footnote-732) In 2022, the Commissioner for Human Rights, emphasising that “any further steps on legacy must place the rights and needs of victims at its heart”, urged:

the UK Government to return to previously agreed principles in the Stormont House Agreement, and to use these principles as a basis to set out an approach to legacy cases that can carry the support of a considerable portion of society in NI, that provides for ECHR-compliant investigations into killings and other serious human rights violations during the Troubles, and that prevents impunity for such violations. This approach must be brought forward promptly to ensure that truth-finding and justice are no longer delayed.[[732]](#footnote-733)

In 2019, the UN CAT Committee recommended that the UK Government “take urgent measures to advance and implement the Stormont House Agreement and the mechanisms it contemplates for investigating conflict-related violations, particularly the Historical Investigations Unit”.[[733]](#footnote-734) The UN CAT Committee also recommended that the UK Government “refrain from enacting amnesties or statutes of limitations for torture or ill-treatment”, which are inconsistent with UN CAT.[[734]](#footnote-735)

The UN CAT Committee’s recommendations are supported by the UN Human Rights Committee,[[735]](#footnote-736) the former UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and guarantees of non-repetition, Pablo de Greiff,[[736]](#footnote-737) and several recommendations by the UN Working Group on the Universal Periodic Review.[[737]](#footnote-738)

In Windsor Framework Article 2, the UK Government commits to ensuring there is no diminution of the rights, safeguards and equality of opportunity protections contained in that chapter of the Belfast (Good Friday) Agreement 1998 as a result of the UK leaving the EU, including the right of victims “to remember as well as contribute to a changed society”.[[738]](#footnote-739) EU obligations underpinning the rights of victims include the EU Victims’ Directive[[739]](#footnote-740) as well as other relevant EU laws which support victims.[[740]](#footnote-741) The EU Victims’ Directive has been acknowledged by the UK Government as falling within the scope of Windsor Framework Article 2.[[741]](#footnote-742)

In 2021, the UK Government set out specific plans for legislation to address the legacy of the Troubles.[[742]](#footnote-743) Contrary to the majority of views expressed during a public consultation in 2018,[[743]](#footnote-744) the plans indicated a shift away from conducting human rights compliant Troubles-related investigations, towards seeking and receiving information about Troubles-related deaths and injuries.[[744]](#footnote-745) The plan also included the intention to introduce a statute of limitations to apply equally to all Troubles-related incidents.[[745]](#footnote-746)

In 2022, the then NI Troubles (Legacy and Reconciliation) Bill was introduced to the UK Parliament. Throughout the passage of the Bill, the Commission provided advice on its compatibility with the ECHR and international human rights framework.[[746]](#footnote-747)

In May 2023, Sir Declan Morgan was announced as the Independent Commission for Reconciliation and Information Recovery’s Chief Commissioner.[[747]](#footnote-748) In July 2023, a public survey was launched requesting views on how the Independent Commission for Reconciliation and Information Recovery should carry out its work.[[748]](#footnote-749) In September 2023, Peter Sheridan was announced as Commissioner for Investigations.[[749]](#footnote-750) Recruitment is underway for other roles.[[750]](#footnote-751)

In September 2023, the NI Troubles (Legacy and Reconciliation) Act 2023 received Royal Assent. The 2023 Act establishes an Independent Commission for Reconciliation and Information Recovery which will conduct reviews, on request, into deaths and serious injuries resulting from or connected with conduct during the Troubles. The Independent Commission for Reconciliation and Information Recovery is also tasked with producing a historical record of all remaining deaths that occurred during the Troubles (i.e. Troubles-related deaths that are not subject to a review by the Independent Commission). The Independent Commission for Reconciliation and Information Recovery will operate a conditional immunity scheme for certain Troubles-related offences and most Troubles-related proceedings will cease by 1 May 2024. The 2023 Act also establishes several statutory-based initiatives aimed at memorialising the Troubles such as oral history records, a memorialisation strategy and Troubles-related academic research.

Considering the 2023 Act, the Commission remains gravely concerned that the Independent Commission for Reconciliation and Information is not independent in practice and its mandate does not satisfy procedural human rights obligations. The conditional immunity scheme applies to offences where immunity should not be an option. The cessation of criminal investigations (other than those referred by the Independent Commission for Reconciliation and Information Recovery to the prosecutor), police complaints, civil proceedings and inquests/inquiries linked to Troubles-related offences is likely contrary to the right to an effective remedy.

The Commission is also concerned that the 2023 Act may not be compliant with Windsor Framework Article 2. For example, Article 11 of the EU Victims’ Directive requires States to ensure that victims have the right to a review of a decision not to prosecute.[[751]](#footnote-752) A decision to grant immunity is tantamount to a decision not to prosecute as it precludes any criminal enforcement action in respect of the offence(s) which are subject to that decision. Article 6 of the EU Directive provides a right to a victim of a criminal offence to receive information regarding any decision not to proceed with or to end an investigation or not to prosecute the offender.[[752]](#footnote-753) The Act does not include an express requirement for victims or family members to be informed when an individual has applied for immunity, nor does it expressly require that information relating to the review process or the outcome of the immunity request is provided to victims or family members.[[753]](#footnote-754) Moreover, obligations under the EU Victims’ Directive must be interpreted in line with the EU Charter of Fundamental Rights provisions, including Article 47 (right to an effective remedy and to a fair trial) and general principles of EU law.[[754]](#footnote-755)

The Independent Commission for Reconciliation and Information Recovery is intended to be fully operational by summer 2024.[[755]](#footnote-756) However, in August 2023, the Independent Commission for Reconciliation and Information Recovery’s Chief Commissioner stated:

the decision on whether something is compatible or not is not for Parliament to make, it is not for… [the Independent Commission for Reconciliation and Information Recovery] to make – it is for the courts to decide… [By May 2024] I am hoping that at least the first instances of decisions on whether it is compatible are determined. If it is compatible, I will implement the immunity provisions in a way that the court rules is compatible, and if it is not, we won’t.[[756]](#footnote-757)

In September 2023, the Secretary of State for NI stated that:

I believe that the [then NI Troubles (Legacy and Reconciliation)] Bill is now compliant, but that will undoubtedly be tested. Only when it is tested and the results come forward can anybody actually say that the [then] Bill [now Act] is Article 2 [of the ECHR] compliant, as Government lawyers truly believe it is.[[757]](#footnote-758)

In September 2023, 20 judicial reviews were lodged arguing that the NI Troubles (Legacy and Reconciliation) Act 2023 violates the ECHR.[[758]](#footnote-759) Several legal challenges regarding the 2023 Act also raised concerns about compliance with Windsor Framework Article 2.[[759]](#footnote-760) In November 2023, the High Court of Justice in NI was due to hear three of the 20 cases that were identified as best suited to determine the issues raised. The Commission was granted leave to intervene on grounds relating to the correct interpretation and application of the ECHR and Windsor Framework Article 2.

In 2023, the Government of Ireland was also considering whether to take an inter-State case to the ECtHR challenging the 2023 Act.[[760]](#footnote-761)

#### Recommendations

The Commission recommends that the UK Government repeals the NI Troubles (Legacy and Reconciliation) Act 2023 and introduces revised legislation that is human rights compliant, victim-centred, does not restrict the investigation and prosecution of alleged unlawful killings and serious injuries, is compatible with Articles 2 (right to life) and 3 (freedom from torture) of the ECHR and compliant with the EU Victims’ Directive and Windsor Framework Article 2. In the interim, the Independent Commission for Reconciliation and Information Recovery should ensure that the fundamental concerns with the NI Troubles (Legacy and Reconciliation) Act

2023 are addressed to the greatest extent possible within its mandate, including adopting a victim-centred approach and undertaking meaningful engagement.

### [RED] Legacy inquests and inquiries

In September 2023, the CoE Committee of Ministers “deeply regretted furthermore that, while the cut-off date has been extended to May 2024, the proposal to terminate pending inquests remains [in the now NI Troubles (Legacy and Reconciliation) Act]”.[[761]](#footnote-762) The Committee of Minsters expressed “profound concern that, if effective handover measures are not put in place, this may lead to further delay and distress for individuals”.[[762]](#footnote-763) The Committee of Ministers:

urged the authorities to consider taking additional practical measures to ensure that as many inquests as possible can conclude before 1 May 2024 and that all of the preparatory work done on these pending cases is not lost in any transfer to the Independent Commission on Reconciliation and Information Recovery.[[763]](#footnote-764)

Additionally, the Committee of Ministers reiterated its:

profound concern that over four years have passed since the [UK] Supreme Court judgment finding that there has still not been an Article 2-compliant inquiry into… [Patrick] Finucane’s death in 1989 and that there is still no clear indication of how the Secretary of State [for NI] proposes to proceed.[[764]](#footnote-765)

The Committee of Ministers “exhorted the authorities again to provide their full and clear response to the [UK] Supreme Court judgment, including a decision on the measures they intend to take as soon as possible”.[[765]](#footnote-766)

Between 2015 and 2021, echoing the CoE Committee of Ministers’ concerns, the UN Human Rights Committee[[766]](#footnote-767) and the then UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, Pablo de Greiff,[[767]](#footnote-768) continued to call for prompt, adequate and effective resourcing of legacy inquests and inquiries in NI.[[768]](#footnote-769) The UN CAT Committee[[769]](#footnote-770) and UN Human Rights Committee also specifically called for an inquiry into the killing of Patrick Finucane.[[770]](#footnote-771)

In Windsor Framework Article 2, the UK Government commits to ensuring there is no diminution of the rights, safeguards and equality of opportunity protections contained in that chapter of the Belfast (Good Friday) Agreement 1998 as a result of the UK leaving the EU, including the right of victims “to remember as well as contribute to a changed society”.[[771]](#footnote-772) EU obligations underpinning the rights of victims include the EU Victims’ Directive[[772]](#footnote-773) as well as other relevant EU laws which support victims.[[773]](#footnote-774)

#### Legacy inquests

In 2019, the Legacy Inquest Unit was established within the Coroner's Service, under the remit of the Lord Chief Justice. The Legacy Inquest Unit was due to complete its work within five years, but this was delayed due to COVID-19 restrictions delaying court business in general.[[774]](#footnote-775)

By June 2023, the Legacy Inquest Unit had completed eight inquests.[[775]](#footnote-776) In six of these completed inquests, it was found that the deaths had occurred due to “unjustified” or “disproportionate” use of force.[[776]](#footnote-777) In three of these completed inquests, it was found that investigation obligations had not been adequately fulfilled.[[777]](#footnote-778) In one of these completed inquests, it was found that that "the [military] operation was not planned and controlled in such a way that it minimised to the greatest extent possible the need for recourse to lethal force".[[778]](#footnote-779)

In January 2023, the Legacy Inquest Unit commenced the inquest into the deaths of Kevin McKearney, John (Jack) McKearney, Charles Fox and Teresa Fox.[[779]](#footnote-780)

In February 2023, the Legacy Inquest Unit commenced the Springhill Inquest, which is considering the deaths of John Dougal, Patrick Butler, Father Noel Fitzpatrick, David McCafferty and Margaret Gargan.[[780]](#footnote-781) This is the second inquest into these deaths, which was directed by the Attorney General for NI following an application by the families.[[781]](#footnote-782)

In June 2023, the Legacy Inquest Unit concluded its hearings regarding the Coagh Inquest, which consider the deaths of Michael Ryan, Anthony Doris and Lawrence McNally.[[782]](#footnote-783)

The NI Troubles (Legacy and Reconciliation) Act 2023 imposes a cessation of criminal investigations (other than those referred by the Independent Commission for Reconciliation and Information Recovery to the prosecutor), police complaints, civil proceedings and inquests/inquiries linked to Troubles-related offences by 1 May 2024. The Commission remains gravely concerned that these changes will close off any pursuit of justice outside of the proposed Independent Commission for Reconciliation and Information Recovery.[[783]](#footnote-784)

#### Patrick Finucane inquiry

In 2019, the UK Supreme Court unanimously made a declaration that there had not been an inquiry into the death of Patrick Finucane that was compliant with Article 2 of the ECHR.[[784]](#footnote-785) The UK Supreme Court identified the lack of ability of Sir Desmond de Silva to compel the attendance of witnesses or cross-examine witnesses on the veracity of their evidence as limitations of the De Silva review.[[785]](#footnote-786) The UK Supreme Court did not order a public inquiry, noting that:

it is for the State to decide, in light of the incapacity of Sir Desmond de Silva’s review and the inquiries which preceded it to meet the procedural requirement of Article 2 [of the ECHR], what form of investigation, if indeed any is now feasible, is required in order to meet that requirement.[[786]](#footnote-787)

In 2020, the UK Government confirmed that it does not intend to hold a public inquiry into Patrick Finucane’s death, but that the possibility of a public inquiry was not “off the table”.[[787]](#footnote-788) The Police Service of NI has “no new lines of inquiry” and is of the view that it is highly likely that any review of Pat Finucane’s death will need to be conducted independently of the Police Service of NI due to the “accepted position of State involvement in this matter”.[[788]](#footnote-789) The Police Ombudsman for NI has also stated that Pat Finucane’s death is “not central to any” of its “ongoing investigations”.[[789]](#footnote-790)

In 2022, the High Court of Justice in NI found that the UK Government “remains in breach of Article 2 [of the ECHR] on the basis of the ongoing delay in completing an investigation which satisfies the requirements of that provision”.[[790]](#footnote-791) The High Court clarified that:

even assuming that the Police Service of NI or Police Ombudsman for NI processes which the Secretary of State [for NI] determined should proceed first which went before, these could not be considered to do so within a timeframe which did anything other than give rise to delay which was a further breach of Article 2 [of the ECHR] requirements of reasonable expedition.[[791]](#footnote-792)

In March 2023, the High Court awarded the Finucane family further damages due to the ongoing breach.[[792]](#footnote-793) However, the Secretary of State for NI, Chris Heaton-Harris MP, has appealed the High Court’s judgment.[[793]](#footnote-794) In September 2023, the Court of Appeal in NI heard the case, with the judgment awaited.[[794]](#footnote-795) The position of the UK Government continued to be “that a final decision on the Finucane case has not yet been taken. All necessary steps will be taken to ensure compliance with both the domestic courts’ and the [ECtHR’s]… decisions in this case”.[[795]](#footnote-796)

#### Omagh bomb inquiry

In 1998, a bomb in the centre of Omagh injured at least 220 people and killed 29 people, including a woman who was pregnant with twins.[[796]](#footnote-797)

In 2021, after several legal cases,[[797]](#footnote-798) the High Court of Justice in NI ruled that there are “plausible arguments that there was a real prospect of preventing the Omagh bombing”.[[798]](#footnote-799) The High Court did not “order a public inquiry to look at arguable grounds of preventability”.[[799]](#footnote-800) However, the High Court stated that "there is a real advantage in an Article 2 [of the ECHR] compliant investigation proceeding in… Ireland simultaneously with one in NI”.[[800]](#footnote-801) Thus, the High Court ruled that “it is for the government(s) to hold an investigation that is Article 2 [of the ECHR] compliant and which can receive both open and closed materials”.[[801]](#footnote-802)

In February 2023, the Secretary of State for NI, Chris Heaton-Harris MP, announced the UK Government’s intention to establish an independent statutory inquiry into the preventability of the Omagh bombing.[[802]](#footnote-803)

In June 2023, Lord Turnbull was announced as Chair of the Omagh Bombing Inquiry.[[803]](#footnote-804)

#### Recommendations

The Commission calls on the Department of Justice and NI Office to fully support the work of the Legacy Inquests Unit, to ensure that all its investigations are compliant with the right to life (Article 2 of the ECHR).

The Commission recommends that the UK Government repeals the NI Troubles (Legacy and Reconciliation) Act 2023 and introduces revised legislation that enables the pursuit of justice in compliance with Article 2 of the ECHR.

The Commission recommends that the UK Government expeditiously initiates a right to life (Article 2 of the ECHR) compliant inquiry into the death of Patrick Finucane, in line with the judgment of the UK Supreme Court.

The Commission recommends that the UK Government ensures that the Omagh Bombing Inquiry is compliant with Articles 2 (right to life) and 3 (freedom from torture) of the ECHR.

The Commission recommends that the UK Government ensures that legislation to replace the NI Troubles (Legacy and Reconciliation) Act 2023 is compliant with the EU Victims’ Directive and does not diminish the rights of victims, in breach of Windsor Framework Article 2.

## Freedom from Torture, Inhuman and Degrading Treatment

### [RED] Child, early and forced marriage

In June 2023, the UN CRC Committee specifically stated that it was “concerned that children who are 16 and 17 years of age do not always receive protection as children, and that marriage under 18 years of age remains permissible in… NI”.[[804]](#footnote-805) The UN CRC Committee recommended that the UK Government and the NI Executive “prohibit all marriages under 18 years of age, without exception, in… NI”.[[805]](#footnote-806) The UN CRC Committee also recommended that the UK Government and NI Executive:

develop national strategies aimed at eliminating and preventing harmful practices affecting children, including child marriage… and ensure that it includes effective measures for raising public awareness, training relevant professional groups, identifying victims and addressing data gaps and low rates of reporting and prosecution.[[806]](#footnote-807)

In 2019, the UN CEDAW Committee[[807]](#footnote-808) and UN CAT Committee emphasised the need for the UK Government and the NI Executive to strengthen efforts and effectiveness in combating forced marriage, including preventative and protection measures.[[808]](#footnote-809)

The Marriage (NI) Order 2003 permits the marriage of a child aged 16 or 17 years old with the consent of their parents or legal guardians or the courts.

The Marriage and Civil Partnership (Minimum Age) Act 2022 raised the legal age of marriage and civil partnerships in England and Wales to 18 years old.[[809]](#footnote-810) Under the 2022 Act, children will not face penalties, but adults who facilitate underage marriages could face imprisonment for up to seven years and a fine. The 2022 Act applies to children taken abroad from England and Wales to marry.[[810]](#footnote-811)

In 2022, 36 girls and 9 boys were married in NI.[[811]](#footnote-812) This is a decrease compared to 2021, when 39 girls and 15 boys married in NI.[[812]](#footnote-813)

In 2022, the Commission advised the Department of Finance that international human rights standards consider child marriage to be a form of forced marriage.[[813]](#footnote-814) The EU Victims’ Directive recognises forced marriage as a form of gender-based violence and therefore, Windsor Framework Article 2 was engaged.[[814]](#footnote-815) The Department of Finance published its consultation analysis report, revealing near unanimous support among respondents for increasing the minimum age for marriage and civil partnerships to 18 years.[[815]](#footnote-816) The then Minister for Finance, Conor Murphy MLA, signalled his intention to prepare legislation to raise the minimum age for marriage to 18 years old.[[816]](#footnote-817)

In 2023, the necessary legislation could not progress without a functioning NI Executive and NI Assembly.[[817]](#footnote-818)

#### Recommendations

The Commission recommends that the Department of Finance expeditiously introduces legislation to repeal all legal provisions permitting the marriage of children in NI and increase the minimum age for marriage to 18 years for all children.

The Commission recommends that the NI Executive ensures that cross-Departmental efforts to combat forced marriages are strengthened, including by sensitising parents on the need for full and free consent of their child to marry.

The Commission recommends that the Department of Finance ensure Windsor Framework Article 2, including the EU Victims’ Directive, is considered and complied with in the development of legislation to repeal all legal provisions permitting the marriage of children in NI.

### [RED] Children missing from care

In June 2023, the UN CRC Committee recommended that the UK Government and NI Executive “ensure the systematic collection and analysis of data on child protection issues and violence against children to inform the implementation of national strategies on violence and child sexual abuse, including by…creating a national database for missing children”.[[818]](#footnote-819)

In Windsor Framework Article 2, the UK Government commits to ensuring there is no diminution of the rights, safeguards and equality of opportunity protections contained in that chapter of the Belfast (Good Friday) Agreement 1998 as a result of the UK leaving the EU. EU obligations underpinning the rights of child victims include the EU Child Sexual Exploitation Directive;[[819]](#footnote-820) the EU Victims’ Directive[[820]](#footnote-821) and EU Trafficking Directive.[[821]](#footnote-822) The Commission considers these directives within scope of Windsor Framework Article 2 for several reasons. Firstly, on the basis that these directives underpin ECHR rights; secondly, these are sub-categories of victims and victims’ rights are recognised in the relevant chapter of the Belfast (Good Friday) Agreement; and thirdly, on the basis of the equality commitments in the relevant chapter of the Belfast (Good Friday) Agreement. These EU directives require that the best interests of the child are a primary consideration.

Children and young people who are missing from care are particularly vulnerable to exploitation.[[822]](#footnote-823) It has also been noted that there is a “particular link” between children going missing from care and child sexual exploitation.[[823]](#footnote-824)

In 2022/2023, the Police Service of NI received 5,240 reports of children going missing from care in NI, which involved 1,171 individual children.[[824]](#footnote-825) Of these occurrences, 2,923 reports were from residential children’s homes, relating to 166 individual children.[[825]](#footnote-826)

In 2022, the Police Service of NI and the Health and Social Care Board conducted a targeted consultation on a revised protocol on children missing from home and care.[[826]](#footnote-827) In its response,[[827]](#footnote-828) the Commission recommended that the Protocol should make specific reference to the victims’ rights and protections which fall within scope of Article 2 of the Windsor Framework, including the EU Child Sexual Exploitation Directive,[[828]](#footnote-829) which places a positive obligation on States to prevent children from becoming victims of child sexual abuse and to investigate such crimes.[[829]](#footnote-830) The Commission expressed concern that the revised Protocol had removed a section on safeguarding child victims of modern slavery and human trafficking which had been included in the Missing Children Protocol 2015[[830]](#footnote-831) and advised on relevant provisions of the EU Trafficking Directive.[[831]](#footnote-832) In terms of risk assessment, the Commission welcomed specific consideration being given to children who are flagged as at risk of child sexual exploitation and also recommended the inclusion of measures for child victims of modern slavery and human trafficking.[[832]](#footnote-833)

In July 2023, the Police Service of NI and the Health and Social Care Trusts launched its new interface protocol on children missing from care.[[833]](#footnote-834) As part of its implementation a more consistent approach to multi-agency work is being developed, particularly with regard to repeat missing occurrences.[[834]](#footnote-835) Monitoring data that is already shared in local districts each month will additionally be examined at joint operational meetings between the Police Service of NI and the Health and Social Care Trusts in NI.[[835]](#footnote-836) These meetings will also provide the opportunity to consider joint arrangements for responding to child sexual exploitation and joint diversionary activities to disrupt repeat missing patterns.[[836]](#footnote-837)

The new Interface Protocol includes measures for human trafficking, slavery, servitude, and forced or compulsory labour in the case of unaccompanied children seeking asylum.[[837]](#footnote-838) The new Interface Protocol also refers to the current NI guidance on working arrangements for the welfare and safeguarding of child victims and potential child victims of human trafficking and modern slavery, that is currently under review.[[838]](#footnote-839) The Interface Protocol also includes measures related to children at risk of being sexually exploited.[[839]](#footnote-840)

#### Recommendations

The Commission recommends that the Department of Health and the Police Service of NI reviews, after 12 months of implementation, the effectiveness of the new Interface Protocol for when a child is reported missing and other police interactions. This analysis should consider steps taken to identify patterns and risks, reduce harm, improve support, and prevent missing occurrences.

### [RED] Physical punishment of children

In June 2023, the UN CRC Committee, in recalling its previous recommendation, recommended that the UK Government and NI Executive:

1. explicitly prohibit, as a matter of priority, corporal punishment in all settings, including in the home, throughout the [UK]… and repeal legal defences of ‘reasonable punishment’ in …NI;
2. monitor the implementation and impact of legislation prohibiting corporal punishment… with a view to informing measures aimed at promoting attitudinal change concerning corporal punishment in all settings;
3. strengthen awareness-raising campaigns for parents, teachers and other professionals working with and for children, to promote positive, non-violent and participatory forms of child-rearing.[[840]](#footnote-841)

In 2023, the UN Working Group on the Universal Periodic Review recommended that the UK Government and NI Executive “take further measures to protect children from physical punishment… in accordance with the UN CRC”[[841]](#footnote-842) and “ban corporal punishment of children in all settings, including in the family, to ensure the full protection and freedom from violence for all children, as required by the UN CRC”.[[842]](#footnote-843)

In Windsor Framework Article 2, the UK Government commits to ensuring there is no diminution of the rights, safeguards and equality of opportunity protections contained in that chapter of the Belfast (Good Friday) Agreement 1998 as a result of the UK leaving the EU.[[843]](#footnote-844) EU obligations underpinning the rights of victims include the EU Victims’ Directive[[844]](#footnote-845) as well as other relevant EU laws which support victims.[[845]](#footnote-846) The Commission considers these directives within scope of Windsor Framework Article 2 for several reasons. Firstly, on the basis that these directives underpin ECHR rights; secondly, these are sub-categories of victims and victims’ rights are recognised in the relevant chapter of the Belfast (Good Friday) Agreement; and thirdly, on the basis of the equality commitments in the relevant chapter of the Belfast (Good Friday) Agreement.

As an EU Member State, the UK had primary responsibility for protecting children against violence and the role of EU law was limited to those areas within its competence. While the physical punishment of children did not fall within EU competence prior to 31 December 2020, protections for victims did fall within its scope. The EU Victims’ Directive recognises that the best interests of the child is a primary consideration for child victims, in line with the EU Charter of Fundamental Rights and the UN CRC.[[846]](#footnote-847) In addition, the EU Directive recognises that violence within close relationships can result in physical, mental or emotional harm and can cause systematic psychological and physical trauma and therefore may need special protection measures.[[847]](#footnote-848) A person is considered a victim whether an offender is identified, apprehended, prosecuted or convicted and regardless of familial relationship between them.[[848]](#footnote-849)

The Law Reform (Miscellaneous Provisions) (NI) Order 2006 continues to allow for a defence of reasonable punishment of a child. This reflects the situation in England.[[849]](#footnote-850) However, Scotland, Wales and Ireland have prohibited the physical punishment of children by parents and others caring for them.[[850]](#footnote-851)

In 2021, the then Minister of Justice, Naomi Long MLA, announced her intention to take legislative steps to remove the defence of reasonable chastisement in NI.[[851]](#footnote-852) However, the proposed legislative provision failed to secure majority cross-party support and could not be brought forward.[[852]](#footnote-853) In 2022, the then Minister of Justice was considering options for the primary legislative programme for the new mandate and intended to revisit the handling of this issue following the reinstatement of the NI Executive and NI Assembly.[[853]](#footnote-854) In 2023, the necessary legislative change could not progress without a functioning NI Executive and NI Assembly.

#### Recommendations

The Commission recommends that the Department of Justice, working with the NI Executive and NI Assembly, expeditiously repeals the defence of reasonable chastisement of a child and devise and implement a strategy to effectively promote positive and non-violent forms of discipline and respect for children’s equal right to human dignity and physical integrity, with a view to eliminating the use of physical punishment in child-rearing.

The Commission recommends that, when developing or implementing any laws or policies on the physical punishment of children, the Department of Justice considers the extent to which Article 2 of the Windsor Framework, including the EU Victims’ Directive, is engaged and ensures that there is no diminution to the rights and safeguards which fall within its scope.

### [RED] Rwanda asylum proposals

In 2022, the UN Refugee Agency urged the UK to refrain from transferring people seeking asylum and refugees to Rwanda for asylum processing. It found that “the UK is adopting arrangements that abdicate responsibility to others and thus threaten the international refugee protection regime, which has stood the test of time, and saved millions of lives over the decades”.[[854]](#footnote-855) In 2022, the UN Refugee Agency published a legal opinion on the proposals that found:

the UK-Rwanda arrangement fails to meet the required standards relating to the legality and appropriateness of bilateral or multilateral transfers of asylum-seekers. This arrangement, which amongst other concerns seeks to shift responsibility and lacks necessary safeguards, is incompatible with the letter and spirit of the… [UN Refugee Convention 1951].[[855]](#footnote-856)

In 2022, the then Home Secretary, Priti Patel MP, announced a migration and economic development partnership between the UK and Rwanda, proposing to relocate some migrants who have arrived in the UK illegally to Rwanda “to resettle and rebuild their lives”.[[856]](#footnote-857) A Memorandum of Understanding was signed, with immediate effect, between the UK and Rwanda setting out the terms for the Asylum Partnership Arrangement,[[857]](#footnote-858) within which Rwanda committed to:

receive asylum seekers from the UK, to consider their claims for asylum, giving effect to their rights under international law through the Rwanda domestic asylum system and arranging for the settlement in Rwanda of those recognised as refugees or otherwise requiring protection.[[858]](#footnote-859)

The Memorandum of Understanding also contained a commitment by the UK and Rwanda to uphold “fundamental human rights and freedoms without discrimination”.[[859]](#footnote-860) Yet, the Memorandum of Understanding is not binding in international law[[860]](#footnote-861) and compliance with this arrangement is not “justiciable in any court of law by third-parties or individuals”.[[861]](#footnote-862)

Under the Memorandum of Understanding and the Nationality and Borders Act 2022, if an asylum claim in the UK is deemed ‘inadmissible’ it will not be considered in the UK, however it could be considered in Rwanda.

In 2022, the Home Office updated its guidance on inadmissible claims stating that:

asylum claims may be declared inadmissible and not substantively considered in the UK, if the claimant was previously present in or had another connection to a safe third country, where they claimed protection, or could reasonably be expected to have done so, provided there is a reasonable prospect of removing them in a reasonable time to a safe third country.[[862]](#footnote-863)

Where children are involved, applications should be considered in accordance with the duty to safeguard the welfare of the child under the Borders, Citizenship and Immigration Act 2009.[[863]](#footnote-864) Unaccompanied children are not suitable for this inadmissibility process, though they may be invited to withdraw their application where certain grounds are fulfilled. However, families with children under 18 years of age may still be removed on inadmissibility grounds.[[864]](#footnote-865)

On 1 June 2022, formal directions were issued to the first group of people to be relocated to Rwanda on 14 June 2022.[[865]](#footnote-866) However, the initial flight was stopped by an ECtHR interim measure to prevent irreversible harm to an applicant challenging the legality of their deportation.[[866]](#footnote-867)

Legal actions against the policy were also commenced by civil society organisations. In 2022, hearings for the first judicial review application began on behalf of people seeking asylum, supported by the Public and Commercial Services Union, Care4Calais and Detention Action. This action challenged that removing people seeking asylum to Rwanda would put the individuals affected at risk from torture and inhuman treatment.[[867]](#footnote-868) A second challenge based on the procedural fairness of the proposals was also heard on behalf of Asylum Aid.[[868]](#footnote-869) The High Court of England and Wales, in finding that the policy was consistent with the UN Refugee Convention and the Human Rights Act 1998, held that the arrangements for relocating asylum seekers to Rwanda and to have their asylum claims determined in Rwanda rather than the UK was lawful.[[869]](#footnote-870) Nonetheless, the decisions for removal were quashed and referred back to the Home Secretary for reconsideration on the basis that the Home Secretary had enforced a blanket policy without considering the individual circumstances of the claimants.[[870]](#footnote-871) In June 2023, on appeal, the Court of Appeal of England and Wales reversed the High Court of England and Wales’ decision that Rwanda was a safe third country. By a majority decision, it concluded that, if people seeking asylum were sent to Rwanda pursuant to the Asylum Partnership Agreement, they “faced real risks of Article 3 [of the ECHR] mistreatment”.[[871]](#footnote-872) In reaching this conclusion, the Court of Appeal attached particular importance to the evidence of the UN Human Rights Committee, who were intervenors in this set of proceedings.[[872]](#footnote-873) In October 2023, the UK Supreme Court heard the UK Government’s appeal, with a decision awaited.[[873]](#footnote-874)

Additionally in 2022, the House of Lords International Agreement Committee found that:

the arrangement will have far-reaching consequences for individuals and their rights, and the Memorandum of Understanding contains specific assurances and protections for those being relocated that both Parties commit to uphold. However, because it is a political agreement only – as opposed to a legally binding treaty – the safeguards included in it are not enforceable. This is unacceptable. Agreements that fundamentally affect individuals’ rights should be entered into through a formal treaty, so that the rights of those affected can be fully protected.[[874]](#footnote-875)

In January 2023, the UK Government responded to the International Agreement Committee stating that the Memorandum of Understanding was:

negotiated with close care and attention though a series of discussions between the UK and the Government of Rwanda. The commitments within it and the form it took were issues agreed between the two Participants. Whilst not legally binding in international law, the terms of the Memorandum of Understanding – including the monitoring arrangements – provide the assurances we, and Rwanda, need to confirm that the arrangement will be operated in line with international obligations and in a manner which ensures the welfare and safety of those people relocated under it.[[875]](#footnote-876)

The UK Government recognises that Windsor Framework Article 2 applies to “everyone who is subject to [NI]… law”.[[876]](#footnote-877) The Commission takes the view that the commitment in the Belfast (Good Friday) Agreement 1998 to the civil rights and religious liberties of “everyone in the community” includes asylum seekers and refugees. The Commission considers that all EU law in force in NI on or before 31 December 2020 which underpins ECHR rights falls within scope of the non-diminution commitment in Windsor Framework Article 2. The Commission has identified the EU Procedures Directive,[[877]](#footnote-878) EU Reception Directive,[[878]](#footnote-879) EU Qualification Directive[[879]](#footnote-880) and the Dublin III Regulation as relevant to refugees and asylum seekers.[[880]](#footnote-881) The EU Charter on Fundamental Rights also continues to have relevance in relation to Windsor Framework Article 2 and Article 18 of the EU Charter protects the right to asylum. In October 2023, the High Court of Justice in NI confirmed that the Belfast (Good Friday) Agreement 1998 was drafted with EU fundamental rights in mind and therefore protects the rights of everyone in the community, including asylum seekers.[[881]](#footnote-882)

#### Recommendations

The Commission recommends that the UK Government repeals the Memorandum of Understanding with Rwanda and ensures all people seeking asylum in the UK are processed in a way that is compliant with international human rights standards and Windsor Framework Article 2. This should take into account the difficult journey and trauma experienced by many prior to arriving in the UK.

## Freedom from Slavery

### [RED] Child sexual exploitation

In June 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

promptly and effectively investigate and intervene in all cases of violence against children, including… sexual exploitation and abuse of children…

strengthen efforts to train professionals working with and for children, including social workers, law enforcement authorities and the judiciary, to identify and effectively respond to cases of violence, including sexual exploitation…

ensure the systematic collection and analysis of data on child protection issues and violence against children to inform the implementation of national strategies on violence and child sexual abuse, including by:

1. creating a national database for missing children;
2. collecting data on cases that have been reported, investigated and prosecuted; and
3. ensuring that data on the sexual exploitation and abuse of 16-and-17 year old children is disaggregated as children.[[882]](#footnote-883)

The UN CRC Committee also recommended that the UK Government and NI Executive ensure that:

all children under 18 years of age, including 16-and-17-year olds, who are victims of offences… including sexual exploitation, sexual abuse material and sexual exploitation in prostitution, are treated as victims, receive adequate protection under the law and have access to remedies.[[883]](#footnote-884)

In 2019, the UN CEDAW Committee recommended that the UK Government and NI Executive “revise its legislation to shift the burden of proof from the prosecution to the purchaser of sexual services for cases involving minors”.[[884]](#footnote-885)

In Article 2 of the Windsor Framework, the UK Government commits to ensuring there is no diminution of the rights, safeguards and equality of opportunity protections contained in that chapter of the Belfast (Good Friday) Agreement 1998 as a result of the UK leaving the EU.[[885]](#footnote-886) EU obligations underpinning the rights of child victims of sexual exploitation and abuse include the EU Child Sexual Exploitation Directive,[[886]](#footnote-887) as well as other relevant EU laws which support victims.[[887]](#footnote-888) The Commission considers these directives within scope of Windsor Framework Article 2 for several reasons. Firstly, on the basis that these directives underpin ECHR rights; secondly, these are sub-categories of victims and victims’ rights are recognised in the relevant chapter of the Belfast (Good Friday) Agreement; and thirdly, on the basis of the equality commitments in the relevant chapter of the Belfast (Good Friday) Agreement.

The EU Child Sexual Exploitation Directive recognises that the best interests of the child is a primary consideration for child victims, in line with the EU Charter of Fundamental Rights and UN CRC.[[888]](#footnote-889) It also recognises the need for enhanced protections for victims, including, in recognition of the harm caused by these offences, that assistance should be provided for as long as necessary for the child’s physical and psychological recovery, including into adulthood.[[889]](#footnote-890)

In 2020, the Criminal Justice Inspection NI noted concern “that little was known about the perpetrators of child sexual exploitation and the criminal justice system was urged to develop its response in this respect”.[[890]](#footnote-891) The Criminal Justice Inspection NI found that “Public Prosecution Service NI staff instructions specific to child sexual abuse and exploitation were needed”.[[891]](#footnote-892) It also found that “where cases did progress to court, support for children was required”.[[892]](#footnote-893) It noted positive steps such as the National Society for the Prevention of Cruelty to Children Young Witness Service and Victim Support NI’s pilot Children’s Independent Sexual Violence Advocate service. However, the Criminal Justice Inspection NI highlighted that consideration should be given to the Gillen Review recommendations regarding law and procedures in serious sexual offences in NI.[[893]](#footnote-894) The Barnahus (children’s house) model was proposed as the preferred approach.[[894]](#footnote-895)

The Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022 aims to implement certain Gillen Review Recommendations,[[895]](#footnote-896) and to improve services for victims of trafficking and exploitation. It removes potentially harmful terms such as ‘child prostitution’ and ‘child pornography’ from the Sexual Offences (NI) Order 2008 and extends the scope of offences to include the abuse of positions of trust where the perpetrator “coaches, teaches, trains, supervises or instructs” the victim in a sport or religion.[[896]](#footnote-897) In 2021, the Commission advised that provisions of the then Bill engaged Windsor Framework Article 2, noting the need to monitor relevant EU Directives and related CJEU jurisprudence to ensure there is no diminution of rights.[[897]](#footnote-898)

While the 2022 Act makes welcome improvements to the law, the Department of Justice's proposal to reverse the burden of proof for the defence of ‘reasonable belief’ in sexual offences against children has been delayed.[[898]](#footnote-899) In 2022, the NI Assembly Committee for Justice noted concerns raised by the Commission and others that the Department of Justice had not proceeded with reversing the burden of proof.[[899]](#footnote-900) The Department of Justice advised that it could not ignore the potential implications of such a change that were raised by the Bar of NI, the Public Prosecution Service NI, and the Law Society of NI.[[900]](#footnote-901) The Department of Justice reiterated its commitment to exploring the matter through engagement with key stakeholders to ensure any future legislative changes are “workable and appropriate within the current legal system”.[[901]](#footnote-902) In 2023, progress was hindered by the suspension of the NI Executive and NI Assembly.

In 2023, the Department of Justice consulted on its three-year strategy on modern slavery and human trafficking.[[902]](#footnote-903) In its response, the Commission highlighted the links between modern slavery, human trafficking and child sexual exploitation.[[903]](#footnote-904) The Commission welcomed the inclusion of more child-specific measures within the new strategy and reiterated the importance of ensuring practitioners are aware of and able to identify where the modern slavery and human trafficking of children might be happening in all its forms in NI.[[904]](#footnote-905) This includes highlighting the links with child sexual exploitation, missing children, child criminal exploitation, online exploitation, forced marriage, forced labour and domestic servitude.[[905]](#footnote-906) In order to ensure compliance with Windsor Framework Article 2, consideration should be given to the EU Child Sexual Exploitation Directive[[906]](#footnote-907) and the EU Trafficking Directive.[[907]](#footnote-908)

In July 2023, the Police Service of NI and the Health and Social Care Trusts launched a new Interface Protocol on children missing from care that includes specific measures targeted at children at risk of sexual exploitation.[[908]](#footnote-909)

#### Online child sexual exploitation

In 2022/2023, there were 328 online sexual offences in NI, of which 150 involved sexual communication with a child.[[909]](#footnote-910)

In 2022, the Online Safety Bill was introduced to the UK Parliament. This Bill includes provisions aimed at tackling sexual exploitation of children online and extends to NI.[[910]](#footnote-911) In October 2023, the Online Safety Act 2023 received Royal Assent.

#### Recommendations

The Commission recommends that the Department of Justice urgently introduces legislation to reverse the burden of proof in cases concerning children as victims of sexual offences.

The Commission recommends that, in line with best international practice and the requirements of the EU Trafficking Directive, the Department of Justice ensures specialised training is provided for relevant professionals and measures reflective of the Barnahus Model are adopted throughout the criminal justice system.

The Commission advises that the requirements of the EU Child Sexual Exploitation Directive should be considered as falling within scope of Protocol Article 2 of the Windsor Framework.

The Commission recommends that the Department of Justice, the Home Office and other relevant departments and bodies, ensure that policy and legislation on child sexual exploitation and on modern slavery and human trafficking is developed in compliance with Windsor Framework Article 2 including the requirements of the EU Child Sexual Exploitation Directive, EU Victims' Directive, and the EU Trafficking Directive which provide that the child’s best interests be a primary consideration in their implementation.

## Right to Liberty and Security of the Person

### [RED] Remand of children

In June 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

repeal the practice of remanding children into police custody, ensure that no child is held in police custody overnight, and avoid the use, and reduce the maximum duration, of pretrial detention; and

address the overrepresentation of children belonging to minority groups in detention and develop measures, in consultation with affected children and their families, to prevent racial profiling by law enforcement authorities.[[911]](#footnote-912)

In 2015, the UN Human Rights Committee recommended that the UK Government and NI Executive ensures “that the detention on remand of child defendants is used only as a measure of last resort and for the shortest possible period of time and that suitable bail packages are available to child defendants in NI”.[[912]](#footnote-913)

#### Statistics

In 2022/2023, there were 224 admissions to the Juvenile Justice Centre, an increase from 207 admissions in 2021/2022.[[913]](#footnote-914) Of these, 176 (78.6 per cent) were related to the Police and Criminal Evidence Order 1989 and 45 (20.1 per cent) related to remand.[[914]](#footnote-915) Of the 176 Police and Criminal Evidence Order admissions, 76 children were subsequently remanded by court or sentenced to custody.[[915]](#footnote-916) In 2022/2023, the total average daily population in the Juvenile Justice Centre was 11 children.[[916]](#footnote-917) Of these, nine were children on remand.[[917]](#footnote-918) Of the 224 admissions to the Juvenile Justice Centre, 113 were children with experience of care (50.5 per cent).[[918]](#footnote-919)

#### Legislative proposals

In 2017, the Department of Justice committed to bringing forward legislation relating to the use of remand and of bail, including the possible introduction of a ‘real prospects’ test and the potential removal of the Woodlands Juvenile Justice Centre as a ‘place of safety’.[[919]](#footnote-920) These proposals were not committed to within the New Decade, New Approach Agreement 2020.[[920]](#footnote-921) However, the former Minister of Justice, Naomi Long MLA, later reaffirmed the Department of Justice’s intentions to “strengthen the right to bail for children, and introduce specific conditions which must be met before a child can be remanded into custody, with a view to ensuring that custody is used as a last resort, in line with our international obligations”.[[921]](#footnote-922) In 2023, the necessary legislative change could not progress without a functioning NI Executive and NI Assembly.

In January 2023, the Criminal Justice Inspection NI reported that bail laws and processes in NI were often inadequate, and that limited progress has been made in developing viable alternatives to remand. Inspectors highlighted the proposed legislative provisions for children and recommended the introduction of a broader Bail Act that would provide necessary reforms to bail for all defendants.[[922]](#footnote-923)

#### Regional Care and Justice Programme

In 2018, the Regional Care and Justice Programme was established to oversee the implementation of recommendations from the review of regional facilities for children and young people in NI.[[923]](#footnote-924) It commits the Department of Health and Department of Justice to work collaboratively in supporting children who require time within a secure environment and following their reintegration back into the community.

In 2023, the Regional Care and Justice Programme was restructured into two main workstreams.[[924]](#footnote-925) First, the prevention workstream considers community-based supports aimed at preventing admission, or re-admission, to a secure facility.[[925]](#footnote-926) Second, the harmonisation workstream considers how to align standards of practice and share services and facilities across Woodlands Juvenile Justice Centre and Lakewood Secure Care Centre.[[926]](#footnote-927) The Programme Board has agreed an action plan for reducing unnecessary admissions to the Woodlands Juvenile Justice Centre. It identifies actions across three areas – evidence collection and analysis, preventing arrests, and accommodation.[[927]](#footnote-928)

#### Recommendations

The Commission recommends that the Department of Justice promptly introduces, implements and monitors legislation for the purposes of ensuring that a child should only be held in pre-trial detention as a measure of last resort and that suitable accommodation will be provided within a reasonable time if released on bail.

The Commission recommends that the Department of Justice and Department of Health ensure that a range of non-custodial accommodation arrangements is available for children awaiting trial who cannot return to their homes.

## Right to Fair Trial

### [RED] Age of criminal responsibility

In June 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

1. raise the minimum age of criminal responsibility to at least 14 years of age;
2. take legislative and other measures to ensure that:
3. children are not prosecuted as adult offenders, without exception;
4. the child justice system is applied to all children who were below the age of 18 years when the offence was committed;
5. rehabilitation periods are determined based on the date the offence was committed, and not the date of conviction;
6. detention is used as a measure of last resort and for the shortest possible period of time and is reviewed on a regular basis with a view to its withdrawal; and
7. life imprisonment is abolished for children and young people who committed offences when they were below the age of 18;
8. develop early intervention for children and actively promote non-judicial measures, such as diversion, mediation and counselling, for children accused of criminal offences, and, wherever possible, the use of non-custodial measures for children, such as probation or community service.[[928]](#footnote-929)

The age of criminal responsibility remains at ten years old in NI, as in England and Wales. However, the Age of Criminal Responsibility (Scotland) Act 2019 raised the age of criminal responsibility in Scotland to 12 years of age.

In 2011, a Department of Justice review concluded that “the minimum age should be increased to 12 [years old] forthwith and, following a period of review and preparation, perhaps to 14 [years old], which has some historical and current significance for criminal law in NI”.[[929]](#footnote-930)

In 2022, the Department of Justice published a new strategic framework for youth justice, which indicates that increasing the minimum age of criminal responsibility is a key priority.[[930]](#footnote-931) Consequently, the Department of Justice launched a public consultation to seek views on raising the age of criminal responsibility to 14 years old.[[931]](#footnote-932) In June 2023, the Department of Justice published its analysis of consultation responses.[[932]](#footnote-933) A total of 455 responses were received, 109 of these were from children and young people aged 18 years old and under. Overall, 83.7 per cent of respondents supported increasing the minimum age of criminal responsibility beyond ten years.[[933]](#footnote-934) In 2023, the necessary legislative change could not progress without a functioning NI Executive and NI Assembly.

#### Recommendations

The Commission recommends the Department of Justice promptly introduces legislation to the NI Assembly, which raises the minimum age of criminal responsibility to at least 14 years old.

### [RED] Compensation for a miscarriage of justice

In 2015, the UN Human Rights Committee recommended that the UK Government should "review the new test for miscarriage of justice with a view to ensuring its compatibility with Article 14(6) of the UN ICCPR".[[934]](#footnote-935)

Following a UK Supreme Court judgment,[[935]](#footnote-936) the Anti-social Behaviour, Crime and Policing Act 2014 introduced a new test for compensation for a miscarriage of justice. This new test is satisfied when a new or newly discovered fact shows beyond reasonable doubt that the person did not commit the offence.[[936]](#footnote-937) Where this has been established, an applicant who has been wrongfully convicted and punished as a result of this miscarriage of justice can obtain compensation from the Secretary of State of NI where that conviction has been pardoned or reversed.[[937]](#footnote-938) In England and Wales, this test applies to all offences. In NI, it applies only to applications for compensation involving protected information on the grounds of national security.[[938]](#footnote-939) In this case, the Secretary of State of NI will make the determination of a right to compensation rather than the Department of Justice. Therefore, the amendment creates different tests in respect of those whose convictions involved protected information depending on whether the protected information could be disclosed, or an adequate summary provided.[[939]](#footnote-940)

In 2019, by a majority of five-to-two, the UK Supreme Court dismissed the application that section 133 of the Criminal Justice Act 1988 violates the ECHR and declined to make a declaration of incompatibility.[[940]](#footnote-941) An application was subsequently lodged with the ECtHR arguing that this provision violates Article 6(2) of the ECHR.[[941]](#footnote-942) In February 2023, the case was allocated to the Grand Chamber of the ECtHR. The question before the ECtHR is whether the application of section 133(1ZA) of the Criminal Justice Act 1988 violates Article 6(2) of the ECHR.[[942]](#footnote-943) In July 2023, the ECtHR heard the case, which included a third-party intervention by the Commission. The judgment is awaited.

#### Recommendations

The Commission calls on the Ministry of Justice and Home Office to review the test for a miscarriage of justice to ensure it is compatible with Article 14(6) of the UN ICCPR and Article 6(2) of the ECHR.

## Right to Private and Family Life

### [RED] Access to financial support for unmarried couples

In 2018, the UK Supreme Court ruled that the requirement that couples are married in order to access Widowed Parent’s Allowance violated the right to private and family life (Article 8 of the ECHR) and freedom from discrimination (Article 14 of the ECHR).[[943]](#footnote-944)

In February 2023, after several delays,[[944]](#footnote-945) the Bereavement Benefits (Remedial) Order 2023 came into force. This provides for remedial payments for unmarried couples to be made back to 30 August 2018. Where a claimant’s late partner died before this date, the Remedial Order provides for a part payment of the higher rate of Bereavement Support Payment, if the death was after 5 April 2017, provided that the claim is made by 8 February 2024. Under the Remedial Order, claimants are also eligible for Widowed Parent’s Allowance, where their late partner died before 6 April 2017, and they continue to meet the entitlement conditions on 30 August 2018.[[945]](#footnote-946) In its advice during the legislative passage of the Remedial Order, the Commission recommended that remedial payments should be extended to those who do not have children and to make ex gratia payments to fully recompense those bereaved back to February 2016, when the High Court of Justice in NI first considered this issue.[[946]](#footnote-947) This was also supported by the House of Commons and House of Lords Joint Committee on Human Rights.[[947]](#footnote-948) This recommendation is not reflected within the Remedial Order. Consequently, the Remedial Order does not provide bereavement support on equal terms to non-married couples without dependent children.

#### Commission’s case

In 2018, the Commission issued proceedings on behalf of an individual who was denied access to her late partner’s pension by the Ministry of Defence, on the grounds that they were not married. The Commission argued that there was no objective and justifiable reason for treating the individual differently to a married woman in her circumstances and that the failure to make provision for her, and others like her, violates the right to private and family life (Article 8 of the ECHR), the right to peaceful enjoyment of possessions (Article 1 of Protocol No 1 to the ECHR) and freedom from discrimination (Article 14 of the ECHR). In 2021, the High Court of Justice in NI dismissed the respondent’s application to have the claim struck out.[[948]](#footnote-949) An appeal was then lodged by the Ministry of Defence in the High Court.

In 2022, the High Court allowed the respondent’s appeal and held that taking the case via a private action instead of a public law judicial review was an abuse of process.[[949]](#footnote-950) In February 2023, a further appeal by the Commission was dismissed by the Court of Appeal in NI. In October 2023, the Commission continued to pursue the case via judicial review. The case is ongoing.

#### Recommendations

The Commission recommends that the Department for Work and Pensions ensures that Bereavement Benefits (Remedial) Order is fully retrospective to February 2016 for the families who made claims based on the High Court of Justice in NI’s judgment.

The Commission recommends that the Department for Work and Pensions widens the criteria for social security benefits and pensions to allow couples in long term, cohabiting relationships access to these benefits.

### [RED] Biometric data

In 2020, the ECtHR found that the policy of indefinite retention was a disproportionate interference with the applicant’s rights, in breach of Article 8 of the ECHR.[[950]](#footnote-951) The ECtHR stated that:

the indiscriminate nature of the powers of retention of the DNA profile, fingerprints and photograph of the applicant as person convicted of an offence, even if spent, without reference to the seriousness of the offence or the need for indefinite retention and in the absence of any real possibility of review, failed to strike a fair balance between the competing public and private interests… Accordingly, the… [UK] has overstepped the acceptable margin of appreciation.[[951]](#footnote-952)

In 2022, the CoE Committee of Ministers met to discuss the UK Government’s compliance with *Gaughran v UK* (2020) with a particular focus on biometric data retention in NI.[[952]](#footnote-953) The Committee of Ministers “noted with profound concern” that an ECHR-compliant “framework for retention of biometric data with applicable safeguards… for those arrested but not convicted” is not yet implemented in NI.[[953]](#footnote-954) A broader reform of the legislative framework governing the retention of biometric data and photographs for convicted and non-convicted persons is being prepared, along with safeguards, in NI. However, the Committee of Ministers urged “swift progress and rapid adoption” in line with *Gaughran* and *S and Marper v UK* (2008),[[954]](#footnote-955) including in relation to retention of biometric data related to legacy investigations.[[955]](#footnote-956) In October 2023, the UK Government was due to provide a detailed action plan to the Committee of Ministers.[[956]](#footnote-957)

As of 5 November 2021, approximately 207,189 individuals’ fingerprints and 199,537 DNA profiles were held by the Police Service of NI.[[957]](#footnote-958)

The current law on DNA and fingerprint retention in NI is the Police and Criminal Evidence (NI) Order 1989. In 2008, the ECtHR found that the provisions relating to DNA retention in the Police and Criminal Evidence (NI) Order were in violation of the Article 8 of the ECHR.[[958]](#footnote-959) The Criminal Justice Act (NI) 2013 was enacted to rectify this violation. However, the sections in relation to DNA retention were not commenced, pending political agreement on how these sections would affect legacy investigations.

In 2019, the Commission settled a legal challenge against the Police Service of NI on the basis that it would produce a formal policy on biometric data retention, which would expressly consider Article 8 of the ECHR and provide clear guidance to the public as to how they can apply for their biometric data to be destroyed.[[959]](#footnote-960)

In 2020, with a view to addressing the ECtHR’s ruling in *Gaughran*, the Department of Justice consulted on proposals to amend the legislation governing the retention of DNA and fingerprints in NI.[[960]](#footnote-961) Revised proposals from the Department of Justice following the consultation were considered by the NI Assembly Committee for Justice.[[961]](#footnote-962)

In 2021, the then Minister of Justice, Naomi Long MLA, had planned to address the issue of retention of biometric data through legislation as part of a proposed Justice (Miscellaneous) Provisions Bill. However, the intended legislation progressed in a pared-back form as the then Justice (Sexual Offences and Trafficking Victims) Bill, following approval of the NI Executive. In 2022, the Justice (Sexual Offences and Trafficking Victims) Act 2022 received Royal Assent. The 2022 Act does not include provisions on biometric data retention.

Given the absence of agreement and a legislative framework in NI, legislation was introduced which extends the permitted retention of conflict related material from October 2020 until October 2022.[[962]](#footnote-963) The Police Service of NI also confirmed that, in light of biometric provision not being included in the Justice (Sexual Offences and Trafficking Victims) Act 2022, that interim measures would be implemented. This includes the reinstatement of the Biometric Ratification Committee to determine all applications for deletion in line with the Police and Criminal Evidence (NI) Order 1989.[[963]](#footnote-964) However, the Commission remains concerned that biometric data retention measures in place do not sufficiently meet the obligations safeguards set out in the *Gaughran* judgment.

#### Recommendations

The Commission recommends that the Department of Justice commences the DNA retention sections of the Criminal Justice Act (NI) 2013 without further delay, ensuring that its implementation complies with *Gaughran v UK* (2020).

The Commission recommends that the Police Service of NI ensures its policy on biometric data retention is fully human rights compliant, effectively implemented and expeditiously published in accessible formats.

### [RED] Rehabilitation of offenders

In 2003, the UN Sub-Commission on the Promotion and Protection of Human Rights, in a resolution concerning discrimination against convicted persons who have served their sentence urged States “to examine their treatment of convicted persons after they have served their punishment and to cease any official or unofficial practices of discrimination”.[[964]](#footnote-965)

In 2021, the NI Department of Justice consulted on reforming rehabilitation periods in NI, seeking views on reducing the length of time that it will take for some convictions to become spent and allowing more sentences to be included in the rehabilitation of offenders scheme in NI.[[965]](#footnote-966) In its consultation response, the Commission supported the proposals to reform legislation governing the rehabilitation of offenders in NI.[[966]](#footnote-967) The Commission further recommended that the Department of Justice's approach to a two-part rehabilitation is examined further, taking account of rehabilitation experiences in Scotland and Wales. The Commission also recommended that the Department of Justice considers a review mechanism to comply with Article 8 of the ECHR and that consideration is given to conflict-related convictions that pre-date the Belfast (Good Friday) Agreement 1998. In 2023, legislative progress was delayed by the suspension of the NI Executive and NI Assembly.

#### Commission’s case

In 2020, the Commission initiated legal action against the Department of Justice to challenge the legality of Article 6(1) of the Rehabilitation of Offenders (NI) Order 1978. In 2022, the High Court of Justice in NI declared Article 6(1) of the Rehabilitation of Offenders (NI) Order 1978 was incompatible with the applicant’s Article 8 of the ECHR rights by reason of a failure to provide a mechanism by which the applicant could apply to have their criminal convictions considered spent irrespective or the passage of time and their personal circumstances.[[967]](#footnote-968) However, the High Court declined to make an award of damages concluding that damages were not necessary to afford just satisfaction to the applicant.[[968]](#footnote-969) In May 2023, after an appeal from the Department of Justice, the Court of Appeal in NI reversed the decision of the High Court and held that Article 6(1) of the 1978 Order is compatible with Article 8 of the ECHR. Consequently, the Court of Appeal agreed with the High Court in not awarding damages to the applicant.[[969]](#footnote-970)

In July 2023, the Commission applied to the UK Supreme Court for leave to appeal, with a decision awaited.

#### Recommendations

The Commission recommends that the Department of Justice amends the Rehabilitation of Offenders (NI) Order 1978 to enable an offender to be rehabilitated if their circumstances satisfy the criteria for compliance with Article 8 of the ECHR. This includes ensuring an effective review mechanism is operational.

## Freedom of Religion and Belief, Expression, Association and Right to Participate in Public and Political Life

### [RED] Blasphemy

In 2008, the UN Human Rights Committee welcomed the abolition of the common law offence of blasphemy in England and Wales[[970]](#footnote-971) as a positive measure to ensure compliance with Article 19 of the UN ICCPR on the right to freedom of expression and opinion.[[971]](#footnote-972) A similar approach has been followed in Ireland and Scotland.[[972]](#footnote-973)

The common law offences of blasphemy and blasphemous libel remain on the statute books in NI and, whilst a prosecution has not occurred since 1855, an individual may be subject in law to prosecution for committing either of these offences.[[973]](#footnote-974) In 2021, the then Minister of Justice, Naomi Long MLA, stated that regarding these offences she was "committed to freedom of and from religion and am fully supportive of removing such archaic and unused offences from the law".[[974]](#footnote-975) In 2022, the then Minister of Justice reiterated her support for introducing legislation to that effect. In 2023, the removal of blasphemy offences could not progress without a functioning NI Executive and a NI Assembly.

#### Recommendations

The Commission recommends that the NI Executive introduces legislation to the NI Assembly to abolish the common law offence of blasphemy and blasphemous libel to ensure compatibility with the ECHR and Article 19 of the UN ICCPR.

## Right to An Adequate Standard of Living and To Social Security

### [RED] Cost of living

In June 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

develop or strengthen existing policies, with clear targets, measurable indicators and robust monitoring and accountability mechanisms, to end child poverty and ensure that all children have an adequate standard of living, including by increasing social benefits to reflect the rising cost of living.[[975]](#footnote-976)

In 2019, the former UN Special Rapporteur on Extreme Poverty, Professor Philip Alston, warned that “in NI, the suspension of the devolved coalition government forecloses the possibility of any major efforts to tackle poverty and results in an accountability vacuum”.[[976]](#footnote-977)

In 2016, the UN ICESCR Committee, recommended that an anti-poverty strategy was adopted in NI.[[977]](#footnote-978)

#### Anti-poverty Strategy

In 2015, the High Court of Justice in NI ruled that the NI Executive had failed to adopt an identifiable strategy setting out how it proposes to tackle poverty, social exclusion and patterns of deprivation based on objective need in furtherance of its obligation to do so under section 28E of the NI Act 1998.[[978]](#footnote-979)

In 2020, the New Decade, New Approach Agreement renewed the commitment to developing an anti-poverty strategy for NI.[[979]](#footnote-980) In 2021, an Expert Advisory Panel for the Anti-poverty Strategy published a report setting out key recommendations about the themes and key actions the strategy should include.[[980]](#footnote-981) In 2021/2022, work was undertaken by a Co-Design Group for the Anti-poverty Strategy to guide the drafting of the strategy. In 2022, an updated report by the Co-Design Group was published for the Department for Communities to consider.[[981]](#footnote-982) In 2023, a draft anti-poverty strategy was ready for ministerial consideration, with a public consultation to follow.[[982]](#footnote-983) However, this could not progress in the absence of a functioning NI Executive.[[983]](#footnote-984)

In June 2023, members of the Co-Design Group expressed concerns at the Department of Education’s confirmation that it is not intending to provide the Co-Design Group with an opportunity to consider the draft anti-poverty strategy, in advance of a public consultation.[[984]](#footnote-985)

#### Rising cost of living

In 2021/2022, 300,000 of people (16 per cent) were in relative poverty and 249,000 people (13 per cent) were in absolute poverty in NI.[[985]](#footnote-986)

Increasing energy prices are expected to affect individuals living in NI to a greater extent than other parts of the UK.[[986]](#footnote-987) This has been attributed to there being a greater number of households reliant on home heating oil in NI.[[987]](#footnote-988)

In 2011, the Fuel Poverty Strategy in NI was published.[[988]](#footnote-989) Fuel poverty often affects the most marginalised groups, particularly children and people with disabilities.[[989]](#footnote-990) In 2022, in addition to a payment of £100 for all home oil users, an energy price cap was instated and backdated to October 2022, in line with the rest of the UK.[[990]](#footnote-991)

In 2023, cost of living support payments for individuals on means tested benefits continued.[[991]](#footnote-992) There were three payments across the year amounting to £900 paid to most people in receipt of social security benefits.[[992]](#footnote-993) An additional disability payment of £150 and winter fuel payment of £300 was available for eligible individuals.[[993]](#footnote-994)

Despite these efforts, the need for warm banks was emerging across NI and the use of foodbanks increased.[[994]](#footnote-995)

Additionally, food costs rose, particularly for individuals with specific dietary requirements.[[995]](#footnote-996) Education costs were another contributor to the rising cost of living.[[996]](#footnote-997) For example, available uniform grants in NI were insufficient for need.[[997]](#footnote-998) Legislation has been introduced in England and Wales to create guidance for schools on acceptable uniform costs, but no similar legislation is in place in NI, leaving uniform costs unregulated.[[998]](#footnote-999)

In 2023, it was reported that the lack of a functioning NI Executive and Assembly means that NI is the only part of the UK without a policy response to the rising cost of living.[[999]](#footnote-1000)

#### Debt vulnerability

Personal debt is higher in NI than other parts of the UK,[[1000]](#footnote-1001) which raises concerns regarding debt vulnerability for individuals in receipt of social security, particularly women, who avail of social security more than men.[[1001]](#footnote-1002) In NI, this has an added dimension with paramilitary groups often operating as illegal lenders.[[1002]](#footnote-1003) The rising cost of living will likely increase exploitation.[[1003]](#footnote-1004)

In June 2023, research by the Women’s Support Network and Ulster University identified that the rising cost of living was having a disproportionate effect on women.[[1004]](#footnote-1005) The research attributed this to rising costs affecting low-income households more, with women more likely to live in poverty across their lifetime.[[1005]](#footnote-1006) The research also identified that women can act as “shock absorbers” of poverty in the home, meaning they are more likely to go without essentials to protect other family members from the effects of poverty.[[1006]](#footnote-1007)

#### Recommendations

The Commission recommends that the Department for Communities promptly develops, implements, monitors and adequately resources an anti-poverty strategy for NI, with a measurable action plan, that is guided by meaningful engagement with affected individuals and their representative organisations at every stage of the process.

The Commission recommends that the Department for Communities incorporates measures to comprehensively combat fuel poverty, including introducing, implementing and monitoring an up-to-date effective and adequately resourced long-term strategy that includes a comprehensive action plan.

The Commission recommends that the Department of Education ensures that uniform costs are regulated and that education support grants in NI, including the uniform grant, are sufficient and proportional to costs.

The Commission recommends that the Department of Communities, working with the NI Executive, takes concrete steps to provide the necessary financial support, debt relief and education to ensure individuals in NI are not reliant on illegal lenders. This includes supporting individuals in NI to safely extract themselves from illegal lending and to prosecute the illegal lenders.

## Right to Health

### [RED] Access to reproductive healthcare

In June 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

ensure access for adolescent girls to age-appropriate family planning services, affordable contraceptives and safe abortion and post-abortion care services, particular in NI… with a view to ensuring that no adolescent girl has to travel to other jurisdictions of the State Party to access reproductive healthcare.[[1007]](#footnote-1008)

In 2019, the UN CAT Committee recommended that the UK Government and NI Executive:

ensure that all women and girls in the State party, including in NI, have effective access to termination of pregnancy in situations in which its continuation is likely to result in severe pain and suffering, such as when the pregnancy is the result of rape or incest or in cases of fatal foetal impairment, in addition to cases in which the life or health of the pregnant person is at risk. The [UK]… should also ensure that women and girls in NI have effective access to post-abortion health care and that neither patients nor their doctors face criminal sanctions or other threats for seeking or providing such care.[[1008]](#footnote-1009)

In 2018, in addition to recommending the adoption of legislation to decriminalise termination of pregnancy in NI and to legalise access to termination services in certain circumstances,[[1009]](#footnote-1010) the UN CEDAW Committee recommended that the UK Government and NI Executive:

adopt evidence-based protocols for healthcare professionals on providing legal abortions particularly on the grounds of physical and mental health and ensure continuous training on the protocols…

provide non-biased, scientifically sound and rights-based counselling and information on sexual and reproductive health services, including on all methods of contraception and access to abortion services;

ensure the accessibility and affordability of sexual and reproductive health services and products, including on safe and modern contraception, including oral and emergency, long term or permanent and adopt a protocol to facilitate access at pharmacies, clinics and hospitals; [and]

provide women with access to high-quality abortion and post-abortion care in all public health facilities and adopt guidance on doctor-patient confidentiality in that area.[[1010]](#footnote-1011)

In 2016, the UN ICESCR Committee recommended that the UK Government and NI Executive “amend the legislation on termination of pregnancy in NI to make it compatible with other fundamental rights, such as women’s rights to health, life and dignity”.[[1011]](#footnote-1012)

In 2020, abortion was legalised in NI on request up to 12 weeks and where there is a risk of injury to the physical or mental health of the pregnant woman up to 24 weeks.[[1012]](#footnote-1013) Abortion is also permitted on the grounds of immediate necessity, a risk to life or grave permanent injury to physical or mental health of the pregnant woman, a diagnosis of a severe foetal impairment or fatal foetal abnormality.[[1013]](#footnote-1014) In 2022, after a prolonged process,[[1014]](#footnote-1015) the Secretary of State for NI, Chris Heaton-Harris MP, announced that the UK Government would commission abortion services in NI.[[1015]](#footnote-1016) However, it remains the responsibility of the Department of Health to administer the funding provided by the UK Government.[[1016]](#footnote-1017) It was confirmed that no additional funding would be provided by the UK Government to the NI Executive for this purpose, but that such funding would be ring-fenced within the block grant.[[1017]](#footnote-1018)

In 2021, the Society for the Protection of Unborn Children Pro-Life Limited brought legal proceedings claiming that the Abortion (NI) Regulations 2021 and the Abortion Services Directions 2021 were unlawful.[[1018]](#footnote-1019) It argued that the 2021 Regulations provided the Secretary of State for NI with a greater power than he has under section 26 of the NI Act 1998.[[1019]](#footnote-1020) Also, that the Secretary of State for NI’s powers are not exercisable when legislative and executive powers are being exercised by the NI Assembly.[[1020]](#footnote-1021) The Commission intervened in the case. In February 2022, the High Court of Justice in NI ruled that the Secretary of State for NI had acted lawfully.[[1021]](#footnote-1022) The Society for the Protection of Unborn Children Pro-Life Limited appealed. In May 2023, the Court of Appeal in NI dismissed the appeal.[[1022]](#footnote-1023)

#### Provision

In 2023, the Commission’s monitoring indicated that provision of abortion services in NI was subject to change and could result in an inconsistent implementation of the Abortion (NI) Regulations.[[1023]](#footnote-1024)

In 2023, the provision of abortion services in NI was fragile, often dependent on a single practitioner.[[1024]](#footnote-1025) There were also difficulties in accessing adequate and appropriate facilities to enable consistent abortion services within each Trust in NI.[[1025]](#footnote-1026) The Department of Health was taking steps to address these issues and to bring abortion services closer to the provision required by the Abortion (NI) Regulations.[[1026]](#footnote-1027) The Department of Health confirmed that “Health and Social Care Trusts [in NI were]… progressing with recruitment and training, premises… [had] been identified and equipment… [was] being acquired”.[[1027]](#footnote-1028) The Department of Health was also “closely monitoring demand for services across the Health and Social Care Trusts [in NI]”.[[1028]](#footnote-1029)

In November 2023, abortion services were available up to 11 weeks and six days in four of five Health and Social Care Trusts in NI.[[1029]](#footnote-1030) There was a delay in delivering these services in the Belfast Health and Social Care Trust due to challenges in “securing appropriate premise to enable the co-location of both the early surgical and early medical abortions up to 12 weeks”.[[1030]](#footnote-1031) This was expected to be remedied in December 2023.[[1031]](#footnote-1032) Similarly, four of five Trusts in NI offered surgical abortions up to 11 weeks and six days.[[1032]](#footnote-1033) The South Eastern Health and Social Care Trust offered surgical abortions up to ten weeks, with it expected to extend its services in line with other Trusts in NI by mid-November 2023.[[1033]](#footnote-1034) Abortions in cases of immediate necessity were available in all Health and Social Care Trusts in NI.[[1034]](#footnote-1035) Additionally, abortions were available in all Health and Social Care Trusts in NI on the grounds of risk to life or grave permanent injury to the physical or mental health of the individual or severe fetal impairment and fatal fetal abnormality.[[1035]](#footnote-1036) This was an improvement from provision in September 2023.[[1036]](#footnote-1037) However, several civil society organisations stressed that until abortion services were provided on a consistent, long-term basis in line with Abortion (NI) Regulations in NI, many individuals would continue to see no other option but to travel to England for abortions, including early medical abortions.[[1037]](#footnote-1038)

In November 2023, the Belfast Health and Social Care Trust offered a regional feticide service for all patients in NI requiring access to this service.[[1038]](#footnote-1039) However, complex surgical cases continued to be referred for treatment in England, with the diagnosis and aftercare carried out in NI.[[1039]](#footnote-1040) Concerns were raised about individuals experiencing complexities having to travel to England, as this takes individuals away from their support network and trusted healthcare providers.[[1040]](#footnote-1041) There were also concerns for individuals with caring, work-related, education or other commitments in such scenarios.[[1041]](#footnote-1042)

In 2023, the Department of Health instructed all Health and Social Care Trusts in NI to have referral pathways for the regional services in place, as well as contingency measures in the event of any period of non-availability of any element of the regional service.[[1042]](#footnote-1043) Initially there were no pathways between Health and Social Care Trusts in NI for non-regional services.[[1043]](#footnote-1044) For example, early medical abortions were only available in the Trust area where an individual lived.[[1044]](#footnote-1045) Trusts in NI typically only had one location for abortion services, which could leave individuals travelling further within their own Trust area, than if they were able to access the service in another Trust area.[[1045]](#footnote-1046) This was a particular concern of individuals in rural areas where the location in another Trust area may have been more accessible.[[1046]](#footnote-1047) Additionally, having to access abortion services in a Trust area where you may know staff risked creating extra anxiety, which could have been resolved by enabling access to the service in another Trust area.[[1047]](#footnote-1048) In November 2023, the Department of Health confirmed that “the expectation… [was] that during periods of leave, a Trust… [would] support other Trusts as required to ensure that women and girls… [had] timely access to services in NI”.[[1048]](#footnote-1049)

In 2023, the British Pregnancy Advisory Service remained the central booking system for abortion services in NI.[[1049]](#footnote-1050) A replacement service was under discussion.[[1050]](#footnote-1051) The proposals are for the new referral system to provide open access across all Trusts in NI, regardless of postcode.[[1051]](#footnote-1052)

#### Data collection

The Department of Health publishes annual statistics on hospital-based abortions in NI and the number of individuals travelling to other parts of the UK for abortion services.[[1052]](#footnote-1053) However, in 2023, there was “no framework in place to report on all terminations of pregnancy carried out in NI”.[[1053]](#footnote-1054) Disaggregation of the data was limited to recording medical abortions and termination of pregnancies,[[1054]](#footnote-1055) age of the individual that had an abortion and the trust area in which the abortion was performed.[[1055]](#footnote-1056) Many civil society organisations viewed the available statistics as uninformative and lacking in context.[[1056]](#footnote-1057) The Department of Health is working on improving its data collection process regarding abortion services in NI, which it intends to start utilising in 2024.[[1057]](#footnote-1058)

#### Telemedicine

For the first two weeks of April 2020, the only abortion services available in NI were where it was necessary to preserve the life of the woman, or there is a risk of real and serious adverse effect on her physical or mental health, which is either long term or permanent.[[1058]](#footnote-1059) In response to the lacuna, the British Pregnancy Advisory Service extended its ‘telemedicine option’ to NI.[[1059]](#footnote-1060) This option was quickly withdrawn following correspondence from the Department of Health.[[1060]](#footnote-1061) Telemedicine has been rolled out in the rest of the UK, but remains unavailable in NI.[[1061]](#footnote-1062) In 2023, the Department of Health intended to consider the introduction of telemedicine during phase two of its process for implementing abortion services in NI.[[1062]](#footnote-1063) Phase two is expected to commence in 2025, at the earliest.[[1063]](#footnote-1064) However, whether consideration of telemedicine is included will be subject to Ministerial approval.[[1064]](#footnote-1065)

In 2023, individuals in NI continued to obtain telemedicine through unregistered websites.[[1065]](#footnote-1066) Support for individuals that faced complications in such scenarios was lacking, with reports of individuals being informed by their General Practitioners Surgery to contact the drug provider for assistance.[[1066]](#footnote-1067) The reason(s) for this happening require further investigation, however some civil society organisations reported cases where significant trauma resulted and the affected individual’s life was put at risk due to the lack of a clear care pathway in cases of unregulated telemedicine.[[1067]](#footnote-1068)

#### Guidance and training

In 2023, there was no plan to introduce statutory, department-led guidance on abortion services specific to NI.[[1068]](#footnote-1069) Health and Social Care Trusts in NI, Royal College of Obstetricians and Gynaecologists, the Royal College of Midwives and Royal College of Nursing were instructed to develop, review and appropriately revise their own guidance for abortion services in NI, which was to be disseminated to all staff.[[1069]](#footnote-1070) The Department of Health also directed that “appropriate training and support… [were] provided to all relevant staff”.[[1070]](#footnote-1071)

In 2023, the Department of Health was content that sufficient guidance already existed and did not plan to introduce specific guidance on conscientious objection regarding abortion services in NI.[[1071]](#footnote-1072) However, several stakeholders were aware of frequent misuse or misunderstanding of conscientious objection in the context of abortion services.[[1072]](#footnote-1073) Thus, it has been proposed that regional guidance that is clear on what does and does not constitute conscientious objection in this specific context is required.[[1073]](#footnote-1074)

In 2023, each Trust in NI provided ‘values clarification’ training.[[1074]](#footnote-1075) This training operated on an opt-in basis and was only offered as one cycle.[[1075]](#footnote-1076) Several civil society organisations have recommended that values clarification training should be given to all staff, not only staff directly involved with abortion services.[[1076]](#footnote-1077) The Department of Health has acknowledged that the training and recruitment necessary to enable comprehensive provision of abortion services in NI remained a challenge.[[1077]](#footnote-1078) In November 2023, the Department of Health confirmed that steps were being taken to progress required recruitment and training.[[1078]](#footnote-1079)

#### Monitoring

In 2023, the Abortion Services Implementation Board continued to meet monthly.[[1079]](#footnote-1080) The Oversight Board is tasked with managing any challenges to implementing abortion services in NI. Issues can also be escalated to Abortion Services Oversight Board, the Permanent Secretaries of the Department of Health or NI Office.[[1080]](#footnote-1081) The Implementation Board has no set term, but is expected to be operational until at least 2025.[[1081]](#footnote-1082)

In the long-term, it is intended that the Regional Quality Improvement Authority[[1082]](#footnote-1083) will monitor and review commissioned abortion services in NI.[[1083]](#footnote-1084) In 2023, the Regional Quality Improvement Authority was willing, but unable to do so without specific funding.[[1084]](#footnote-1085) The Regional Quality Improvement Authority’s mandate may also need to be revisited to ensure it can monitor all doctors involved in delivering abortion services in NI.[[1085]](#footnote-1086)

#### Accessibility and affordability of services and products

In 2023, contraception was provided as part of regional sexual and reproductive health services, which other Health and Social Care Trusts in NI can make referrals to.[[1086]](#footnote-1087) The Department of Health also commissioned an online contraceptive service for administering contraception pills.[[1087]](#footnote-1088) The Department of Health intends that the commissioned online contraceptive services will enable family planning services to concentrate limited resources on the provision of long acting reversible contraception and the insertion of coils, rather than administering contraceptive pills.[[1088]](#footnote-1089)

In November 2023, there were two sexual and reproductive health consultants in NI.[[1089]](#footnote-1090) Recruitment was also underway to appoint a sexual and reproductive health consultant in all Trusts in NI.[[1090]](#footnote-1091)

#### Recommendations

The Commission recommends that the UK Government, working with the Department of Health, ensures that sufficient, long-term, ring-fenced funding is available and fully utilised to maintain consistent abortion services in line with the Abortion (NI) Regulations in every Health and Social Care Trust area in NI. Also, that the necessary funding for abortion services is an addition to the Department of Health’s broader budget, to ensure existing healthcare services can be delivered in full.

The Commission recommends that the Department of Health ensures that comprehensive disaggregated data is gathered, reported and monitored regarding abortion services in NI, including that representative organisations are effectively consulted on how to achieve this.

The Commission recommends that the Department of Health ensures telemedicine is introduced as an option for early medical abortions in NI under certain circumstances, as in other parts of the UK, and that a clear pathway to care and after care is in place for telemedicine abortions, including for individuals using unregistered sources.

The Commission recommends that the Department of Education ensures that there is regional, abortion-specific, non-stereotyping guidance in NI and that all associated healthcare staff undertake related training that is informed by service users and periodically refreshed, particularly regarding conscientious objection.

The Commission recommends that the Department of Health ensures that there is effective staff planning and sufficient specialised pathways to ensure that sexual health and abortion services are consistently available across NI.

The Commission recommends that the Department of Health ensures that sufficient long-term, ring-fenced funding is provided to the Regional Quality Improvement Authority, or an appropriate alternative, for the purposes of ensuring that abortion services in NI are consistently monitored and reviewed at regular intervals.

The Commission recommends that the Department of Health ensures that consistent, accessible and effective contraception services and information are available across all Health and Social Care Trust areas in NI, with particular consideration of rurality and utilising online pathways.

### [RED] National Health Service waiting lists

In June 2023, the UN CRC Committee recommended that the UK Government and NI Executive:

strengthen measures aimed at ensuring the availability of quality, child-sensitive and age-appropriate paediatric primary and specialist health care services to all children, and ensure that children’s perspectives are included in the development and implementation of all health services, health and social care commissioning, and policy and practice reviews; [and]

develop a strategy to address health inequalities, including the underlying causes, and in particular in respect of children in disadvantaged situations including children with disabilities, children belonging to ethnic minorities, socioeconomically disadvantaged children, children living in rural areas and transgender children.[[1091]](#footnote-1092)

In 2017, the UN CRPD Committee recommended that the UK Government and NI Executive:

develop a targeted, measurable and financed plan of action aiming at eliminating barriers in access to healthcare and services, and monitor and measure its progress, especially in relation to persons with intellectual and/or psychosocial disabilities and those with neurological and cognitive conditions.[[1092]](#footnote-1093)

In 2023, the national health care system, particularly in NI, was in unprecedented crisis.[[1093]](#footnote-1094) For example, hospital departments are closing or subject to intermittent suspensions, patients are being treated and accommodated within ambulances or corridors for excessive periods, rural maternity services are being centralised, patients are spending years awaiting diagnosis or life-changing surgery, and General Practitioners have become increasingly difficult to access.[[1094]](#footnote-1095) It was also reported that challenging work conditions, poor terms of employment and reduced funding were affecting the National Health Service in NI’s existing workforce, recruitment and training.[[1095]](#footnote-1096) This all contributed to the broader issue of excessive National Health Service waiting lists.

In recent years, there was an “alarming growth in both the number of patients on elective care waiting lists, and the length of time they wait for assessment and treatment [in NI]”.[[1096]](#footnote-1097) In March 2023, 696,000 patients were on waiting lists in NI, with 197,345 (49 per cent) waiting over a year for an initial outpatient appointment, 64,513 (54 per cent) waiting over a year for inpatient treatment and 46,511 (27 per cent) waiting over 26 weeks for a diagnostic test.[[1097]](#footnote-1098) Furthermore, available information suggested waiting list performance levels were “significantly worse in NI compared with the other UK regions”.[[1098]](#footnote-1099)

In 2023, the rise in waiting lists was attributed to “a growing gap between rising population demand for care and available funding has significantly contributed to lengthy waiting times”.[[1099]](#footnote-1100) While “the COVID-19 pandemic exacerbated the challenges”, it was noted “that the deterioration in waiting times has been longstanding”.[[1100]](#footnote-1101) In June 2023, the NI Public Services Ombudsman, Margaret Kelly, also found that there was “systemic maladministration” regarding waiting list communications in NI.[[1101]](#footnote-1102) The NI Public Services Ombudsman concluded that:

with rising waiting lists and longer waits, good communication has become key to patient’s ‘waiting well’. I am also in no doubt that the current lack of communication has not only had an impact on patients, it has also impacted on the resources of the Trust and General Practitioners due to the resulting level of enquiries and complaints.[[1102]](#footnote-1103)

In 2023, the House of Commons NI Affairs Committee undertook an inquiry on the funding and delivery of public services in NI. The NI Director of the Royal College of Surgeons, Mark Taylor, stated that:

orthopaedic surgeons [in NI] are seeing people whom they know they will never be able to give the treatment that they are designed to give them. An 80 year old person waiting five to seven years for a hip will not get that hip replacement. A child on a waiting list waits so long that they are transferred to the adult waiting list, due to the length of time that they have waited.[[1103]](#footnote-1104)

The NI Director of the Royal College of Surgeons highlighted that this is creating “moral distress” for healthcare workers in NI. He also stressed that for the patient, “it is not just the condition, but the life that person will lead, [that is] affected by delays and delays”.[[1104]](#footnote-1105) The NI Council Chair at the British Medical Association, Dr Tom Black, also warned that “we simply do not have the capacity in the private sector or the public sector in NI [to address the waiting lists]”.[[1105]](#footnote-1106)

The NI Council Chair at the British Medical Association highlighted that waiting list initiatives had been trialled, but that these were being brought to an end due to budget cuts.[[1106]](#footnote-1107) The Associate Director of Employment Relations and Member Services at the Royal College of Nursing, Dolores McCormick, noted that “there are so many examples of nurse-led initiatives that have cut down waiting lists and improved outcomes for patients across the spectrum, from mental health to children and right through”.[[1107]](#footnote-1108) The NI Director of the Royal College of Surgeons stressed that “in terms of short-term cuts, any impact on the waiting list initiative work will increase waiting lists even further”.[[1108]](#footnote-1109)

The NI Director of the Royal College of Surgeons stated that “in order to transform and deal with the firefighting, we need much more resource and we need it to be recurrent over three to five years so that you can plan, rather than on a yearly basis with temporary contracts and temporary solutions”.[[1109]](#footnote-1110) He suggested that surgical hubs would be beneficial, but warned that:

we are also going to need the independent sector and waiting list initiative work to deal with the backlog. We cannot use a new, transformed system to start off first with this massive backlog and then start to try to develop capacity.[[1110]](#footnote-1111)

In June 2023, the Department of Health confirmed that commitments for March 2026 would not be met.[[1111]](#footnote-1112) This included that no-one should wait more than 52 weeks for a first outpatient appointment and inpatient/day case treatment or 26 weeks for a diagnostics appointment.[[1112]](#footnote-1113) Also that the gap between demand and capacity for elective care would have been eradicated.[[1113]](#footnote-1114) The Department of Health stated that:

the recurrent funding required to deliver these targets has not been made available. It is… [our] assessment, that even if new recurrent investment was provided now, it will not be possible to achieve either objective in the original five-year timescale. The deficit between demand and capacity has been going on for too long and the waiting list backlog has been exacerbated by the impact of COVID.[[1114]](#footnote-1115)

The Department of Health continued that “notwithstanding the current financial context, dedicated work is ongoing to make positive improvements even in very difficult times. This includes maximising the available resources and identifying potential areas to deliver more efficient and better services”.[[1115]](#footnote-1116)

In October 2023, the Comptroller and Auditor General for NI, Dorinnia Carville, stated that:

despite the remarkable efforts of health and social care staff [in NI] over recent years in trying to cope with rising patient demand, the deterioration in elective waiting time performance is stark... Lengthy waits place patients at risk of developing debilitation and complex conditions, potentially requiring more expensive treatment. Patients’ mental health and quality of life can also suffer to a point where many risk developing serious conditions. As a result, reduced waiting times are essential to improve both patient health and public finances. The health system has been operating within mainly tight and short-term financial environments… Unless and until a longer-term, sustainable funding framework to enable health service transformation is established, the Department [of Health] will likely have to address the most pressing clinical waits through available short-term funding. This approach is totally unsuitable and almost certainly stores up huge problems for the future.[[1116]](#footnote-1117)

In 2021, a judicial review of National Health Service waiting times was initiated by two women. In January 2023, the High Court of Justice in NI dismissed the applications for judicial review stating that the allocation of healthcare resources is matter of policy generally not reviewable by the courts, save in exceptional circumstances.[[1117]](#footnote-1118) The High Court acknowledged that waiting lists in NI were a matter of manifest public concern, but concluded that this should be addressed by political leadership rather than the courts.[[1118]](#footnote-1119) The case was appealed to the Court of Appeal in NI, with the outcome awaited.

#### Recommendations

The Commission recommends that the Department of Health immediately develops and implements a targeted, measurable and appropriately financed plan of action aimed at eradicating unreasonable waiting lists and eliminating barriers in access to healthcare and services in NI. This includes ensuring that the resources and finances available are ring-fenced and sufficient to satisfy need on a long-term basis and to ensure effective communication with patients.

# Chapter 4 – Issues With No Significant Progress in 2023

For many issues there has been a lack of significant development on taking the necessary steps for resolution in 2023. It is important to highlight such inaction, as it can be just as detrimental as regressive development – the longer the issue remains unaddressed, the greater the effect on the individuals affected and the harder it is to remedy. It is difficult to establish if this lack of development would be substantially different if the devolved institutions were operating. Due consideration also needs to be given to the repercussions that continue to be experienced due to the lasting effect of the COVID-19 pandemic. However, there is no doubt that the stagnation created by the suspension of the NI Assembly and NI Executive is an exacerbating factor.

All the issues set out in this chapter are ‘amber’. This means that a subject has been identified that on human rights grounds requires action by the UK Government, NI Executive or relevant public authorities. Amber means initial steps have already been taken or been acknowledged as necessary by the relevant body, however, the necessary action has not yet been completed.

The Annual Statement 2022[[1119]](#footnote-1120) and the Annual Report on the Implementation of Article 2 of the Windsor Framework 2022-2023[[1120]](#footnote-1121) provide context to the issues set out in this chapter.

## Constitutional Protections

In 2023, there has been a lack of significant development in:

* the UK Government introducing a Bill of Rights for NI, as set out in the Belfast (Good Friday) Agreement 1998.
* the political parties in both NI and Ireland adopting a Charter of Rights for the island of Ireland, with the UK Government and Government of Ireland as co-guarantors.
* the Home Office amending nationality and immigration laws to provide for the birthright of all the people of NI to identify, and be accepted, as Irish or British or both, without any loss of rights or entitlements, in line with the Belfast (Good Friday) Agreement 1998.
* the codification of the Common Travel Area and associated rights in a bilateral agreement by the UK Government and Government of Ireland.
* the Home Office implementing effective gathering and monitoring of disaggregated data, including racial and ethnic monitoring, on people examined by enforcement officers at entry to NI at ports and airports, particularly in the context of cross-border travel to enforce the prohibition on racial profiling.

## Equality and Non-discrimination

In 2023, there has been a lack of significant development in:

* the Executive Office introducing legislation that extends age discrimination protection in the provision of goods, facilities and services to all children under 18 years old.
* the Executive Office introducing a Single Equality Act for NI.
* the Department of Communities introducing a robust, gender-sensitive Gender Equality Strategy with a measurable plan of action and effective monitoring mechanisms, which takes a human rights-based approach in line with international human rights standards and Windsor Framework Article 2.
* the Department of Communities introducing a robust and adequately resourced Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex+ Strategy for NI with a measurable plan of action and effective monitoring mechanisms, that deals with gender recognition and takes a human rights-based approach in line with international human rights standards and Windsor Framework Article 2.
* the Department of Health introducing a gender recognition process in NI that reflects the self-declaration model, which is affordable, respectful and accessible, with effective training for staff and professionals across an individual’s gender recognition journey.
* the Executive Office introducing measures to ensure intersectional multiple discrimination claims in NI are effectively addressed, including providing for intersectionality within equality legislation, as required.
* the Department for Communities introducing a robust and adequately resourced Disability Strategy with a measurable plan of action and effective monitoring mechanisms, which takes a human rights-based approach in line with international human rights standards and Windsor Framework Article 2.
* the Department for Communities introducing a Central Regional Disability Forum, that is sufficiently resourced on a long-term basis and consists of persons with disabilities and their representative organisations.
* the Department of Health reopening the Independent Living Fund for new claimants in NI and that it is resourced to meet demand on a long-term basis.
* the Department for the Economy introducing long-term funding arrangements for new and existing disability employment projects.
* the Executive Office introducing a Refugee Integration Strategy, with a comprehensive action plan and adequate, long-term resources, that takes a human rights-based approach in line with international human rights standards and Windsor Framework Article 2 without further delay.

## Right to Life

In 2023, there has been a lack of significant development in:

* the UK Government introducing necessary legislative amendments to guarantee the independence of inquiries established under the Inquiries Act 2005.

## Freedom from Torture, Inhuman and Degrading Treatment

In 2023, there has been a lack of significant development in:

* the Department of Health, working with the NI Executive, to introduce a freestanding offence where an individual, who has the care of another individual by virtue of being a care worker, ill-treats or wilfully neglects that individual, as is the case elsewhere in the UK.
* the UK Government introducing a full, independent, judge-led inquiry in relation to allegations of complicity of British military personnel, security and secret intelligence services in the ill-treatment of detainees overseas and rendition.
* the UK Government introducing a requirement to ensure judicial scrutiny before exercising the power to deprive an individual of their UK citizenship.
* the UK Government withdrawing its reservation against Article 59 of the Istanbul Convention.
* the Department of Health improving the way in which disaggregated data on the prevalence of female genital mutilation in NI is gathered and monitored to ensure that every case of female genital mutilation in NI can be captured and addressed.
* the Department of Finance and the Home Office, facilitating the recognition of intersex individuals before the law through the expeditious provision of birth certificates, civil registration documents, identity papers, passports and other official personal documentation while respecting intersex persons’ right to self-determination.
* the Department of Health legally prohibiting non-urgent and non-essential medical or surgical treatment of intersex children before they are of sufficient maturity to make their own decisions. This includes establishing an effective investigation and monitoring mechanisms and ensuring that victims are provided with redress and access to appropriate support services.
* the Home Office ensuring the independence of health care professionals dealing with detained asylum seekers in Larne House.
* the NI Office amending the NI Act 1998 to allow the Commission to enter places of detention without having to provide advance notice.

## Right to Liberty and Security of the Person

In 2023, there has been a lack of significant development in:

* the Department of Justice introducing and implementing the necessary legislation for ensuring that there is a statutory basis for the use of restorative approaches in the adult justice system in NI.
* the Department of Justice ensuring long-term sustainable funding for the effective implementation of the adult restorative justice strategy for NI.
* the Home Office conducting and publishing a review of the broad definition of terrorism.
* the Home Office addressing the lack of a definition of ‘hostile activity’ and the moving of criminal law into private spaces within the Counter-Terrorism and Border Security Act 2019.
* the Department of Justice ending imprisonment for fine default and promptly developing, implementing, and monitoring alternative strategies, including community interventions and support services for actual or potential fine defaulters.
* the Department of Justice introducing legislation to remove the legal basis for the imprisonment of children alongside adults.
* the Home Office conducting and publishing a review of the exercise of arrest powers under section 41 of the Terrorism Act 2000 to ensure that the principles of necessity and proportionality are strictly observed when using arrest powers and that any detention of suspects arrested under the Terrorism Act 2000 is based on an individualised determination that it is reasonable and necessary taking into account all the circumstances.
* the Home Office making bail available for persons arrested under the Terrorism Act 2000 and ensuring that bail is granted for such persons when appropriate, following consideration of public safety.

## Right to Fair Trial and the Administration of Justice

In 2023, there has been a lack of significant development in:

* the UK Government ensuring that the use of closed material procedures is limited in cases involving serious human rights violations.
* the UK Government ensuring that sufficient, long-term resources are available where closed material procedures are used in NI.
* the Department of Justice ensuring that a comprehensive library for closed judgments is available and accessible to legal teams and judges in NI.

## Right to Privacy and Family Life

In 2023, there has been a lack of significant development in:

* the Department of Health developing and implementing the regulations and guidance required to give full effect to the Adoption and Children Act 2022.
* the Department of Health developing and implementing minimum standards of foster care and introducing a statutory requirement for foster care to be inspected.
* the Department of Justice amending the Youth Justice and Criminal Evidence Act 1999 to ensure that all children in NI allegedly involved in an offence are granted anonymity at every stage of the criminal justice process, including the pre-charge stages.
* the Department of Health introducing regulations for implementing the duties set out in the Health and Social Care (Control of Data Processing) Act 2016 Act.
* the Department of Health establishing a committee to authorise the processing of confidential information under the Health and Social Care (Control of Data Processing) Act 2016.
* the Police Service of NI developing and implementing a suitable methodology for recording disaggregated data on the community background of individuals, including children, stopped and searched under the Terrorism Act 2000 and the Justice and Security (NI) Act 2007 throughout NI.

## Freedom of Religion and Belief, Expression, Association and Right to Participate in Public and Political Life

In 2023, there has been a lack of significant development in:

* the UK Government devolving responsibility for parades and protests to the NI Assembly, in line with the Stormont House Agreement.
* the Executive Office drafting, and the NI Executive considering, a discussion paper setting out a range of options on how issues relating to parades and protests could be addressed in legislation, as required by the Stormont House Agreement.
* the NI Executive taking effective steps to ensure that the participation of women in public and political life is proportionate to NI’s population.

## Right to Work and to Just and Favourable Conditions of Work

In 2023, there has been a lack of significant development in:

* the Department of Education ensuring that childcare facilities and arrangements in NI are available, affordable and accessible. This includes ensuring access to affordable childcare options for socio-economically disadvantaged families, families in rural and remote areas, and families with irregular work schedules.
* the Department of Education developing, implementing and monitoring an Early Learning and Childcare Strategy for NI, that has a measurable action plan and is adequately resourced. This includes involving parents, carers, guardians and representative organisations at every stage of the process.
* the Department of Education introducing statutory arrangements to deliver extended, affordable, responsive, high-quality provision of early education and care initiatives for families with children, using the provision available in other parts of the UK as a starting point.
* the Ministry of Defence raising the minimum age of recruitment for the British Armed Forces to 18 years old or reconsidering recruitment policies that specifically target children and allow military recruiters’ access to schools.
* the Department for the Economy ensuring that the gender pay gap and insecure, low paid employment of women in NI is effectively addressed and monitored. This includes ensuring that the provisions regarding mandatory pay gap reporting in the Employment Act (NI) 2016 are brought into effect in NI.
* the Department for the Economy requiring employers to publish a narrative with their gender pay gap data and that this is evaluated.
* the UK Government ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
* the Department for the Economy ensuring that migrant workers are protected against exploitation and abuse. This includes ensuring that all migrant workers enjoy the same conditions as other workers in NI and have effective access to complaint mechanisms and legal assistance. Also, that conditions of work of migrant workers are effectively monitored.

## Right to an Adequate Standard of Living and to Social Security

In 2023, there has been a lack of significant development in:

* the Department for Communities and the Department for Agriculture, Environment and Rural Affairs taking immediate and effective measures to tackle food insecurity in NI on an emergency and long-term basis, including publishing a rights-based strategy, that considers and reasonably accommodates food allergies and intolerances, for the protection of the right to adequate and good quality food in NI and the promotion of healthy diets.
* the Executive Office developing appropriate safeguards through statutory regulations and guidance, to ensure the enactment of the Nationality and Borders Act 2022 and the Illegal Migration Act 2023 do not undermine existing protections for refugees and people seeking asylum in NI regarding matters of devolved competence. This includes child protection arrangements, age assessments, accommodation and support for unaccompanied children seeking asylum and support to victims and potential victims of modern slavery and human trafficking.
* the Home Office amending the UK Immigration Rules to ensure that asylum applications are considered using a consistent, expeditious and child rights-based approach, including that the best interests of the child are a primary consideration, and that unaccompanied children have an unqualified right to apply for family reunification.
* the Home Office reviewing the restrictions placed on people seeking asylum, which prevent the taking up of work while claims are being processed.
* the Home Office ensuring that payments to people seeking asylum can be used online.
* the Department of Health developing, implementing and monitoring an up-to-date NI Carers Strategy and measurable action plan, which involves carers and their representative organisations at every stage of the process and includes concrete steps for providing accessible support to unpaid carers, taking into account specific needs, such as for young or older carers.
* the UK Government uplifting the Carer's Allowance to support carers that is proportional to the rising cost of living.
* the UK Government introducing an additional carers recognition payment, a young carer’s recognition payment, a payment where more than one child is being cared for, or a relaxation of the earnings rules which when exceeded, end entitlement to benefit.
* the Department for Communities developing, implementing and adequately resourcing an anti-poverty strategy for NI that contains specific actions to eradicate child poverty in NI, including by establishing concrete and time-limited targets with measurable indicators, and regular monitoring and reporting on the reduction of child poverty in NI.
* in the interim, the Executive Office placing the Crisis Fund on a permanent footing, with guaranteed funding, and in the long-term the UK Government and NI Executive addressing the causes of destitution in the first instance, rather than relying on a discretionary fund to address destitution when it emerges.
* the Executive Office, Department for Communities and Department of Justice taking concrete steps, through a collaborative approach with housing providers, Police Service of NI and community representatives, to promptly and robustly eradicate paramilitary and sectarian intimidation that causes families to be forced out of their homes.
* the Department for Communities, in cooperation with the NI Housing Executive and through meaningful consultation with individuals affected and their representative organisations, revising the housing selection scheme to ensure that it considers properly an applicant’s circumstances and reflects up-to-date common challenges faced by individuals and households in NI, particularly in relation to intimidation points.
* the Department for Communities, in cooperation with the NI Housing Executive, ensuring that an official mechanism to appeal housing selection decisions is in place, which is effectively implemented and monitored.
* the Department for Communities ensuring that comprehensive equality data on housing in NI, that is disaggregated in a way that reflects NI society, is regularly gathered, monitored, evaluated and published.
* the Department of Work and Pensions and Department for Communities ensuring that social security is guided by a cumulative impact assessment that is regularly monitored.
* the Department of Work and Pensions repealing the two-child tax credit limit/Universal Credit limit and ensuring that separate Universal Credit payments are made the primary option.
* the Executive Office, Department for Communities, the Department for Infrastructure, local councils, NI Housing Executive and housing associations ensuring the full and sustained implementation of the remaining recommendations in the Commission’s investigation report on Travellers’ accommodation in NI.
* the Department for Communities ensuring that the Unauthorised Encampments (NI) Order 2005 is repealed.

## Right to Health

In 2023, there has been a lack of significant development in:

* the Department of Health taking effective steps to identify and minimise procedural barriers to all migrants, particularly migrant women, accessing healthcare. This includes introducing guidance for healthcare professionals on providing effective access.
* the Department of Health issuing an amendment or policy direction to ensure that the full set of General Practitioner services, including access to a General Practitioner list (subject to discretion), is genuinely available to any person.
* the Department of Health and the Home Office minimising any procedural or informational barriers to accessing healthcare services for people in temporary and contingency accommodation that are seeking asylum.
* the Department of Health providing clear, accessible and complete information on rights to healthcare post-EU withdrawal, including access to cross-border and island-of-Ireland services to ensure no diminution of the current provision and protect the rights to the highest attainable standard of healthcare.
* the Department of Health ensuring that the Mental Capacity (NI) Act 2016 is commenced in full.
* the Department of Health ensuring that the required legislative steps are taken to address issues with substitute decision making in the Mental Capacity (NI) Act 2016.
* the Department of Health ensuring that similar legislative protections concerning mental capacity, as in the Mental Capacity (NI) Act 2016, are introduced for under 16-year-olds in NI, subject to recognition of evolving capacity.
* the Department of Justice considering the lacuna identified by the High Court of Justice in NI regarding the powers of a Review Tribunal when seeking to release with conditions an individual who had been detained under the Mental Health (NI) Order 1986, but now has capacity.
* the Department of Health developing, implementing and monitoring an up-to-date Oral Health Strategy for NI that involves affected individuals and their representative organisations at every stage of the process.
* the Department of Health, working with the Department of Finance, in ensuring that adequate funding for oral health-related programmes is ring-fenced through the Soft Drinks Industry Levy.

## Right to Education

In 2023, there has been a lack of significant development in:

* the Department of Education developing, implementing and monitoring a revised policy and measurable action plan for children of migrant families that takes a human rights-based approach in line with international human rights standards and Windsor Framework Article 2, including reconsidering the use of the term ‘newcomer pupils’.
* the Department of Education reviewing, through meaningful consultation with parents, guardians, children and representative organisations, the curriculum, initial teacher education and in-service professional development to ensure sufficient representation of racial, cultural, gender and other diversities across education in NI.
* the Department of Education reviewing and adequately funding the Education Authority NI's Intercultural Education Service to ensure the service has sufficient flexibility to ensure all children seeking asylum in NI at any given time have timely access to education and other necessary supports, such as language classes, uniform grants, school meals and transport.

## Right to Participate in the Cultural Life of the Community

In 2023, there has been a lack of significant development in:

* the NI Office, working with the NI Executive and Treasury, in ensuring the necessary steps are taken and resources are provided to establish and guarantee the effective functioning of the new statutory bodies created by the Identity and Language (NI) Act 2022. This includes providing adequate resources to support existing public authorities to effectively fulfil their new duties created by the 2022 Act.

# Annex - Traffic Light Summary of Issues for 2023

**Constitutional Protections**

[AMBER] A Bill of Rights for NI

[AMBER] A Charter of Rights for the island of Ireland

[AMBER] Birthright

[AMBER] Common Travel Area

[AMBER] Human Rights Act and administrative law reform

[AMBER] National human rights institutions

[AMBER] Human Rights after UK exit from the EU

[AMBER] EU Settlement Scheme and frontier workers

[AMBER] Retained EU law

**Equality and Non-discrimination**

[AMBER] Age discrimination

[AMBER] Business and human rights

[AMBER] Consolidating, strengthening and clarifying equality protections

[RED] Conversion therapy

[AMBER] Discrimination on grounds of sexual orientation

[AMBER] Gender Equality Strategy

[AMBER] Gender recognition

[AMBER] Hate crime

[AMBER] Intersectional multiple discrimination

[AMBER] Persons with disabilities

[AMBER] Racial equality

[AMBER] Refugee Integration Strategy

[AMBER] Sectarianism

[AMBER] Sport and human rights

**Right to life**

[RED] Conflict related deaths: transitional justice and individual cases

[AMBER] Inquiries Act 2005

[RED] Legacy inquests and inquiries

[AMBER] Rule of law: non-State actors

**Freedom from Torture, Inhuman and Degrading Treatment**

[AMBER] Abuse in health and social care settings

[AMBER] Allegations of torture and cruel, inhuman or degrading treatment or punishment overseas

[RED] Children, early and forced marriage

[RED] Children missing from care

[AMBER] Deprivation of citizenship

[AMBER] Domestic and sexual violence and abuse

[AMBER] Female genital mutilation

[AMBER] Historical abuse of children and adults

[AMBER] Intersex genital mutilation

[AMBER] Mechanisms to identify victims of torture detained in immigration facilities

[RED] Physical punishment of children

[AMBER] Prison conditions

[RED] Rwanda asylum proposals

[AMBER] Spit and bite guards

[AMBER] Strip searches

[AMBER] Victims’ payments

**Freedom from Slavery**

[RED] Child sexual exploitation

[AMBER] Modern slavery and human trafficking

**Right to Liberty and Security of the Person**

[AMBER] Alternatives to imprisonment

[AMBER] Definition of terrorism

[AMBER] Imprisonment for fine default

[AMBER] Imprisonment of children with adults

[AMBER] Powers of arrest under Terrorism Act 2000

[RED] Remand of children

[AMBER] Women in detention

**Right to Fair Trial and the Administration of Justice**

[AMBER] Access to justice

[RED] Age of criminal responsibility

[AMBER] Avoidable delay

[AMBER] Closed material proceedings

[RED] Compensation for a miscarriage of justice

[AMBER] Cross-border justice arrangements

[AMBER] Non-jury trials

**Right to Private and Family Life**

[RED] Access to financial support for unmarried couples

[AMBER] Alternative care arrangements for children

[AMBER] Anonymity: Children and pre-charge proceedings

[RED] Biometric data

[AMBER] Climate change and environmental regulation

[AMBER] Health and Social Care (Control of Data Processing) Act 2016

[RED] Rehabilitation of offenders

[AMBER] Stop and search

[AMBER] Visitation in health and social care settings

**Freedom of Religion and Belief, Expression, Association and Right to Participate in Public and Political Life**

[RED] Blasphemy

[AMBER] Freedom of expression of journalists

[AMBER] Parades and protests

[AMBER] Participation of women in public and private life

**Right to Work and to Just and Favourable Conditions of Work**

[AMBER] Accessible childcare

[GREEN] Armed Forces Covenant

[AMBER] Children in the Armed Forces

[AMBER] Employment equality

[AMBER] Gender pay gap

[AMBER] Menopause

[AMBER] Working conditions of migrant workers

**Right to an Adequate Standard of Living and to Social Security**

[AMBER] Access to food

[AMBER] Asylum and refugee law and resettlement

[AMBER] Asylum financial support

[AMBER] Carers

[AMBER] Child poverty

[RED] Cost of living

[AMBER] Crisis fund

[AMBER] Homelessness

[AMBER] Social housing

[AMBER] Social security

[AMBER] Travellers’ accommodation

[AMBER] Unauthorised Encampments (NI) Order 2005

**Right to Health**

[AMBER] Access to healthcare for migrants

[RED] Access to reproductive healthcare

[AMBER] Emergency healthcare

[AMBER] Mental capacity

[AMBER] Mental health

[RED] National Health Service waiting lists

[AMBER] Oral health

[AMBER] Period poverty

[AMBER] Relationships and sexuality education

[GREEN] Safe access zones

**Right to Education**

[AMBER] Academic selection

[AMBER] Bullying in schools

[AMBER] Educational needs of specific groups of children

[AMBER] Integrated education

[AMBER] Religious education

[AMBER] Shared education

[AMBER] Special educational needs

[AMBER] Use of restraint in educational settings

**Right to Participate in the Cultural Life of the Community**

[AMBER] Minority culture and languages

1. Section 69, NI Act 1998. [↑](#footnote-ref-2)
2. 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. [↑](#footnote-ref-3)
3. Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, 24 January 2020. [↑](#footnote-ref-4)
4. In December 2022 the Commission, together with Equality Commission for NI, published a joint working paper on the scope of Article 2(1) of the Windsor Framework. Appendix 1 to the working paper sets out the EU law which the Commissions have identified as of that date as falling within the scope of Windsor Framework Article 2. The Commissions published a further table which sets out the EU directives identified in the Appendix together with the associated underpinning domestic transposing legislation. See NI Human Rights Commission and Equality Commission for NI ‘Working Paper: The Scope of Article 2(1) of the Ireland/Northern Ireland Protocol’ (NIHRC and ECNI, 2022); NI Human Rights Commission and Equality Commission for NI, ‘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’ (NIHRC and ECNI, 2022). [↑](#footnote-ref-5)
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11. Section 6, Human Rights Act 1998. This means that private sector contractors may, depending on their role, be subject to the requirements of the Human Rights Act. [↑](#footnote-ref-12)
12. Section 7A, EU (Withdrawal) Act 2018. [↑](#footnote-ref-13)
13. Section 24 of the NI Act 1998 states: “A Minister or NI department has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act – a) is incompatible with any of the [ECHR]… rights; aa) is incompatible with Article 2(1) of the Protocol on Ireland/NI in the EU Withdrawal Agreement (rights of individuals)”. [↑](#footnote-ref-14)
14. Section 6 of the NI Act 1998 states: “1) A provision of an Act is not law if it is outside the legislative competence of the [NI] Assembly. 2) A provision is outside that competence if… c) it is incompatible with any of the [ECHR]… rights; ca) it is incompatible with Article 2(1) of the Protocol on Ireland/NI in the EU Withdrawal Agreement (rights of individuals)”. [↑](#footnote-ref-15)
15. Section 26 of the NI Act 1998 states: “If the Secretary of State considers that any action proposed to be taken by a Minister or NI department would be incompatible with any international obligations, with the interests of defence or national security or with the protection of public safety or public order, he may by order direct that the proposed action shall not be taken”. [↑](#footnote-ref-16)
16. UK ratification 1951 and given further domestic effect by the Human Rights Act 1998. [↑](#footnote-ref-17)
17. UK ratification 1962. The UK has signed, but not ratified, the CoE Revised European Social Charter 1991. [↑](#footnote-ref-18)
18. UK ratification 1969. [↑](#footnote-ref-19)
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20. UK ratification 1976. [↑](#footnote-ref-21)
21. UK ratification 1986. [↑](#footnote-ref-22)
22. UK ratification 1988. [↑](#footnote-ref-23)
23. UK ratification 1991. [↑](#footnote-ref-24)
24. UK ratification 2001. [↑](#footnote-ref-25)
25. UK ratification 1998. [↑](#footnote-ref-26)
26. UK ratification 2003. [↑](#footnote-ref-27)
27. UK ratification 2009. [↑](#footnote-ref-28)
28. UK ratification 2008. [↑](#footnote-ref-29)
29. UK ratification 2007. [↑](#footnote-ref-30)
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31. UK ratification 2018. [↑](#footnote-ref-32)
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