



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Relationships and Sexuality
Education in Post Primary
Schools in Northern Ireland:
*A Compelling Case for Reform***

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Chapter 1: Introduction

1.1 Investigation Powers of the Northern Ireland Human Rights Commission

1.1.1 The Northern Ireland Human Rights Commission (NIHRC) was established following the Belfast (Good Friday) Agreement under the Northern Ireland Act 1998. Section 69 of the Act empowers the NIHRC to conduct investigations and to compel evidence.¹

1.1.2 The NIHRC is obliged to promote and protect human rights, to which the United Kingdom (UK) is legally committed. This is at the national, regional and international levels and is in full conformity with the United Nations (UN) Principles relating to the Status of National Human Rights Institutions (the Paris Principles).² In discharging its duties, the Commission may exercise statutory powers, one of which is to investigate.

1.1.3 The findings and recommendations in this report are presented pursuant to the NIHRC's statutory duty to review the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland (NI), following its exercise of the power to investigate.³

1.2 Subject of the Investigation

1.2.1 On 6 March 2018, the UN Committee on the Elimination of all forms of Discrimination Against Women (UN CEDAW Committee) published the report of its inquiry into sexual and reproductive health rights in NI. The UN CEDAW report made a number of recommendations in relation to access to abortion and post abortion care as well as on sexual and reproductive health education.

1.2.2 The UN CEDAW Committee recommended 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

¹ Sections 69(8) and 69A NI Act 1998, as amended by the Justice and Security (NI) Act 2007. During this investigation, the NIHRC did not need to compel evidence due to the high levels of cooperation from the public authorities involved.

² A/RES/48/134, 'UN General Assembly Resolution: National Institutions for the Promotion and Protection of Human Rights', 4 March 1994.

³ Sections 69(1) and 69(8A), NI Act 1998.

of early pregnancy and access to abortion, and monitor its implementation".⁴

1.2.3 This recommendation was later given domestic effect by the Northern Ireland (Executive Formation etc) Act 2019. The Act places a duty on the Secretary of State for NI to bring about the implementation of the UN CEDAW Committee's recommendations outlined in paragraphs 85 and 86 of the UN CEDAW inquiry report.⁵

1.2.4 The Act repealed sections 58 and 59 of the Offence against the Person Act 1861 (attempts to procure abortion) and the Abortion (Northern Ireland) (No. 2) Regulations 2020 came into force on the 14 May 2020. The Regulations provided the legislative framework for abortion in NI. However, the regulations did not include provision for sexual and reproductive health education. The recommendations relating to the provision of abortion services were considered by the NIHRC in its monitoring report in 2021.⁶

1.2.5 This investigation follows on from all of the above but is grounded firmly in the recommendation set out at paragraph 86(d) dealing with education.

1.3 Case for the Investigation

1.3.1 The Northern Ireland Act 1998, at section 69(8), makes clear that the NIHRC may conduct such investigations as it considers necessary or expedient. In exercising this power, the NIHRC has regard for its overarching responsibility to 'keep under review the adequacy and effectiveness in NI of law and practice relating to the protection of human rights' (section 69(1)). Before exercising its investigatory powers, the NIHRC assured itself that the matter had not already been investigated adequately by another person.

1.3.2 Prior to commencing this investigation the NIHRC conducted desktop research into whether an investigation of this nature had been conducted previously. The role of the Education and Training Inspectorate (ETI) was key in this regard. The ETI is a unitary inspectorate and part of the Department of Education NI, providing independent inspection services and policy advice for the Department.

⁴ CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the United Kingdom of Great Britain and Northern Ireland under Article 8 of the Optional Protocol to the UN CEDAW Report of the Committee', 6 March 2018, at para 86(d).

⁵ Section 9(1), NI (Executive Functions etc) Act 2019.

⁶ NI Human Rights Commission, 'Monitoring Report on Reproductive Healthcare Provision in Northern Ireland', (NIHRC, 2021).

1.3.3 In January 2011, the ETI reported on an inspection carried out during 2009 and 2010 to evaluate the provision of Relationships and Sexuality Education (RSE).⁷ The NIHRC notes the inspection was carried out over 10 years ago and there has been considerable legislative and policy change since then. The ETI report does not make reference to human rights standards, nor does it critically analyse the content that is being delivered. It does highlight areas where further support is needed, reporting that almost half of schools surveyed stated they required support/information on “how to deal with difficult situations regarding disclosures on issues around the outcomes of sexual activity, pregnancy or sexual orientation”.⁸ Over 70 per cent needed support on sexual orientation, domestic violence and child abuse.⁹ The terms “LGBT” and “LGBTQ+” are not mentioned within the report.

1.3.4 The NIHRC also reviewed the ETI report of 2016, which evaluated RSE in primary schools and special education schools.¹⁰ That report found that a majority of schools identified that teachers lack confidence and/or are uncomfortable in delivering the sensitive aspects of RSE and require specific training on teaching sexuality. This includes sexual identity, puberty, appropriate language for body parts, inappropriate behaviour, touching and abuse, and the online exposure of children to material that is not age appropriate.¹¹ While this report similarly lacked a reference to human rights standards, it was considered that, as this had been evaluated more recently, primary and special education schools would not be within the scope of the investigation. The NIHRC also noted that the UN CEDAW recommendation relates to adolescents which refers to young people aged 10-19.

1.3.5 The NIHRC is aware that in response to concerns about sexual offences, the Department of Education NI commissioned the ETI to carry out an evaluation of the approaches and challenges in delivering effective preventative safeguarding practices in schools.¹² The findings of this evaluation were published in April 2023,¹³ however, were outside of the timeframe to be considered within this investigation.

1.3.6 The NIHRC noted that the issue of RSE had been considered in a number of reviews into related matters. In 2018, the Criminal Justice Board commissioned a review of the law and procedure in prosecutions of

⁷ Education and Training Inspectorate, ‘Report of an Evaluation of Relationships and Sexuality Education in Post- Primary Schools’, (ETI,2011).

⁸ Ibid, at [Table 2, page 12](#).

⁹ Ibid.

¹⁰ Education and Training Inspectorate, ‘Relationships and Sexuality Education in Primary and Special Schools Report of an Evaluation by the Education and Training Inspectorate’, (ETI, 2016).

¹¹ Ibid.

¹² NI Assembly Hansard, ‘Oral Question: Relationships and Sexuality Education- John Blair MLA- AQO 2853/17-22’, 6 December 2021.

¹³ Education and Training Inspectorate, ‘The Preventative Curriculum in Schools and Education Other Than at School (EOTAS)’, (ETI, 2023).

serious sexual offences. Sir John Gillen was commissioned to undertake the review which concluded in 2019.

1.3.7 The Gillen Review recognised the role that RSE plays in the prevention of sexual offences. Sir John Gillen argued that “the Department of Education, has a duty to play a positive role in addressing the justice gap that exists in our approach to serious sexual offences”¹⁴ and recommended that “the Department of Education draw up a plan to exhort all schools to include these matters within their curriculum and, if that proves ineffective, to be the subject of legislation mandating such education”.¹⁵

1.3.8 The review further recommended that:

The Department of Education should address the need to include in the school curriculum for disabled children, children with sensory disability and those who are members of marginalised communities’ sex education designed in a culturally sensitive manner on matters such as consent, personal space, boundaries, appropriate behaviour, relationships, fears of homophobia and transphobia, gender identity and sexuality.¹⁶

1.3.9 Whilst the review made important recommendations, it did not investigate the policy framework or policies in place in post-primary schools relating to RSE.

1.3.10 The NIHRC therefore assured itself that the matters to which this investigation relates have not been investigated by another body prior to launching the investigation. Indeed, the lack of investigation into this area has been reported on.¹⁷

1.4 Terminology

1.4.1 Within its inquiry report, the UN CEDAW Committee refers to comprehensive sexual and reproductive health and rights education. However, throughout the international human rights framework, as well as in the NI policy context, a variety of terms are used including “relationships and sex/sexuality education (RSE)” and “comprehensive sexuality education (CSE)”. Various terms will be referenced throughout this report when referring to a specific document or quoting a particular

¹⁴ Ibid, at 210.

¹⁵ Ibid, at 211.

¹⁶ Ibid, at 451.

¹⁷ Mark Bain, ‘concern in NI over lack of reviews of sex education in post primaries’, Belfast Telegraph, 13 May 2021.

body. However, as relationships and sexuality education (RSE) is the term primarily used within NI policy documents, this is the term the NIHRC has adopted for its report.

1.5 Methodology

1.5.1 The NIHRC commenced this investigation in October 2021 and continued to gather evidence and reflect developments until 31 January 2023.

1.5.2 In line with section 69D of the NI Act the NIHRC prepared a terms of reference setting out the scope of the investigation. The terms of reference clarified that the aims of the investigation were to:

- Identify the legal, policy and regulatory framework in NI for the provision of sexual and reproductive health education in schools;
- Identify the extent to which the human rights of children and young people to access age appropriate, comprehensive and scientifically accurate sexual and reproductive education are realised in law, policy and practice;
- Identify good practice and make recommendations where necessary for improvement;
- Increase public awareness of human rights generally and in the specific context of children's health education.

1.5.3 Utilising its powers of investigation, the NIHRC issued notice letters to the NI Office and relevant NI Departments, public authorities and other third sector providers to request that they provide relevant data and documentation.

1.5.4 The NIHRC further wrote to all post-primary schools in NI and requested that they provide a response to the following questions:

- Does your school have an RSE policy? If so please enclose a copy.
- Under which department within the school is RSE provided?
- If RSE is delivered within the school, who is it delivered by? What materials are used to teach RSE? Please provide copies.
- Does your school engage external providers to assist with the delivery of RSE? If so, can you provide details of those providers?
- If you have contracted RSE provision, were you provided within any training materials that have been retained within the school? If so, please provide copies.
- Does your school use the CCEA RSE hub materials to deliver RSE? If so, which ones?

1.5.5 In total, 149 schools responded to the questionnaire and 124 provided copies of their RSE policies. This response created a sufficient sample size to make credible findings in relation to school policies, it was therefore unnecessary to compel information. Additionally, 42 schools provided copies of relevant materials such as RSE curriculum outlines, PowerPoint lessons, teaching notes and links to relevant organisations. This accounted for a total of 210 additional educational resources.

1.5.6 To assist in its assessment of the information gathered, the NIHRC appointed independent experts with specialist experience and expertise. Those independent experts considered and reported to the NIHRC on the current provision of RSE in post-primary schools in NI. Those experts also consulted with a medically qualified RSE expert who has 12 years' experience of working as a sexual health doctor in the NHS. They advised on whether the materials were comprehensive, scientifically accurate and in line with current best practice in RSE. The experts presented their findings, which are discussed in this report in Chapter 4.

1.5.7 As there are other public authorities established, and with relevant oversight roles, for direct engagement with students and teachers, such as the ETI, this investigation did not duplicate that role so did not carry out direct engagement with students and teachers.

1.5.8 This investigation focuses primarily on the legal and policy framework governing the provision of RSE in NI and on arrangements within schools. The NIHRC has not specifically considered delivery within schools. However, we have made a number of recommendations as to how delivery within schools can be supported and monitored.

1.6 Summary

1.6.1 This report is structured into four substantive chapters. In chapter two we will discuss relevant human rights standards. In chapter three we will consider the legal and policy framework in NI, and specifically consider whether the current legal and policy framework complies with the Northern Ireland (Executive Formation etc) Act 2019. In chapter four we will draw on the work of the independent experts and will present a range of findings. We will set out our conclusions and recommendations, which include recommendations for actions which the Secretary of State NI may have to take in the execution of his duties contained under the 2019 Act. As we acknowledge within this chapter, whilst the 2019 Act places duties on the Secretary of State, in practice many of the actions required to meet these duties will need to be performed by the Department of Education NI.

Chapter 2: Human Rights Framework

2.1 Introduction

2.1.1 In 2018, the UN CEDAW Committee published its inquiry report into access to reproductive healthcare in NI. In relation to the provision of education, the Committee recommended 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”.¹⁸

2.1.2 Sexual and reproductive health education has not been strictly defined by the UN CEDAW Committee. In this chapter we will discuss how this issue has been considered by a wide range of regional and international human rights bodies. In this chapter we will also discuss the legitimate aims which sexual and reproductive health education or RSE should seek to achieve.

2.2 Defining Sexual and Reproductive Health

2.2.1 The World Health Organisation current working definition of sexual health is:

...a state of physical, emotional, mental and social well-being in relation to sexuality; it is not merely the absence of disease, dysfunction or infirmity. Sexual health requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence. For sexual health to be attained and maintained, the sexual rights of all persons must be respected, protected and fulfilled.¹⁹

2.2.2 The World Health Organisation finds that sexual health cannot be defined without a broad consideration of sexuality, which underlies important behaviours and outcomes related to sexual health. The World

¹⁸ CEDAW/C/OP.8/GBR/1, ‘UN CEDAW Committee Inquiry Concerning the United Kingdom of Great Britain and Northern Ireland under Article 8 of the Optional Protocol to the UN CEDAW Report of the Committee’, 6 March 2018, at para 86(d).

¹⁹ World Health Organisation, ‘Defining Sexual Health’, Available at: [Sexual and Reproductive Health and Research \(SRH\) \(who.int\)](https://www.who.int/reproductivehealth/topics/sexual-reproductive-health/sexual-health).

Health Organisation has put forward the below working definition of sexuality:

...a central aspect of being human throughout life encompasses sex, gender identities and roles, sexual orientation, eroticism, pleasure, intimacy and reproduction. Sexuality is experienced and expressed in thoughts, fantasies, desires, beliefs, attitudes, values, behaviours, practices, roles and relationships. While sexuality can include all of these dimensions, not all of them are always experienced or expressed. Sexuality is influenced by the interaction of biological, psychological, social, economic, political, cultural, legal, historical, religious and spiritual factors.²⁰

2.2.3 The UN Population Fund defines good sexual and reproductive health as:

a state of complete physical, mental and social well-being in all matters relating to the reproductive system. It implies that people are able to have a satisfying and safe sex life, the capability to reproduce and the freedom to decide if, when, and how often to do so. To maintain one's sexual and reproductive health, people need access to accurate information and the safe, effective, affordable and acceptable contraception method of their choice. They must be informed and empowered to protect themselves from sexually transmitted infections. And when they decide to have children, women must have access to skilled health care providers and services that can help them have a fit pregnancy, safe birth and healthy baby. Every individual has the right to make their own choices about their sexual and reproductive health.²¹

2.3 Defining Sexual and Reproductive Health Education

2.3.1 In its International Technical Guidance on Sexuality Education, the UN Educational, Scientific and Cultural Organisation (UNESCO) states that:

²⁰ World Health Organisation, 'Defining Sexual Health', Available at: [Sexual and Reproductive Health and Research \(SRH\) \(who.int\)](http://www.who.int)

²¹ United Nations Population Fund, 'Sexual and Reproductive Health', Available at: [Sexual & reproductive health \(unfpa.org\)](http://www.unfpa.org)

Sexuality Education is defined as an age-appropriate, culturally relevant approach to teaching about sex and relationships by providing scientifically accurate, realistic, non-judgemental information. Sexuality Education provides opportunities to explore one's own values and attitudes and to build decision-making, communication and risk-reduction skills about many aspects of sexuality.²²

2.3.2 It further states that:

Comprehensive sexuality education (CSE) is a curriculum-based process of teaching and learning about the cognitive, emotional, physical and social aspects of sexuality. It aims to equip children and young people with knowledge, skills, attitudes and values that will empower them to: realize their health, well-being and dignity; develop respectful social and sexual relationships; consider how their choices affect their own well-being and that of others; and, understand and ensure the protection of their rights throughout their lives.²³

2.3.3 The guidance notes that comprehensive sexuality education goes beyond reproduction, risks and disease and should include "ongoing discussions about social and cultural factors relating to broader aspects of relationships and vulnerability, such as gender and power inequalities, socio-economic factors, race, HIV status, disability, sexual orientation and gender identity".²⁴

2.3.4 It finds that education programmes will be less effective if they omit key issues. For example, it states that "failure to discuss menstruation can contribute to the persistence of negative social and cultural attitudes towards it".²⁵ Other issues that should not be omitted include "the [sexual and reproductive health] needs of young people living with disabilities or HIV; unsafe abortion and harmful practices such as [child, early and forced marriage] and [female genital mutilation/cutting] or discrimination based on sexual orientation or gender identity".²⁶ It argues that "[s]ilencing or omitting these topics can contribute to stigma, shame and ignorance, may increase risk-taking and create help-seeking barriers for vulnerable or marginalised populations".²⁷

²² United Nations Educational, Scientific and Cultural Organization, 'International Guidelines on Sexuality Education: An Evidence Informed Approach to Effective Sex, Relationships and HIV/STI Education', (UNESCO, 2009) at 2.

²³ Ibid, at 16.

²⁴ Ibid, at 18.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

2.4 Human Rights Laws and Standards

2.4.1 The main sources of human rights laws and standards are international and regional human rights treaties. These are agreements between States.²⁸ There are two possibilities available to a State when it is considering an international treaty – signature and/or ratification. When a State ‘signs’ a treaty it is obliged to refrain, in good faith, from acts that would defeat the object and purpose of the treaty. Ratification establishes consent to be bound by the instrument. Signature usually indicates an intention to ratify at a later date, but a delay in ratification can occur for a number of reasons. Sometimes a delay is justified in order to allow the national parliament to debate and approve the treaty. Alternatively, the State may be in a situation where a number of domestic laws and policies have the potential to violate the treaty and thus a delay can occur while legislative reforms are introduced to ensure compliance with the adopted international standards. If a State is in favour of the treaty as a whole, but has issues that it cannot resolve in the short to medium term then it can choose to ratify the instrument with reservations. Reservations are statements which purport to exclude or modify some of the legal obligations contained within the treaty and their effect within the State.

2.4.2 The UK has a dualist approach to international law. This approach is ‘based on the proposition that international law and domestic law operate in independent spheres’.²⁹ Whilst treaties that have been ratified or signed by the UK Government are ‘binding on the United Kingdom in international law, treaties are not part of UK law and give rise to no legal rights or obligations in domestic law’.³⁰ The ratification of treaties does impose international legal obligations with which the UK agrees to comply with in good faith.³¹ In addition UK courts may draw on international treaties in certain prescribed circumstances.³² However, the ratification of a treaty cannot confer rights on individuals “without the intervention of Parliament ...”.³³

2.4.3 The European Convention on Human Rights (ECHR) is the only human rights treaty directly incorporated into the UK domestic legal framework by way of the Human Rights Act 1998. An individual can therefore rely on the rights of the ECHR incorporated by the Human

²⁸ Article 2(1)(a), Vienna Convention on the Law on Treaties 1969.

²⁹ *Miller v Secretary of State for Exiting the European Union* [2017] UKSC 5, at 398.

³⁰ *Ibid.*

³¹ Article 26, Vienna Convention on the Law on Treaties 1969.

³² *R (on the application of SC, CB and 8 children) v Secretary of State for Work and Pensions and Others* [2021] UKSC 26.

³³ *Tin Council Case (JH Rayner (Mincing Lane) Ltd v Department of Trade and Industry* [1990] 2 AC 418, at 499.

Rights Act before the UK courts. The incorporation of the ECHR is reflected in the NI Act 1998.

2.4.4 The Northern Ireland (Executive Formation etc) Act 2019 uniquely incorporated a recommendation from an international treaty body, the UN CEDAW Committee, into domestic UK law. The Act places a duty on the Secretary of State for NI to bring about the implementation of the UN CEDAW recommendations outlined in paragraphs 85 and 86. Therefore whilst the UN CEDAW is an unincorporated treaty, a recommendation emerging from a UN CEDAW Committee process has been given domestic effect in the UK due to an Act of Parliament. The requirements incorporated in the 2019 Act will be considered in chapter 3. In this chapter we will first consider obligations contained in international UN treaties. We will then consider obligations contained in the treaties of the Council of Europe (CoE). In this section we will consider the jurisprudence of the European Court of Human Rights (ECtHR) and the ways in which the UK Courts have interpreted the relevant rights.

2.5 United Nations

2.5.1 The main UN human rights treaties that relate to sexual and reproductive health are the Convention on the Elimination of All Forms of Discrimination Against Women (UN CEDAW), the Convention on Civil and Political Rights (UN ICCPR),³⁴ the International Covenant on Economic, Social and Cultural Rights (UN ICESCR) and the Convention on the Rights of the Child (UN CRC) and the Convention on the Rights of Persons with Disabilities (UN CRPD).

2.5.2 Each treaty has a committee of independent experts that monitor implementation and offer authoritative guidance on interpretation of the substantive provisions. The main method used by UN Committees to determine compliance with treaty obligations is the State reporting procedure.³⁵ This involves the State submitting a periodic report detailing

³⁴ Articles 9, 28(1) and 28(2)(d), Convention on the Rights of Persons with Disabilities 2006.

³⁵ A number of treaty bodies can also initiate country inquiries and accept individual petitions. Country inquiries could be initiated in relation to Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), ICESCR, CEDAW, CRC, Convention on Enforced Disappearances (CED), and CRPD. The use of country inquiries depends on whether the State under investigation recognised the competence of the treaty body to conduct an inquiry. It also depends upon whether the State under investigation cooperated. Some treaties (such as the CAT and CED) include a provision providing for country inquiries. Other treaties (such as ICESCR, CEDAW, CRC and CRPD) do not contain such a provision and an Optional Protocol was required. This amends or provides supplementary rights to a treaty, in this case adding the option of a country inquiry. In such cases a State is required to ratify the Optional Protocol for country inquiries to apply to its jurisdiction. The UK does not allow for country inquiries in relation to ICESCR, CRC and CED. It does allow for country inquiries in relation to CAT, CEDAW and CRPD. Whether an individual can submit a petition to a Committee depended on whether the State involved had separately recognised the competence of the treaty body to receive and consider complaints. Some treaties (such as CAT and CERD) include a provision providing for an individual complaints' mechanism. In this instance a State makes a declaration against the relevant provision stating that it recognised the individual complaints mechanism. Other treaties (such as CCPR,

actions undertaken to implement the treaty. The UN Committee subsequently reviews the report and, after a dialogue with the State, issues Concluding Observations. The UN Committee welcomes positive developments, details areas of concern, and makes recommendations designed to assist the State in moving toward the full implementation of the treaty. A number of treaty bodies can also initiate country inquiries and accept individual petitions.³⁶ In addition to Concluding Observations and inquiry reports, UN Committees periodically publish General Comments, which are authoritative interpretations of the treaties.

2.5.3 Numerous treaty bodies have made recommendations relating to the provision of RSE. Of most significance to this investigation are the recommendations emerging from the UN CEDAW Committee.

UN Convention on the Elimination of Discrimination Against Women (UN CEDAW)

2.5.4 The UK ratified the UN CEDAW on 7 April 1986 and acceded to the Optional Protocol on 17 December 2004. The Optional Protocol at Article 8 empowers the UN CEDAW Committee to receive complaints and conduct inquiries to ascertain if grave or systematic violations have occurred.

2.5.5 Article 10 of the UN CEDAW establishes that women's right to education includes "access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning". Article 16 of the UN CEDAW further guarantees women equal rights in deciding "freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights".

2.5.6 In its General Recommendation No 24, the UN CEDAW Committee recommends that States prioritise the "prevention of unwanted pregnancy through family planning and sex education".³⁷

2.5.7 On 9 December 2010, the UN CEDAW Committee received information from several organisations pursuant to Article 8 of the UN

ICESCR, CEDAW, CRC, CED and CRPD do not contain such a provision and an Optional Protocol was required. In such cases a State is required to ratify the Optional Protocol for the complaints mechanism to apply to its jurisdiction. The UK does not allow for individual complaints in relation to CERD, CCPR, ICESCR, CRC or CED. It does allow for individual complaints in relation to CAT, CEDAW and CRPD.

³⁶ Six treaty bodies are able to initiate inquiries, namely, the Committee Against Torture ('CAT'), the Committee for the Elimination of Discrimination Against Women ('CEDAW'), the Committee on Enforced Disappearance ('CED'), the Committee on the Rights of Persons with Disabilities ('CRPD'), the Committee on Economic, Social and Cultural Rights ('CESCR'), and the Committee on the Rights of the Child ('CRC').

³⁷A/54/38/Rev.1, chap. I, UN Committee on the Elimination of Discrimination Against Women, General Recommendation No. 24: Article 12 of the Convention (Women and Health), 1999 at para 31 (c).

CEDAW. The sources alleged that the UK had committed grave and systematic violations of rights under the UN CEDAW “due to restrictive access to abortion for women and girls in Northern Ireland”. In February 2018, following extensive engagement with the UK Government and with stakeholders in NI the UN CEDAW Committee issued its findings and made a number of recommendations relating to the provision of sexual and reproductive rights in NI.

2.5.8 The UN CEDAW Committee’s inquiry found that NI youth are “denied the education necessary to enjoy their sexual and reproductive health and rights”³⁸ and that “access to abortion services and contraceptives are not statutory requirements of the advisory curriculum”.³⁹

2.5.9 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”.⁴⁰

2.5.10 In relation to access to reproductive health services and contraceptives, the UN CEDAW Committee noted:

the centralised and limited availability of facilities in NI providing information, counselling and services in family planning, and particularly about options to access legal abortions in or outside NI. Furthermore, medical professionals are neither trained nor encouraged to provide information on abortion options and rely on this information being provided by non-governmental entities.⁴¹

2.5.11 This resulted in women facing challenges in obtaining appropriate and modern forms of contraception.

2.5.12 The UN CEDAW Committee published its inquiry report on 6 March 2018. This report made several recommendations. In relation to the provision of education, the Committee recommended 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

³⁸ CEDAW/C/OP.8/GBR/1, ‘UN CEDAW Committee Inquiry Concerning the United Kingdom of Great Britain and Northern Ireland under Article 8 of the Optional Protocol to the UN CEDAW Report of the Committee’, 6 March 2018, at para 43.

³⁹ Ibid, at para 44.

⁴⁰ Ibid.

⁴¹ Ibid.

of early pregnancy and access to abortion, and monitor its implementation".⁴²

2.5.13 In 2019, the UN CEDAW Committee reiterated this recommendation in its Concluding Observations on the UK recommending the State "take measures to introduce into school curricula mandatory, age-appropriate education on sexual and reproductive rights, including issues such as gender relations and responsible sexual behaviour, throughout the State party".⁴³

2.5.14 These recommendations were given effect in domestic legislation by Section 9 of the Northern Ireland (Executive Formation etc.) Act 2019.

2.5.15 In 2021, the NIHRC published a monitoring report assessing the implementation of recommendations relating to the provision of sexual and reproductive health services. In this report the NIHRC is investigating the implementation of recommendation 86(d) set out above.

UN International Covenant on Civil and Political Rights (UN ICCPR)

2.5.16 The UK ratified the UN ICCPR on the 20 May 1976. Article 6 of the UN ICCPR protects the right to life. In General Comment No 36, the UN Human Rights Committee has held that in order to protect women and girls against the health risks associated with unsafe abortions, States:

should ensure access for women and men, and, especially, girls and boys to quality and evidence-based information and education about sexual and reproductive health and to a wide range of affordable contraceptive methods and prevent the stigmatisation of women and girls seeking abortion.⁴⁴

2.5.17 Article 18(4) of the UN ICCPR provides "the States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions".

⁴² CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the United Kingdom of Great Britain and Northern Ireland under Article 8 of the Optional Protocol to the UN CEDAW Report of the Committee', 6 March 2018, at para 86(d).

⁴³ CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the UK Eighth Periodic Report', 8 March 2019 at para 42(c).

⁴⁴CCPR/C/GC/36, General Comment No 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life, at para 8.

UN International Covenant on Economic Social and Cultural Rights (UN ICESCR)

2.5.18 The UK ratified the UN ICESCR on the 20 May 1976. Article 13 of the UN ICESCR provides:

1) The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realisation of this right:

a) Primary education shall be compulsory and available free to all;

b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved

by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

2.5.19 The Committee on Economic Social and Cultural Rights (UN ICESCR Committee) has provided further advice relating to the provision of secondary school education. In its General Comment No 13, the UN ICESCR Committee advises that States should “fulfil (provide) the adaptability of education by designing and providing resources for curricula which reflect the contemporary needs of students in a changing world”.⁴⁵

2.5.20 In its General Comment No 14, the UN ICESCR Committee has explained that the provision of maternal health services is comparable to a core obligation which cannot be derogated from. The UN ICESCR Committee has interpreted the right to health as “extending not only to timely and appropriate health care but also to the underlying determinants of health” including “access to health-related education and information, including on sexual and reproductive health”.⁴⁶ The UN ICESCR Committee further advises that States should refrain from “withholding or intentionally misrepresenting health-related information, including sexual education and information”.⁴⁷

2.5.21 In General Comment No 22, the UN ICESCR Committee advises States “to repeal or eliminate laws, policies and practices that criminalise, obstruct or undermine access by individuals or a particular group to sexual and reproductive health facilities, services, goods and information”.⁴⁸

2.5.22 General Comment No 22 further establishes that “non-discrimination, in the context of the right to sexual and reproductive health, also encompasses the right of all persons, including lesbian, gay, bisexual, transgender and intersex persons, to be fully respected for their sexual orientation, gender identity and intersex status”.⁴⁹

2.5.23 The UN ICESCR Committee also identifies that:

individuals belonging to particular groups may be disproportionately affected by intersectional discrimination in the context of sexual and reproductive health...such as, but not limited to, poor women, persons with disabilities, migrants, indigenous or other ethnic minorities,

⁴⁵ E/C.12/1999/10, ‘Committee on Economic, Social and Cultural Rights, General Comment No 13: The Right to Education’, 18 December 1999, at para 50.

⁴⁶ E/C.12/2000/4, ‘Committee on Economic, Social and Cultural Rights, General Comment No 14’, 11 August 2000, at para 11.

⁴⁷ Ibid, at para 34.

⁴⁸ E/C.12/GC/22, Committee on Economic, Social and Cultural Rights, General Comment No 22 on the Right to Sexual and Reproductive Health’, 2 May 2016, at para 49(a).

⁴⁹ Ibid, at para 23.

adolescents, lesbian, gay, bisexual, transgender and intersex persons, and people living with HIV/AIDS.⁵⁰

2.5.24 This issue has also been highlighted by the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz, who has identified that “transgender persons, including young people, face particular difficulties in accessing health care and related information on sexual and reproductive health and rights”.⁵¹

UN Convention on the Rights of the Child (UN CRC)

2.5.25 The UK ratified the UN CRC on the 16 December 1991. Article 28 of the UN CRC requires States Parties to recognise the right of the child to education. Article 29 further requires that education of the child be directed to “the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin”.⁵²

2.5.26 The Committee on the Rights of the Child (UN CRC Committee) has also made a number of recommendations to ensure access to appropriate sexual and reproductive health education in accordance with the child’s right to education and best interest.

2.5.27 In its General Comment No 4 on adolescent health and development, the UN CRC Committee has noted that “States parties should provide adolescents with access to sexual and reproductive information, including on family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted diseases (STDs)”.⁵³ It further notes that States should “pay specific attention to the special needs relating to the sexuality of adolescents with disabilities”.⁵⁴

2.5.28 The UN CRC Committee has also noted with concern barriers to sexual education, such as allowing parents to exempt their children from such education.⁵⁵

⁵⁰ E/C.12/GC/22, Committee on Economic, Social and Cultural Rights, General Comment No 22 on the Right to Sexual and Reproductive Health’, 2 May 2016, at para 30.

⁵¹ A/HRC/38/43 Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity (2018), at para 44.

⁵² Article 29, UN Convention on the Rights of the Child.

⁵³ CRC/GC/2003/4, ‘UN CRC Committee General Comment No 4 Adolescent Health and Development in the Context of the Convention on the Rights of the Child’, 1 July 2003, at para 28.

⁵⁴ Ibid, at para 35(c).

⁵⁵ CRC/C/IRL/CO/2, ‘UN Committee on the Rights of the Child Concluding Observations on the Second Periodic Report of Ireland’, 29 September 2006, at para 52.

2.5.29 The UN CRC Committee's 2016 Concluding Observations on the UK and NI, with reference to its General Comment No 12 (2009) on the right of the child to be heard, recommended that the State party:

establish structures for the active and meaningful participation of children and give due weight to their views in designing laws, policies, programmes and services at the local and national levels, including in relation to discrimination, violence, sexual exploitation and abuse, harmful practices, alternative care, sexual and reproductive education, leisure and play. Particular attention should be paid to involving younger children and children in vulnerable situations, such as children with disabilities.⁵⁶

2.5.30 In regard to adolescent health, the UN CRC Committee noted the steady decrease in teenage pregnancies, however the UN CRC Committee is concerned that "relationships and sexuality education is not mandatory in all schools, its contents and quality varies depending on the school, and lesbian, gay, bisexual, transgender and intersex children do not have access to accurate information on their sexuality".⁵⁷

2.5.31 The UN CRC Committee recommended the State:

ensure that meaningful sexual and reproductive health education is part of the mandatory school curriculum for all schools, including academies, special schools and youth detention centres, in all areas of the State party. Such education should provide age-appropriate information on: confidential sexual and reproductive health-care services; contraceptives; the prevention of sexual abuse or exploitation, including sexual bullying; the support available in cases of such abuse and exploitation; and sexuality, including that of lesbian, gay, bisexual, transgender and intersex children.⁵⁸

2.5.32 In advance of a treaty body's examination of a State report, a list of issues and questions is shared with the State party. Within the 2021 UN CRC List of Issues report on the UK and NI, with regard to education, the CRC Committee called on the UK government and NI Executive to "ensure that mandatory sexual and reproductive health education includes material on sexual orientation and gender identity".⁵⁹

⁵⁶ CRC/C/GBR/CO/5, 'Committee on the Rights of the Child Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 12 July 2016, at para 31(a).

⁵⁷ Ibid, at para 64(b).

⁵⁸ Ibid, at para 65(b).

⁵⁹ CRC/C/GBR/QPR/6-7, 'Committee on the Rights of the Child List of Issues Prior to Submission of the Combined Sixth and Seventh Reports of the United Kingdom of Great Britain and Northern Ireland', 4 March 2021.

UN Convention on the Rights of Persons with Disabilities (UN CRPD)

2.5.33 The UK ratified the UN CRPD on the 8 June 2009. The UN CRPD was drafted to “promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity”.⁶⁰

2.5.34 Article 23 of UN CRPD requires States to ensure the “rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognised, and the means necessary to enable them to exercise these rights are provided”.

2.5.35 Article 24 of the UN CRPD further requires States to “ensure an inclusive education system to support the full development of human potential and sense of dignity and self-worth with respect for human rights and diversity”.

2.5.6 In its General Comment No 3, The UN CRPD Committee raised concerns that:

Women with disabilities may also be denied access to information and communication, including comprehensive sexuality education, based on harmful stereotypes that assume that they are asexual and do not therefore require such information on an equal basis with others. Information may also not be available in accessible formats. Sexual and reproductive health information includes information about all aspects of sexual and reproductive health, including maternal health, contraceptives, family planning, sexually transmitted infections, HIV prevention, safe abortion and post-abortion care, infertility and fertility options, and reproductive cancer.⁶¹

2.5.37 It further notes that “lack of access to sexual and reproductive health information for women with disabilities, especially women with intellectual disabilities and deaf and deafblind women, can increase their risk of being subjected to sexual violence”.⁶²

⁶⁰ Article 1 UN Convention on the Rights of Persons with Disabilities.

⁶¹ CRPD/C/GC/3, ‘UN CRPD Committee General Comment No 3 on Women and Girls with Disabilities’, 25 November 2016, at para 40.

⁶² Ibid, at para 41.

2.5.38 The UN CRPD Committee recommended that States adopt affirmative action measures for the development, advancement and empowerment of women with disabilities with particular regard to issues including education and sexual and reproductive health.⁶³

2.5.39 In 2018, the UN CRPD Committee and the UN CEDAW Committee issued a joint statement on guaranteeing sexual and reproductive health and rights for all women, in particular women with disabilities. The statement advised that:

States must ensure the enjoyment of their sexual and reproductive health and rights without any form of discrimination. Access to safe and legal abortion, as well as related services and information are essential aspects of women's reproductive health and a prerequisite for safeguarding their human rights to life, health, equality before the law and equal protection of the law, non-discrimination, information, privacy, bodily integrity and freedom from torture and ill treatment.⁶⁴

UN Charter Based System

2.5.40 The UN Human Rights Council derives its establishment from provisions contained in the Charter of the UN. The special procedures of the Human Rights Council are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. They are voluntary positions and are elected for 3-year mandates that can be renewed for another three years. As of October 2022, there are 45 thematic and 14 country mandates.⁶⁵ Of most relevance to this investigation is the UN Special Rapporteur on the Right to Education.

2.5.41 In 2010 the former UN Special Rapporteur on the Right to Education, Vernor Muñoz, stated, "sexual education should be considered a right in itself and should be clearly linked with other rights in accordance with the principle of the interdependence and indivisibility of human rights".⁶⁶ In his view, "there is no valid excuse for not providing people with the comprehensive sexual education that they need in order

⁶³CRPD/C/GC/3, 'UN CRPD Committee General Comment No 3 on Women and Girls with Disabilities', 25 November 2016, at para 64 (b).

⁶⁴ 'Guaranteeing Sexual and Reproductive Health and Rights for all Women, in Particular Women with Disabilities: Joint Statement by the Committee on the Rights of Persons with Disabilities and the Committee on the Elimination of All Forms of Discrimination against Women', 29 August 2018.

⁶⁵ Special Procedures of the Human Rights Council. Available at: [Special Procedures of the Human Rights Council | OHCHR](#)

⁶⁶ A/65/162, 'Report of the United Nations Special Rapporteur on the Right to Education', 23 July 2010 at para 61.

to lead a dignified and healthy life. Enjoyment of the right to sexual education plays a crucial preventive role and may be a question of life or death".⁶⁷ He went on to note that "in order to be comprehensive, sexual education must pay special attention to diversity, since everyone has the right to deal with his or her own sexuality without being discriminated against on grounds of sexual orientation or gender identity".⁶⁸ He has also advised that "national human rights institutions and civil society should participate actively in the preparation of comprehensive sexual education plans and should help to monitor their implementation and to increase awareness in that area".⁶⁹

Sustainable Development Goals

2.5.42 In 2015, the UK Government committed to delivering the UN Sustainable Development Goals. The Sustainable Development Goals outline the global commitments to address, poverty, inequality and climate change by 2030. In drafting the Goals, it was viewed that "ending poverty and other deprivations must go hand-in-hand with strategies that improve health and education".⁷⁰

2.5.43 The third Sustainable Development Goal is to "ensure healthy lives and promote well-being for all at all ages".⁷¹ Within this Goal, Target 3.7 encourages States to "ensure universal access to sexual and reproductive health-care services, including for family planning, information and education, and the integration of reproductive health into national strategies and programmes".⁷²

2.5.44 The fifth Sustainable Development Goal is to "achieve gender equality and empower all women and girls".⁷³ This Goal includes a wide range of targets aimed at addressing violence and discrimination against women. Target 5.6 encourages States to:

Ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for

⁶⁷A/65/162, 'Report of the United Nations Special Rapporteur on the Right to Education', 23 July 2010, at para 15.

⁶⁸ Ibid, at para 17.

⁶⁹ Ibid, at para 88(c).

⁷⁰ United Nations Sustainable Development, 'The 17 Goals'. Available at: [THE 17 GOALS | Sustainable Development \(un.org\)](https://www.un.org/sustainabledevelopment/).

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

Action and the outcome documents of their review conferences.⁷⁴

2.5.45 In relation to sexual and reproductive health, the Programme of Action of the International Conference on Population and Development repeatedly notes the importance of effective education on the matter and recommends that “full attention should be given to the promotion of mutually respectful and equitable gender relations and particularly to meeting the educational and service needs of adolescents to enable them to deal in a positive and responsible way with their sexuality”.⁷⁵

2.5.46 The Beijing Platform further recommends that States “remove legal, regulatory and social barriers, where appropriate, to sexual and reproductive health education within formal education programmes regarding women’s health issues”.⁷⁶

2.5 Council of Europe

European Convention on Human Rights

2.5.1 The main human rights treaty of the CoE is the ECHR.

2.5.2 The ECHR is enforceable directly through the UK domestic legal framework, via the Human Rights Act, and can be relied upon in any domestic court. When interpreting the scope and application of ECHR rights, the UK Courts must, by virtue of section 2 of the Human Rights Act, take into account judgments and decisions of the European Court of Human Rights (ECtHR). The obligations placed on the State extend to legislative acts of the NI Assembly, and the functions of public authorities.⁷⁷ This means that unless primary legislation prevents it from acting otherwise, it is unlawful for a public authority to act in a way that is incompatible with a person’s Convention rights.

2.5.3 The provision of RSE in schools may engage a number of ECHR rights. For example, Article 8 of the ECHR provides for a private and family life; Article 9 of the ECHR provides for freedom of thought, conscience and religion; Article 10 of the ECHR provides for freedom of

⁷⁴ United Nations Sustainable Development, ‘The 17 Goals’. Available at: [THE 17 GOALS | Sustainable Development \(un.org\)](https://www.un.org/sustainabledevelopment/).

⁷⁵ A/CONF.171/13/Rev.1, ‘Programme of Action of the International Conference on Population and Development’, 5–13 September 1994, at 60.

⁷⁶ United Nations, ‘Beijing Declaration and Platform of Action, Adopted at the Fourth World Conference on Women’, 27 October 1995, at 31.

⁷⁷ Section 6, Human Rights Act 1998; Section 6(2), NI Act 1998.

expression and Article 14 of the ECHR provides for prohibition of discrimination.

2.5.4 Of relevance to this investigation is Article 2 of Protocol No 1 which provides the right to education. It states that:

no person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

2.5.5 By committing themselves not to “deny the right to education”, States guarantee access to educational institutions existing at a given time to anyone within their jurisdiction.⁷⁸

2.5.6 Although Article 2 of Protocol No 1 has been incorporated into domestic law by the Human Rights Act, the United Kingdom has filed a reservation in respect of Article 2 of Protocol No 1. The reservation accepts the principle of education in conformity with parent’s religious and philosophical convictions “only so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure”.⁷⁹

2.5.7 Article 2 of Protocol No 1 requires the State to respect parents’ religious and philosophical convictions, throughout the State education system.⁸⁰ The term “conviction” is not simply an opinion or idea but, rather, denotes beliefs of a level of seriousness and importance.⁸¹ The requirement to “respect” means more than “acknowledge” or “take into account” and, along with the primarily negative undertaking, implies some positive obligation on the part of the State.⁸² However, the primary purpose of Article 2 of Protocol 1 is to guarantee to an individual the right to education. The ECtHR has highlighted that “[i]n a democratic society, the right to education ... is indispensable to the furtherance of human rights [and] plays ... a fundamental role”.⁸³ It has held that the provision of an education system is “a very particular type of public service, which not only directly benefits those using it but also serves broader societal functions”.⁸⁴ The ECtHR has further highlighted that “secondary education plays an ever-increasing

⁷⁸ Kjeldsen, Busk Madsen and Pedersen v Denmark (1976) ECHR 6, at para 52.

⁷⁹ Reservation contained in a letter from the Permanent Representative of the United Kingdom, dated 9 October 2001, registered at the Secretariat General on 10 October 2001.

⁸⁰ Kjeldsen, Busk Madsen and Pedersen v Denmark (1976) ECHR 6, at para 51.

⁸¹ Campbell and Cosans v UK (1982) ECHR 1, at para 36.

⁸² Ibid, at para 37(a).

⁸³ Leyla Şahin v Turkey, (2004) ECHR 299, at para 137.

⁸⁴ Ponomaryovi v Bulgaria, (2011) ECHR 972, at para 55.

role in successful personal development and in the social and professional integration of the individuals concerned".⁸⁵

2.5.8 In its jurisprudence the ECtHR has identified that RSE pursues a number of legitimate aims including the preservation of health, the prevention of sexual violence and exploitation.⁸⁶ In addition, RSE prepares children for social realities.⁸⁷

2.5.9 The ECtHR has held that the Article 2 of Protocol 1 should be viewed collectively. In *Kjeldsen v Denmark (1976)*, the ECtHR highlighted that:

the second sentence of Article 2 (P1-2) must be read together with the first which enshrines the right of everyone to education. It is on to this fundamental right that is grafted the right of parents to respect for their religious and philosophical convictions.⁸⁸

2.5.10 Parents therefore may "not refuse a child's right to education"⁸⁹ on the basis of their religious and philosophical convictions. Rather, the second sentence of Article 2 of Protocol No 1 aims to safeguard pluralism in education to protect the democratic society envisaged by the Convention.⁹⁰

2.5.11 Regarding the role of the State, the ECtHR has held that the setting and planning of the curriculum in principle fall within the competence of the State.⁹¹ The ECtHR has highlighted that the right to education calls for regulation by the State.⁹²

2.5.12 Mr Justice Warby, in the case of *Birmingham CC v Afsar*, stated that the second sentence of Article 2 of Protocol No.1 in comparison with most other Convention guarantees is "a weak one", which is principally aimed at ensuring fair and non-discriminatory access to the state education system.⁹³

2.5.13 The second sentence of Article 2 of Protocol No 1 does not prevent States from including topics that are directly or indirectly religious or philosophical in nature in their curriculum. Further, it does not permit parents to object to the integration of such teaching within the school curriculum.⁹⁴ However, it is implicit within the second sentence of Article

⁸⁵ *Ponomaryovi v Bulgaria*, (2011) ECHR 972, at para 57.

⁸⁶ *A.R. and L.R. v. Switzerland*, Application No 22338/15, judgement of 18 January 2018.

⁸⁷ *Ibid.*

⁸⁸ *Kjeldsen, Busk Madsen and Pedersen v Denmark (1976)* ECHR 6, at para 50.

⁸⁹ *Konrad and Others v Germany*, Application No 35504/03, judgement of 11 September 2006.

⁹⁰ *Folgerø and Others v Norway (2007)* ECHR 2148, at para 84(b).

⁹¹ *Valamis v Greece (1996)* ECHR 72, at para 28.

⁹² Case "Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium" v. Belgium (Merits) (Application no 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64) at 28.

⁹³ *Birmingham CC v Afsar* [2019] EWHC 3217, at para 61.

⁹⁴ *Kjeldsen, Busk Madsen and Pedersen v Denmark (1976)* ECHR 6, at para 53.

2 of Protocol No 1 that the State, in fulfilling its functions in relation to education and teaching, must ensure that the information included in the curriculum is conveyed in an objective and pluralistic manner.⁹⁵

2.5.14 The ECtHR has, in its case law, found that the two sentences of Article 2 of Protocol No 1 must be interpreted not only in the light of each other but also with particular regard to Articles 8, 9 and 10 of the ECHR.⁹⁶ It should further be interpreted in a way which is consistent with “the general spirit of the Convention itself, an instrument designed to maintain and promote the ideals and values of a democratic society”.⁹⁷

2.5.15 In the case of *Dojan and Others v. Germany*, five married couples complained that the refusal by the authorities to exempt their children from mandatory sex education classes and other school activities resulted in a disproportionate restriction of their right to educate their children in conformity with their religious convictions. Sex education classes were a compulsory component of the primary school curriculum. The school also organised a mandatory theatre group workshop at regular intervals to raise awareness of child sexual abuse, with an alternative activity for children who did not wish to attend. The applicants were fined for preventing their children from taking part in all or some of these activities and when two of the parents refused to pay the fine, they were imprisoned. The ECtHR noted that the sex education classes in question aimed at the “neutral transmission of knowledge regarding procreation, contraception, pregnancy and child birth in accordance with the underlying legal provisions and the ensuing guidelines and the curriculum, which were based on current scientific and educational standards”.⁹⁸ The ECtHR found that the aims of the regulations relating to sex education were “consonant with the principles of pluralism and objectivity embodied in Article 2 of Protocol No 1”.⁹⁹ The ECtHR found that in refusing to exempt the children from classes and activities, the national authorities had acted within the margin of appreciation accorded to them within the scope of Article 2 of Protocol No 1. The ECtHR further advised that the Convention “does not guarantee the right not to be confronted with opinions that are opposed to one’s own convictions”.¹⁰⁰

2.5.16 In the case of *Isherwood and Others v The Welsh Ministers*, the Welsh RSE Code and Guidance were subject to a judicial review on a

⁹⁵ Kjeldsen, Busk Madsen and Pedersen v Denmark (1976) ECHR 6, at para 53.

⁹⁶ Folgerø and Others v Norway (2007) ECHR 2148, at para 84 (a). 84(h) the second sentence of Art.2 of Protocol No.1 implies on the other hand that the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents’ religious and philosophical convictions. That is the limit that must not be exceeded.

⁹⁷ Kjeldsen, Busk Madsen and Pedersen v Denmark (1976) ECHR 6, at para 53.

⁹⁸ *Dojan and Others v Germany* (2011) ECHR 1420.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

number of grounds,¹⁰¹ including that the failure to allow for parental exemptions was in breach of the requirements of the second sentence of Article 2 of Protocol No 1. It was further claimed that the rights protected by Article 2 of Protocol No 1 were breached by imposing a 'whole school' approach to RSE, without providing for any right of excusal and without any guarantees as to the content of that education.

2.5.17 In her judgment Mrs Justice Steyn DBE stated:

the State is entitled to provide teaching that (i) addresses considerations of a moral nature, provided it does not constitute an attempt at indoctrination aimed at advocating a specific kind of sexual behaviour; (ii) aims to equip pupils to protect themselves and to show consideration for others; (iii) seeks to provide pupils with knowledge of biological, ethical, social and cultural aspects of sexuality in order to enable them to develop their own moral views and an independent approach to their own sexuality, and that encourages tolerance towards human beings irrespective of their sexual orientation and identity; and (iv) aims to enable pupils to be tolerant and open to dialogue and to people whose beliefs differ from their own.¹⁰²

2.5.18 She further noted that:

much of the jurisprudence on the second sentence of Article 2 of Protocol No 1 relates to religious education, in which context the European Court of Human Rights has emphasised the State's duty of neutrality as between different religious and philosophical beliefs. But the court has taken a different approach in the context of teaching of sex education, morals and ethics. A position of strict neutrality on the part of the state is not required. The fundamental requirements are of pluralism and the avoidance of indoctrination.¹⁰³

2.5.19 In dismissing the case she found that there is "a close resemblance between the Welsh Government's objectives and the

¹⁰¹Isherwood & Others, R. (On the Application Of) v The Welsh Ministers [2022] EWHC 3331.

¹⁰² Ibid, at Para 146.

¹⁰³ Ibid, at para 145.

purposes of teaching that the Strasbourg court considered compatible with [Article 2 of Protocol No 1] in *Kjeldsen and Dojan*".¹⁰⁴

2.5.20 In addition to the ECHR, the Council of Europe has developed the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), the Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) and the European Social Charter which also contain provisions relating to RSE.

Convention on Combatting and Preventing Violence Against Women and Domestic Violence (CoE Istanbul Convention)

2.5.21 The UK ratified the CoE Istanbul Convention on the 21 July 2022 and the Convention entered into force in the UK on the 1 November 2022. This means the UK Government is bound, and has committed, to implement it in practice.¹⁰⁵ The CoE Istanbul Convention is a comprehensive framework which aims to address violence against women and girls. Its obligations cover four areas which include: prevention, protection, prosecution and coordinated policies.

2.5.22 Article 12 of the CoE Istanbul Convention outlines general obligations in the implementation of preventative measures and requires States to "take into account and address the specific needs of persons made vulnerable by particular circumstances and [to] place the human rights of all victims at their centre".¹⁰⁶ This means that preventative measures, including educational programmes must address the needs of those at an increased risk of discrimination.¹⁰⁷

2.5.23 Article 14 of the CoE Istanbul Convention states that:

parties shall take, where appropriate, the necessary steps to include teaching material on issues such as equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, gender-based violence against women and the right to personal integrity, adapted to the

¹⁰⁴ *Isherwood & Others, R. (On the Application Of) v The Welsh Ministers* [2022] EWHC 3331, at para 201.

¹⁰⁵ While it is not enforceable in the same way as the ECHR by the HRA, courts will rely on the Istanbul Convention to interpret the obligations of public authorities. Moreover, the State is obliged directly to comply with it.

¹⁰⁶ Article 12 (3) Convention on Combatting and Preventing Violence Against Women and Domestic Violence.

¹⁰⁷ Council of Europe, 'Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence', (CoE, 2011), at para 87.

evolving capacity of learners, in formal curricula and at all levels of education.¹⁰⁸

2.5.24 According to the Explanatory report to the Convention:

attitudes, convictions and behavioural patterns are shaped very early on in life. The promotion of gender equality, mutual respect in interpersonal relationships and non-violence must start as early as possible and is primarily a responsibility of parents. Educational establishments, however, have an important role to play in enhancing the promotion of these values.¹⁰⁹

2.5.25 The drafters of the Convention intended to give “a maximum of flexibility”¹¹⁰ in the implementation of this provision, taking into account the varying approaches between States in determining teaching materials. They note that “[s]ome states for instance determine the teaching aims in their formal curriculum while leaving it to the schools to decide on the proper working methods and teaching materials to be used to reach these aims”.¹¹¹

2.5.26 GREVIO, the independent expert body responsible for monitoring the implementation of the CoE Istanbul Convention, has noted that:

education on sexuality can provide a means to address some of the topics covered by Article 14 of the convention, in particular the right to personal integrity and the notion that sexual violence is based on the absence of freely given consent.¹¹²

2.5.27 It has also found that “sexuality education for all boys and girls in schools is essential to guarantee women’s sexual and reproductive rights and that it is a full component of the rights to education and to health”.¹¹³

2.5.28 GREVIO has encouraged States in which sexuality education exclusively focuses on the prevention of unwanted pregnancies and infectious diseases to address issues such as “the right to personal integrity, unequal power in the relations between women and men and responsible sexual behaviour”.¹¹⁴

¹⁰⁸ Article 14 Convention on Combatting and Preventing Violence Against Women and Domestic Violence.

¹⁰⁹ Council of Europe, ‘Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence’, (CoE, 2011), at para 94.

¹¹⁰ Ibid, at para 95.

¹¹¹ Ibid.

¹¹² Council of Europe, ‘Mid-term Horizontal Review of GREVIO Baseline Evaluation Reports’, (CoE, 2022), at 164.

¹¹³ Ibid.

¹¹⁴ Ibid, at 165.

2.5.29 GREVIO has not yet examined the UK's compliance with the CoE Istanbul Convention. When GREVIO does commence its examination, it is likely to explore provision for RSE throughout the UK including in NI.

Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (CoE Lanzarote Convention)

2.5.30 The UK ratified the CoE Lanzarote Convention on the 21 June 2018. The Convention requires states to adopt specific legislation and take measures to prevent sexual violence, to protect child victims and to prosecute perpetrators.

2.5.31 In relation to education programmes, the CoE Lanzarote Convention states that:

each Party shall take the necessary legislative or other measures to ensure that children, during primary and secondary education, receive information on the risks of sexual exploitation and sexual abuse, as well as on the means to protect themselves, adapted to their evolving capacity. This information, provided in collaboration with parents, where appropriate, shall be given within a more general context of information on sexuality and shall pay special attention to situations of risk, especially those involving the use of new information and communication technologies.¹¹⁵

2.5.32 The Committee of the Parties to the CoE Lanzarote Convention (Lanzarote Committee) has stated that:

the fact that children are frequently victims of sexual violence within the family framework and by persons close to them or in their "circle of trust" should be highlighted and considers that the school environment is particularly appropriate to do so.¹¹⁶

2.5.33 In relation to the philosophical and religious convictions of parents, the Lanzarote Committee has found that:

in the context of the implementation of the Lanzarote Convention, religious or philosophical convictions of the parents on the matter should be respected to the extent

¹¹⁵ Council of Europe, Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse, 12 July 2007, at Article 6.

¹¹⁶ Committee of the Parties to the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (Lanzarote Committee), '2nd Implementation Report: Protection of Children Against Sexual Abuse in the Circle of Trust', (CoE, 2018), at para 45.

that these do not come into conflict first and foremost with the child's best interest but also with the public interest which is served through the provision of education to children to protect them from all forms of sexual violence.¹¹⁷

European Social Charter

2.5.34 The European Social Charter is a Council of Europe treaty that protects social and economic rights relating to employment, housing, health, education, social protection and welfare. Compliance with the Charter is monitored with the European Committee on Social Rights. The UK ratified the European Social Charter on 11 July 1962 and has accepted 60 of the Charter's 72 paragraphs. A revised European Social Charter was adopted in 1996. The Revised European Social Charter takes account of the changes that have occurred in Europe since the Charter was adopted in 1961 and includes a number of new rights and amendments. The UK has signed but not ratified the Revised European Social Charter. The Revised Charter is gradually replacing the initial 1961 Charter. However, the UK is currently still bound to its obligations under the initial 1961 Charter only.

2.5.35 Article 11 of the European Social Charter guarantees the right to health. The European Committee of Social Rights has held that the right to health obligates states to ensure sexual and reproductive health education "throughout the entire period of schooling"¹¹⁸ as part of the mandatory school curriculum.¹¹⁹ The European Committee on Social Rights stated that this curriculum must provide objective, scientifically based and non-discriminatory sex education without "censoring, withholding or intentionally misrepresenting information"¹²⁰ such as on contraception.¹²¹ The Committee added that sex education must not only address the biological functions of sexuality but also its social and cultural aspects. The Committee specifically noted that sex education must be aimed at "developing the capacity of children and young people to understand their sexuality in its biological, psychological, socio-cultural and reproductive dimensions which will enable them to make responsible decisions with regard to sexual and reproductive health behaviour".¹²²

¹¹⁷ Committee of the Parties to the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (Lanzarote Committee), '2nd Implementation Report: Protection of Children Against Sexual Abuse in the Circle of Trust', (CoE, 2018), at para 49.

¹¹⁸ INTERIGHTS v. Croatia (2009) Complaint No. 45/2007 (European Committee of Social Rights), at para 45.

¹¹⁹ Ibid, at para 47.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ibid, at para 46.

2.5.36 The Committee expressed the view that States are required to ensure that sexual education programmes do not involve reinforcing “demeaning stereotypes and perpetuating forms of prejudice which contribute to the social exclusion, embedded discrimination and denial of human dignity often experienced by historically marginalised groups such as persons of non-heterosexual orientation”.¹²³

Council of Europe Committee of Ministers Recommendation on Gender Mainstreaming in Education

2.5.37 The Committee of Ministers is the Council of Europe's decision-making body. It is made up of the Foreign Affairs Ministers of all the member States, or their permanent diplomatic representatives in Strasbourg. In 2007, the CoE Committee of Ministers published a recommendation on gender mainstreaming in education.¹²⁴ It recommended:

making education for private life part of the school curriculum, when necessary, in order to encourage boys and girls to be self-reliant in this area, make them more responsible in their emotional and sexual relationships and behaviour, combat sexist role stereotyping, and prepare young people for a new gender partnership in private and public life.¹²⁵

2.5.38 The CoE Committee of Ministers further advised that young people should be taught “to consider and interpret relationships with reference to gender equality, human rights, power relations and violence”¹²⁶ and that girls and boys should be made “aware of the dangers of exploitation, sexual abuse and trafficking to which they are exposed”.¹²⁷

Council of Europe Commissioner for Human Rights

2.5.39 The Council of Europe Commissioner for Human Rights is responsible for promoting respect for human rights in the 47 Council of Europe Member States through reports, dialogue, and recommendations to States.

¹²³ INTERIGHTS v. Croatia (2009) Complaint No. 45/2007 (European Committee of Social Rights), at para 61.

¹²⁴ CM/Rec (2007)13, ‘Recommendation 13 of the Committee of Ministers to Member States on Gender Mainstreaming in Education’, 10 October 2007.

¹²⁵ Ibid, at para 27.

¹²⁶ Ibid, at para 44.

¹²⁷ Ibid, at para 47.

2.5.40 In 2020, the CoE Commissioner for Human Rights, Dunja Mijatović, commented that “Comprehensive sexuality education is part of a good quality education. Thus, it should be provided for by law, be mandatory and mainstreamed across the education system as of the early school years”.¹²⁸

2.5.41 She stated that RSE “is essential to prevent and combat sexual abuse against children, sexual violence and sexual exploitation”¹²⁹ and that “sexuality education is crucial to prevent gender-based violence and discrimination against women”.¹³⁰ She further stated that it provides “an ideal context for raising awareness about the sexual and reproductive health and rights of women, including access to modern contraception and safe abortion”.¹³¹

2.5.42 In relation to the rights of LGBTQIA+ young people, she highlighted that “they should be provided with comprehensive sexuality education that meets their needs. Therefore, sexuality education must include information that is relevant to them. This means helping children to understand sexual orientation and gender identity and dispelling common myths and stereotypes about LGBTI persons”.¹³²

2.5.43 The CoE Commissioner for Human Rights emphasised the need for education provision to be inclusive of children with disabilities noting that “their sexuality tends to be ignored, or even perceived as harmful, and they are therefore often deprived of any access to adequate information on sexuality and relationships, despite their heightened vulnerability to sexual abuse and exploitation”.¹³³

2.5.44 She further stated that “international human rights standards on the right to freedom of religion or belief do not entitle parents to withdraw children from sexuality education classes where relevant information is conveyed in an objective and impartial manner”.¹³⁴ She therefore commended the decision by the Welsh Government to remove the possibility for parents to withdraw their children from parts of the curriculum on RSE. However, she noted the importance of engaging with parents, advising that:

Clearly, if sexuality education is to be accepted and successfully implemented, it should take into account the communities’ and parents’ cultural and religious backgrounds. Therefore, schools should be supported to

¹²⁸ Dunja Mijatović, ‘Press Release: Comprehensive sexuality education protects children and helps build a safer, inclusive society’, 21 July 2020.

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² Ibid.

¹³³ Ibid.

¹³⁴ Ibid.

engage with them, including as appropriate with religious leaders, and to take their views into account as long as they do not contradict the very aims of sexuality education, the best interests of the child, or human rights standards.¹³⁵

2.5.45 She also advised that “[c]urricula on sexuality education should also be regularly evaluated and revised, in order to ensure that they are accurate and meet existing needs”.¹³⁶

2.6 Summary

2.6.1 International human rights bodies consider that RSE is essential to the fulfilment of a range of rights including the right to education, the right to health and even the right to life. While providing children and young people with the necessary information for their sexual and reproductive health is a parental responsibility, human rights bodies emphasise the important role that schools should play in the provision of education programmes. Human rights bodies consistently recommend that RSE should be part of the mandatory school curriculum and include scientifically based information relating to contraceptives and access to abortion services.

2.6.2 Comprehensive RSE has a further role in preventing abuse and violence against women and girls and promoting equality between women and men. It should contribute to effective safeguarding through raising awareness of the risks of sexual violence and abuse and promoting an understanding of the importance of consent within sexual relationships. It should also include information on harmful practices such as child, early and forced marriage and female genital mutilation/cutting. Education programmes should be non-judgemental and should take care not to reinforce harmful and demeaning stereotypes. In developing the curriculum for RSE, specific consideration should be given to the experience of marginalised groups including, but not limited to, LGBTQIA+ persons, disabled persons and persons of national or ethnic minority background.

2.6.3 While the religious and philosophical beliefs of parents must be respected by the State within the education system, this should not interfere with the fundamental right of children to education.

¹³⁵ Dunja Mijatović, ‘Press Release: Comprehensive sexuality education protects children and helps build a safer, inclusive society’, 21 July 2020.

¹³⁶ Ibid.

Chapter 3: Analysis of the Legal and Policy Framework

3.1 Introduction

3.1.1 In this chapter we will consider the current legal and policy framework governing the provision of RSE in NI. In doing so we will assess this framework against the requirements of UN CEDAW Committee recommendation 86(d).

3.1.2 Our assessment of whether the current legal and policy framework complies with the UN CEDAW Committee recommendation 86(d) is presented in three parts. Firstly, we assess the current content prescribed by the legal and policy framework. We then assess what constitutes a compulsory component of the curriculum. Finally, we assess arrangements for monitoring the delivery of RSE and their adequacy to meet the requirements of recommendation 86(d).

3.2 Content of the Curriculum

3.2.1 The current statutory curriculum for both primary and post primary schools in Northern Ireland was introduced in 2007. The Education (NI) Order 2006 was enacted, inter alia, to secure legal changes necessary to introduce the current statutory curriculum.

3.2.2 The 2006 Order places a duty on the Board of Governors and principal of every grant-aided school to exercise their functions to ensure that the school curriculum "(a)promotes the spiritual, emotional, moral, cultural, intellectual and physical development of pupils at the school and thereby of society; and (b)prepares such pupils for the opportunities, responsibilities and experiences of life by equipping them with appropriate knowledge, understanding and skills".¹³⁷

3.2.3 The 2006 Order at Article 7 provides that,

7.—(1) The curriculum for every grant-aided school shall, in relation to each area of learning applicable to pupils at the school—

(a)include such minimum content as is specified in relation to that area of learning and those pupils under paragraph (2);

¹³⁷ Education (NI) Order 2006, Article 4.

(b) require each pupil at the school to be taught the minimum content within that area of learning; and

(c) require that the teaching in that area of learning is consistent with that minimum content.

(2) The Department may by order specify, in relation to an area of learning and pupils in a key stage, such minimum content as it considers appropriate.

(3) The minimum content specified in relation to an area of learning and pupils in a key stage must incorporate knowledge, understanding and skills relevant to each of the contributory elements which fall within that area of learning in relation to pupils in that key stage.

(4) It is the duty of the Department so to exercise the powers conferred by paragraph (2) as—

(a) to set in place as soon as is practicable minimum content in relation to all the areas of learning and each key stage, and

(b) to revise any existing minimum content whenever it considers it necessary or appropriate to do so.

3.2.4 Article 12 further specifies:

12.—(1) The scheme of management for every grant-aided school shall provide for it to be the duty of the Board of Governors—

(a) to determine, and keep under review, its policy in relation to the curriculum for the school; and

(b) to make, and keep up to date, a written statement of that policy.

(2) The policy determined by a Board of Governors under paragraph (1)(a) in relation to the curriculum for a school shall be compatible with—

(a) any minimum content specified under Article 7(1) which forms part of that curriculum;

(b) any specification for a course of study which forms part of that curriculum and leads to an examination for a qualification approved under Article 81 of the 1998 Order; and

(c) the statutory provisions relating to education (including, in particular, those relating to children with special educational needs).

3.2.5 The 2006 Order at Article 5 makes clear that grant aided schools are entitled to include in their curriculum any other matters in line with their general duties.

3.2.6 The Department of Education NI exercised its powers under the 2006 Order to enact the Education (Curriculum Minimum Content) Order (Northern Ireland) 2007.

3.2.7 The Education (Curriculum Minimum Content) Order (NI) 2007 has 2 schedules. Schedule 1 which deals with commencement and Schedule 2 which specifies minimum content.

3.2.8 Schedule 2 Part 1 states:

The statutory Northern Ireland curriculum from Foundation stage to Key Stage 4 is a balanced and broadly based curriculum which-

(a) promotes the spiritual, emotional, moral, cultural, intellectual and physical development of pupils at the school and thereby of society; and

(b) prepares such pupils for the opportunities, responsibilities and experiences of life by equipping them with appropriate knowledge, understanding and skills.

In order to meet their statutory requirements, schools must provide learning opportunities in relation to the following:

(a) Religious Education – in accordance with the core syllabus drafted by the four main Christian Churches in Northern Ireland and specified by the Department of Education.

(b) the following Areas of Learning:...

3.2.9 A table with a prescriptive list of "Areas of Learning" and "Contributory Elements" follows. There then follows an extensive list of Learning Areas within foundation stage, key stage 1, 2, 3 and 4. The terms/ words "sexual and reproductive health"/ "relationship and sexual education" (RSE) (which is a term commonly used in the sector) are not mentioned within the Areas of Learning.

3.2.10 Key Stages 3 and 4 are covered in parts 5 and 6. Within Part 5, Key Stage 3, (age 11-14) a number of areas of learning are identified including "Learning for Life and Work". Personal development is identified as a contributory element of this area of learning. Within Part 6, Key Stage 4, (age 15-16) two areas of learning are identified including namely: "Learning for Life and Work" and "Physical Education". Personal development is identified as a contributory element of "Learning for Life and Work".

3.2.11 RSE is not listed as an area of learning in any Key Stage.

3.2.12 Within Part 5 Key Stage 3 Learning for Life and Work: Personal Development, (ages 11-14) the following are mentioned:

- Explore the implications of sexual maturation;
- Explore the emotional, social and moral implications of early sexual activity.

3.2.13 Part 5 does not set out specific learning outcomes relating to sexual maturation or sexual activity. In addition, under the area of learning, Science and Technology a pupil should have opportunities to learn about organisms and health, including, knowledge of "Cells, genes and reproduction".

3.2.14 Part 6 of the Order requires that at Key Stage 4 under the area of learning, Learning for Life and Work: Personal Development, (ages 15-16) pupils should be enabled to;

develop their understanding of relationships and sexuality and the responsibilities of healthy relationships;

develop an understanding of the roles and responsibilities of parenting.

3.2.15 The Minimum Content Order does not address education post 16. This reflects the fact that the compulsory age of education in NI is 16.

3.2.16 In summary, the current legal framework is not prescriptive with regards to what should be included in RSE. The elements of RSE currently specified in the Minimum Content Order cannot be said to be comprehensive. The Minimum Content Order does not specify many of the topics considered essential to a comprehensive RSE curriculum, as set above and explored in our human rights analysis. The Minimum Content Order does not state that RSE should be age appropriate. Whilst there is reference to scientific topics there is no overriding requirement that the lessons are scientifically accurate. Finally, the Minimum Content Order does not specify that RSE should include the prevention of early pregnancy and access to abortion. It is clear therefore that the current curriculum does not include all the key elements required by the UN CEDAW Committee.

3.2.17 It is acknowledged that, the legislative framework does not restrict schools from developing and delivering RSE lessons beyond that which is prescribed in the Minimum Content Order. The NIHRC notes that the former Minister for Education Lord Peter Weir highlighted that the curriculum "is designed to have limited prescription giving schools as much flexibility as possible in what they choose to teach, for how long

and how often and to use approaches that best suit their pupils”.¹³⁸ The former Minister for Education Michelle McIlveen MLA has also highlighted that the curriculum is, “designed specifically to reflect the importance of giving schools autonomy to choose their own curriculum approaches, allowing school leaders to build a curriculum with appropriate coverage, content, structure and sequencing for their pupils”.¹³⁹ In our next chapter we will set out analysis of RSE policies in schools.

3.3 Compulsory Components

3.3.1 In addition to its legal power to prescribe the curriculum within the Minimum Content Order, the Department of Education NI has also developed a practice of issuing Circulars to schools to provide guidance on specific matters. A number of Circulars have been developed relating to RSE.

3.3.2 *Circular 2010/01: Guidance on Relationships and Sexuality Education* highlighted the Sexual Offences (Northern Ireland) Order 2008, which lowered the age of consent in Northern Ireland from 17 to 16 and highlighted the Equality Commission Guidance on Eliminating Sexual Orientation Discrimination in Northern Ireland.

3.3.3 Within *Circular 2013/16: Relationships and Sexuality Policy in Schools* the Department reiterated the requirement on schools to develop their own “written policy on how it will address the delivery of RSE”. In relation to the development of the policy the Department of Education NI makes clear that an RSE policy, “should be subject to consultation with parents and endorsed by a school’s Board of Governors”. The Department of Education NI makes clear that, “The delivery of RSE must prepare pupils to view relationships in a responsible and healthy manner and should be taught in harmony with the ethos of the school and reflect the moral and religious principles held by parents and school management authorities”.

3.3.4 *Circular 2015/22: Relationships and Sexuality (RSE) Guidance* superseded an earlier circular setting out substantive guidance on RSE. The Circular was developed following an ETI report into the provision of RSE in post-primary schools. The Circular highlights guidance developed by the Northern Ireland Council for the Curriculum, Examinations and Assessment (CCEA) following the report. The Circular also highlights that the Department “requires all grant-aided schools to develop their own RSE policy based on the ethos of their school which is subject to consultation with parents and pupils”. In a letter annexed to the Circular

¹³⁸ Department of Education, ‘Press Release: Education Minister publishes guidance for schools on curriculum planning’, 23 June 2020.

¹³⁹ NI Assembly Official Report: Monday 08 November 2021, [Official Reports \(niassembly.gov.uk\)](https://www.niassembly.gov.uk)

the Department of Education NI highlights best practice in the delivery of RSE.

3.3.5 The Department of Education NI does not have a statutory basis for the issuing of Circulars. It is acknowledged that schools tend to follow guidance set out within a Circular and that the Department of Education NI has a power to issue a direction to schools.¹⁴⁰ However a Circular does not place a legal requirement on a school.

3.3.6 The UN CEDAW Committee recommendation makes clear that RSE provision must be a “compulsory component” of the curriculum. It is acknowledged that the Department of Education NI has provided further direction to Boards of Governors relating to the provision of RSE by way of Circulars. Furthermore, it is noted that the Department of Education NI has indicated an intention to issue a further Circular pertaining to RSE.¹⁴¹ It is assessed that Circulars do not have a clear legal basis and cannot be considered to have the effect of making RSE compulsory. The introduction of a further Circular will not remedy the inadequacies in the Minimum Content Order and will not satisfy the requirement that RSE is a compulsory component of the statutory curriculum.

3.4 Monitoring Arrangements

3.4.1 As discussed above the Minimum Content Order broadly sets out a range of key learning areas. Post primary schools are granted significant discretion in determining the content of lessons delivered in classrooms. In amending the Minimum Content Order to specify comprehensive RSE, this is likely to include a greater level of prescription and detail than is currently present in the existing learning areas specified within the Minimum Content Order. Post primary schools are therefore likely to need support to ensure they are able to comply with their obligation under the 2006 Order to ensure their curriculum complies with the Minimum Content Order. Monitoring arrangements must ensure that schools are meeting their new obligations.

3.4.2 In addition to the references to monitoring included in the UN CEDAW Committee recommendation, the 2019 Act places a duty on the Secretary of State for NI to “ensure that the recommendations in paragraphs 85 and 86 of the UN CEDAW report are implemented in respect of Northern Ireland”.

¹⁴⁰ The Education and Libraries (Northern Ireland) Order 1986, Article 101.

¹⁴¹ NI Assembly Hansard, ‘Oral Question: Gillen Review: RSE Recommendations – Emma Sheerin – MLA - AQO 3323/17-22’, 22 March 2022.

3.4.3 In this section we will consider how the delivery of education in schools is currently monitored and the sufficiency of these arrangements to meet the requirements of paragraph 86(d). In addition, we will consider the obligation placed on the Secretary of State NI by virtue of the 2019 Act.

3.4.4 The CCEA and the ETI play a role in monitoring the implementation of the curriculum in post primary schools.

3.4.5 The Education (NI) Order 1998 provides that the CCEA shall:

(a) keep under review all aspects of the curriculum for grant-aided schools and all aspects of examinations and assessment;

(b) advise the Department on such matters concerned with the curriculum for grant-aided schools or with examinations and assessment as the Department may refer to it or as it may see fit;

(c) publish and disseminate, or secure or assist the publication and dissemination of, information relating to the curriculum for grant-aided schools or to examinations and assessment;

(d) produce, or secure or assist the production of, teaching materials for use in connection with the curriculum for grant-aided schools.¹⁴²

3.4.6 Whilst the CCEA is responsible for reviewing materials, it does not monitor the delivery of the curriculum. The CCEA performs a supporting role, including through the development of materials.

3.4.7 In 2018, the Department of Education NI commissioned the CCEA to deliver a Relationships and Sexuality Education Project.¹⁴³ The project included the development of resources and guidance and an "RSE Hub".

3.4.8 The RSE hub launched in 2019 includes educational materials which can be accessed through the CCEA website by pupils, parents and teachers.¹⁴⁴ These resources, produced by CCEA, are designed to offer schools flexibility in their approach to the delivery of RSE. This approach enables all schools to deliver RSE in line with their ethos and RSE policy and teachers are advised to review materials to ensure they are in line with the ethos of their school.

3.4.9 The RSE Hub also provides a repository of information developed for schools by external providers. Post-primary schools can select the materials and resources they wish to use at their discretion. The website includes a disclaimer relating to external resources, which states, "CCEA

¹⁴² Section 76.

¹⁴³ Council for the Curriculum Examinations and Assessments 'Relationships and Sexuality Education'. Available at: <https://ccea.org.uk/learning-resources/relationships-and-sexuality-education-rse/about-relationships-and-sexuality>

¹⁴⁴ Ibid.

is not responsible for the content of linked websites. We do not necessarily endorse, recommend or approve of the content of these sites". The CCEA does not monitor the use of the RSE hub by schools.

3.4.10 The CCEA have produced a guide for parents and boards of governors which discusses the statutory requirements relating to RSE. The guidance states, "All children and young people have the right to quality teaching and learning across the curriculum: Relationships and Sexuality Education is no exception. Without this provision, children are left with a learning and skills deficit, making them more susceptible to inappropriate behaviours, sexual abuse, and exploitation".¹⁴⁵ The guide refers to the UN CRC.

3.4.11 In addition to the RSE hub the CCEA has developed a RSE Progression Framework. The Framework provides a non-statutory progression pathway, this incorporates from Foundation stage to post-16.

3.4.12 The CCEA guidance, RSE Hub and Progression Framework are non-statutory.

3.4.13 The Education and Libraries (Northern Ireland) Order 1986 (Articles 102 and 102A) provides that the ETI inspectors have a duty to:

promote the highest standards of education and of professional practice among teachers in relevant establishments which provide education by—

(a) monitoring, inspecting and reporting on the standard of education being provided in those establishments and the standards of professional practice among teachers on the staff of such establishments;

(b) advising the Department on any aspect of the curriculum of any of those establishments which the Department may refer to them or on which they think advice is appropriate.

(6) It shall be the duty of inspectors to monitor, inspect and report on the nature, scope and effect of advisory and support services provided by boards under Article 29 of the 1989 Order in relation to the curricula and staff of grant-aided schools.

3.4.14 The ETI therefore has a statutory duty to monitor, inspect and report on the standard of education provided in NI. This includes those elements of the curriculum relating to RSE and the circulars which the Department has issued to schools. The ETI conducts regular inspections of schools and thematic inspections.

¹⁴⁵ Council for the Curriculum Examinations and Assessments 'Relationships and Sexuality Education in Northern Ireland Guidance for Parents and Boards of Governors', (CCEA, 2022).

3.4.15 The ETI has conducted thematic inspections relating to RSE. In 2011 the ETI reported on a thematic inspection of RSE in post primary schools.¹⁴⁶ In this inspection the ETI assessed the provision of RSE against Department of Education NI *Circular 2001/152* which at that time required that:

every school should have a policy setting out how the school will address RSE within each pupil's curriculum, and that it should be the subject of consultation with parents and endorsed by the school's Board of Governors.

3.4.16 In December 2021 the then Minister for Education indicated that the ETI would carry out an "evaluation of the approaches and challenges in delivering effective preventative safeguarding practices in schools".⁹ The then Minister indicated that "the evaluation will provide an important evidence base on the teaching of RSE in the curriculum and on the issue of violence against girls. We need to build a clear and up-to-date picture in schools to inform the most appropriate next steps".¹⁰ A report of this evaluation was not published during the timeframe of this investigation.

3.4.17 In addition to thematic inspections, the ETI has a rolling programme of inspections of schools. Through its inspection of child protection and safeguarding policies and practices, the ETI routinely assesses whether schools have an appropriate policy for the delivery of RSE within the school curriculum. The ETI proforma which guides inspections asks the below questions:

As required by Circular 2013/16, does the policy include consultation with parents, pupils and endorsement by the board of governors?

Does the RSE and preventative curriculum address in age appropriate ways, healthy and respectful relationships, including appropriate use of language and behaviours.

Does this include the holistic overview, review, monitoring and evaluation of the effectiveness of the content and delivery of the RSE and preventative curriculum to empower children and young people to make informed choices and keep themselves safe?

Does the evaluation include consultation with children and young people and outline how their views will be listened to, respected and acted upon, where appropriate?

Are staff provided with professional learning opportunities to be confident in handling current and more sensitive issues, such as,

¹⁴⁶ Education and Training Inspectorate, 'Report of an Evaluation of Relationships and Sexuality Education in Post-Primary Schools', (ETI, 2011).

consent, violence against women and girls, domestic abuse, healthy sexual relationships, Gender, Transgender issues, contraception, pregnancy and abortion, menstrual health and wellbeing, social Media and online safety?

3.4.18 In its response to the Gillen Review the ETI reported:

ETI evaluates the impact of RSE Policy in practice. In effective practice, the RSE policy is created as an integral part of a wider suite of curricular policies as well as those for child protection, safeguarding and online safety to try to ensure that all aspects of the children's learning and well-being are provided in a holistic framework. ETI also evaluates the extent of parental engagement and consultation with governors and wider community when schools are drawing up their policies on RSE, to take account of the diverse family situations within the school community, the changing societal values and moral stance, the challenges of mental health issues, and the resulting complexity in the interaction between the responsibilities of home and school. ETI recommends that schools continue to monitor and evaluate, including the voice of the children, the teaching and learning in RSE and the coherence of the children's experiences across all year groups in order to assure effective impact on the children's learning and personal development.¹⁴⁷

3.4.19 An assessment of the role and operations of the CCEA and the ETI is relevant to the NIHRC's consideration of steps required to ensure compliance with the third component of the UN CEDAW Committee recommendation. The NIHRC notes that there are limited examples of the Minimum Content Order being amended to include new areas of learning.

3.4.20 An amendment was made to the Minimum Content Order in 2022 to include training on cardiopulmonary resuscitation and automatic external defibrillator awareness.¹⁴⁸ It is noted that the introduction of this amendment was preceded by the Department of Education NI indicating that the ETI would amend the safeguarding pro-forma to include consideration of the teaching of CPR. In addition, the Department of Education NI engaged with schools and offered relevant training to teachers.

¹⁴⁷ Evidence provided by Department of Education in relation to this investigation.

¹⁴⁸ The Education (Curriculum Minimum Content) (Amendment) Order (Northern Ireland) 2022.

3.4.21 Arrangements for monitoring the impact of this amendment have been disrupted by the absence of a NI Assembly and Executive. However, the experience highlights that there is a mutually reinforcing relationship between effective implementation and monitoring. The introduction of effective monitoring must be accompanied by robust plans for implementation. As set out the Department has already taken some steps to support the capacity of schools to deliver RSE. In our conclusions and recommendations chapter we will discuss further steps required to support the capacity of schools to deliver RSE.

3.4.22 In line with the approach to implementation of the 2022 Amendment Order it is clear that the introduction of reforms to the Minimum Content Order to reflect the UN CEDAW Committee recommendation 86(d) must be accompanied by changes to the ETI arrangements. This must include more detailed assessments of the content and delivery of lesson plans relating to RSE. These changes will be significant and require consultation with schools. However, it is not envisaged that such changes alone would be sufficient to meet the requirements of paragraph 86(d).

3.4.23 The UN CEDAW Committee have specified that RSE should be “scientifically accurate”. To ensure that this is the case there will be a need for monitoring arrangements which confirm that information relating to RSE is being conveyed to pupils in an objective and non-judgemental manner.

3.4.24 The UN CEDAW Committee do not specifically refer to the moral implications of RSE. This contrasts with the current framework governing the provision of the RSE education in NI. For instance, *Circular 2013/16* “requires all grant-aided schools to develop their own RSE policy based on the ethos of their school which is subject to consultation with parents and pupils”. The NIHRC notes that Part 1 of Schedule 2 to the Education (Curriculum Minimum Content) Order (Northern Ireland) 2007 places a duty on schools to provide learning opportunities in relation to religious education in accordance with a core syllabus drafted by the four main Christian Churches in NI. Such lessons may include a discussion of the moral implications of subjects covered in RSE. This is permissible. However, such lessons should not undermine the integrity of RSE lessons or call into question the accuracy of scientific evidence relating to sexual health.

3.4.25 In our recommendations chapter we will propose amendments to the ETI regime to reflect the monitoring duty set out in paragraph 86(d). We will set out additional measures required to monitor compliance, including actions by the Secretary of State NI.

3.5 Summary

3.5.1 In summary the current legal and policy framework does not mandate the delivery of RSE to an extent required to meet the UN CEDAW Committee recommendation 86(d). Under the current legal and policy framework the only mechanism for introducing compulsory teaching requirements on schools is through an amendment to the Minimum Content Order. The introduction of a more prescriptive circular relating to RSE will not sufficiently address the requirements set out in the UN CEDAW Committee recommendation 86(d). The current arrangements for monitoring the provision of RSE in post primary schools are insufficient to meet the monitoring requirements set out within the UN CEDAW Committee recommendation. In addition to changes to the ETI NI regime for inspecting schools there is a need for the Secretary of State NI to develop a bespoke monitoring arrangement.

Chapter 4: Analysis of School Policies and Support for Schools

4.1 Introduction

4.1.1 In this chapter we will present a number of findings which have been made relating to the provision of RSE in post primary schools throughout NI. We will also consider the efforts by the CCEA to support schools in the provision of RSE.

4.1.2 To inform the NIHRC's assessment of the compatibility of current arrangements with the UN CEDAW Committee's recommendation the NIHRC appointed independent experts to assist us in assessing the extent to which post primary schools in NI are providing age-appropriate, comprehensive and scientifically accurate RSE. The experts were asked to:

- Determine the extent to which schools are using curriculum materials and guidance provided by statutory bodies, particularly the CCEA.
- Determine whether schools are providing information on access to abortion including changes to the law and provision of abortion in NI.
- Review the topics addressed within school policies and CCEA resources, with specific consideration to information on access to abortion, contraception, sexual orientation and gender identity, and gender inequalities and relations.
- Review the language and scientific accuracy of available resources.

4.1.3 As set out in our methodology, the NIHRC utilised its investigatory powers to obtain RSE policies, teaching materials and information relating to the delivery of sexual and reproductive health education. The NIHRC wrote to all post-primary schools in NI and requested that they provide a response to the following questions:

1. Does your school have an RSE policy? If so please enclose a copy.
2. Under which department within the school is RSE provided?
3. If RSE is delivered within the school, who is it delivered by? What materials are used to teach RSE? Please provide copies.
4. Does your school engage external providers to assist with the delivery of RSE? If so, can you provide details of those providers?

5. If you have contracted RSE provision, were you provided within any training materials that have been retained within the school? If so, please provide copies.

6. Does your school use the CCEA RSE hub materials to deliver RSE? If so, which ones?

4.1.4 In total, 149 schools responded to the questionnaire and 124 provided copies of their RSE policies.

4.1.5 In addition, the NIHRC made contact with external providers requesting copies of their RSE post-primary materials. Materials provided by 11 organisations were subjected to thematic analysis.

4.1.6 NIHRC investigators analysed information provided by statutory bodies and engaged with a number of stakeholders to further inform our findings.

4.1.7 It is important to note that neither the NIHRC nor our independently contracted experts observed the delivery of RSE in practice. Our findings are drawn from a critical analysis of the policy documents and documents provided by schools and external providers, as well as an analysis of the information contained within the CCEA RSE Guidance and RSE Hub.

4.2 Findings Relating to the Provision of RSE in Schools

4.2.1 Of those schools who responded to the questionnaire, 94% (n=140) responded that they used external providers to assist with the delivery of RSE.

4.2.2 The independent experts analysed materials provided by eleven external providers. The materials varied in their emphasis and providers tended to develop materials that reflected their organisational objectives and specialisms. They noted that external providers “may have specialist knowledge or comfort with certain topics that teachers themselves lack, particularly in relation to gender, abuse, and LGBTQ issues”. However, the materials were not in all cases considered to be comprehensive, pluralistic and objective. They noted that schools appeared to select the external providers, and their additional resources, based on their schools’ ethos.

4.2.3 They also noted that whilst a number of external providers had updated their resources, a number of schools appeared to be using outdated resources produced by external providers.

4.2.4 As this investigation did not observe the delivery of RSE in the classroom, it is not possible to make findings relating to the use of

external materials in practice. However limited evidence was identified of schools critically assessing external providers to assure themselves that the providers will deliver comprehensive and scientifically accurate information. It was also noted that schools were the ultimate decision taker in relation to the decision to instruct external providers and in relation to the issues covered by external providers.

4.2.5 There appears to be a number of factors influencing the high reliance on external providers including a lack of capacity and confidence within the teaching profession to deliver RSE. The NIHRC notes the outcome of a 2022 UK wide survey of secondary school teachers which found that 46% of teachers reported that they do not feel confident teaching RSE.¹⁴⁹ Whilst this investigation did not involve a survey of teachers, the lack of confidence in the teaching profession in the delivery of RSE was raised by a number of stakeholders.

4.2.6 In relation to the appropriateness of the frequent use of external providers, the independently contracted experts observed that:

If we focus on what students identify as their preferred characteristics of RSE teachers, the same requests come up again and again. That is, they want people teaching them about relationships and sexuality who enjoy (have chosen) this role, are confident, well trained, knowledgeable, comfortable, non-judgmental and open. In terms of pedagogy they want a chance to discuss and share views in safe, well-managed, spaces and they do not want to be fobbed off with worksheets or videos without discussion. In terms of their curriculum they recognise that a lot can be missed if important topics are covered in one-off or 'drop down' days. They would like a spiral curriculum in which issues are covered in more depth as they mature, but where teachers are aware of what they have done previously (no doubt in order to avoid a common situation in which students are shown the same video several years in a row....). And young people need to know where they can go to get support, which could mean agencies external to the school but does suggest the value of permanent, familiar, supportive presences inside a school, whether teachers or counsellors or school nurses etc.

A preferred situation may be one in which school staff work with external providers and both learn from each other.

¹⁴⁹ 'Half of secondary school teachers don't feel confident delivering sex and relationships education', NSPCC, 28 September 2022.

External organisations should not be substituting for teachers without any legacy of learning by school staff.

4.2.7 The NIHRC identified evidence of the Department of Education NI taking steps to enhance the capacity of the teaching profession in NI to deliver RSE. This included requesting that teacher training providers include this issue in their curriculum and funding bespoke training initiatives. The NIHRC further notes that the Belfast Health and Social Care Trust has designed and delivered an RSE training course for teachers of post primary schools. However, our evidence gathering has indicated that further investment is needed to enhance the capacity of teachers.

4.3 Findings Relating to RSE Policies in Schools

4.3.1 As set out in our analysis of the legal and policy framework the Department of Education NI have issued a Circular requesting that schools establish an RSE policy. The overwhelming majority of schools have established RSE policies. The independent experts found that the centrality of ethos and values in RSE was emphasised across the school policies. 96.9% (n=126) of schools made reference to their “ethos”, “morals” or “values” in their RSE policies. Whilst most schools (66.9%, n=87) also made reference to the need for RSE to be “balanced” and/or “unbiased”, there was an overall lack of focus on providing age-appropriate, comprehensive and scientifically accurate RSE.

Abortion

4.3.2 The experts assessed that the majority of schools in NI are not providing age-appropriate, comprehensive and scientifically accurate education on access to abortion services. They reported that:

Analysis identified significant gaps and issues in schools’ inclusion of abortion and abortion services in their RSE policies. Namely, 39.5% (n=49) schools did not reference “abortion”, and related terms (e.g., “termination,” “morning after pill”, etc.), at all in their RSE policies. This points to a gap in information on abortion and abortion services in many schools’ RSE curricula, as most policies outlined other content that their curricula covered, such as relationship skills and online risks. 60.5% (n=75) of schools did make reference to abortion in their policies, however, only 26.6% (n=33) of schools included “abortion” in their RSE

curriculum content in an objective or value-free context. In these cases, some schools specifically described their provision of information on abortion as “factual” and “objective”, and others included abortion in their science or biology classes, which points to a likely teaching of abortion in a factual, rather than value-based, manner.

Aside from these schools who included some degree of unbiased information on abortion in their policies and curriculum content, the majority of schools that mentioned ‘abortion’ did so within a context of their schools’ ethos and moral frameworks. A total of 65.3% (n=81) schools referenced various pro-life values, such as “right to life”, “precious life”, “pro-life”, “value of human life” and the rights of the embryo or foetus, with some schools mentioning “abortion” within this context and others not. Furthermore, several schools (12%, n=15) included their teaching of ‘abortion’ within their religious curriculum content, whereby pupils are taught according to the “biblical principles of the sanctity of life” and “the Christian ethos” in regard to abortion. It is therefore not clear whether there were other spaces in the curriculum where students could access information in a non-judgemental and less value-laden context.

Finally, some schools actively contributed to the shame and stigma surrounding unplanned pregnancy and abortion, by making statements such as “abortion is not a means of contraception and those who knowingly engage in casual sex must bear the consequences of their actions”.

Contraception

4.3.3 The independently contracted experts reported that age-appropriate, comprehensive and scientifically accurate education on contraceptives and prevention of early pregnancy is being provided in at least some, possibly a majority of, schools in NI. However, this often prioritises abstinence and adopts a risk focused approach. They reported that:

The majority of schools (67.7%, n=84) promoted “abstinence” (and related terms such as “celibacy”, “chaste and single”) and the deferment or delaying of sexual activity. Some schools specifically promoted abstinence

until marriage. For example, [one school] stated in their RSE policy: "sexual abstinence before marriage and fidelity within it, will be presented as the positive and desirable option and an achievable reality". While some schools promoted abstinence until marriage, other schools promoted the "deferment of sexual activity until young people are physically and emotionally mature enough to understand the inherent responsibilities and the consequences of their action" or "until the age of consent". While this appears to promote a less rigid version of abstinence, the majority of schools (95.2%, n=118) still promoted the value the "sanctity of marriage", and related terms, such as "permanent committed sexual relationship", and "married love" in their RSE policies and school ethos. Of note, rather than affirming sexual rights and diverse forms of sexual expression and practices, the only positive and affirmative messages surrounding sexual practices involved discussions of the "positive benefits" of commitment, monogamy, and marriage. For example, schools promoted the "benefits of seeking sexual fulfillment within a permanent committed relationship to one person". Other schools made claims about supporting young people to develop "positive attitudes towards sexuality," but then clarified that this must occur within a "moral, social and spiritual framework" that promotes abstinence, marriage and monogamy".

In addition to this idealisation and promotion of abstinence, marriage, and monogamy, many schools use language that shames and stigmatises young people who do engage in sexual practices. Most schools also contributed to this association of shame with sexual activity, by attributing specific moral values and personal characteristics to those who engaged (or did not engage) in sexual behaviour. In particular, schools described the intent to teach young people to practice "modesty", "self-respect", "self-restraint", "self-worth", "personal dignity", "self-control" and "self-discipline" in their sexual relationships. While these affirmative messages may initially seem harmless, they imply those who *do* engage in sexual activities are comparatively lacking these personal values and characteristics. One [school] warns how those who engage in pre-marital sex and promiscuity are at risk of "loss of self-respect". This reality has particularly gendered

implications, as it most often women and girls who are subjected to this societal sexual shaming. Furthermore, a large minority of schools made note of the “physical, emotional and moral risks” of “casual” and “promiscuous” sexual behaviour, referred to young people’s sexual activity as “disturbing” or cause for concern, and/or included references to “pre-marital sex” and “sex outside of marriage” in their RSE curricula.

While abstinence and restrictive sexual values were promoted across school contexts, most schools did combine their moral teachings with some accurate information on contraception and alternative means of pregnancy prevention, beyond abstinence. In particular, 66.9% (n=83) schools referenced “contraception”, “family planning” or STI/pregnancy prevention strategies in their RSE policies. The majority of these references were made in their overview of the key themes addressed in their curricula, and thus it is difficult to ascertain the degree to which they offered accurate and comprehensive information on contraception options. Some schools explicitly expressed their aim to provide “factual information about different types of contraception”, as well as information on “the range of local and national sexual health advice, contraception and support services”, with the aim to “prevent unplanned teenage pregnancy and rates of sexually transmitted infections”. Some schools, however, described how they would present their moral stance on contraception—in addition to providing accurate information on the topic. In particular, some schools state that they will present the Catholic teaching that “the use of any artificial means of preventing procreation is not acceptable”, while also providing “accurate information about methods of artificial contraception in an age appropriate and sensitive manner”. While this moral teaching is in combination with the provision of accurate information, teaching young people that the use of contraception is wrong contradicts risk-reduction approaches to youth sexual activity. Other schools mention “contraception” in their RSE curriculum content, do so within the context of ethical issues, sensitivities, or risks involved. Finally, a couple of schools describe taking a “harm minimisation approach” to adolescent sexual activity whereby “the right of females to exercise control of their own bodies is fundamental”

through contraception. However, both these schools go on to state that “contraception is not a license for young people to engage in pre-marital sex”, and further emphasises the “risks attached to promiscuity”.

Sexual Orientation and Gender Identity

4.3.4 In relation to teaching on sexual orientation and gender identity, the independently contracted experts reported that while the majority of schools oppose bullying of various kinds within their RSE policies, this may not go far enough to achieve positive sexual health for young people who are LGBTQIA+. They reported that:

Most schools (99.2%, n=123) included a reference to sexual orientation, and related terms (e.g., “LGBT”, “Queer”, “lesbian”, “asexuality”, “homophobia”) in their RSE policies, and a smaller majority (57.7%, n=75) of schools made reference to gender identity, and related terms such as: “non-binary”, “gender expression”, “transgender”, “transphobia”, etc.). The meaning and context of these references, however, ranged across school policies.

71% (n=88) of schools made specific reference to the Equality Act (Sexual Orientation) Regulations (NI) 2006 and/or the Equality Commission’s (2009) Guidance on schools’ responsibility to provide youth of all sexual orientations with equal access to education. Furthermore, most schools (66.9%, n=83) made reference to young people’s rights to access education (e.g., “statutory right to access RSE”, “right to education”, “equality of provision”, “equality of opportunity”), with many mentioning the equal provision to students with different sexual orientations.

In addition to upholding their statutory responsibilities, schools overwhelmingly condemned discrimination from school staff and pupils against LGBTQ+ youth and youth with LGBTQ+ parents. Many schools (49.2%, n=61) made specific reference to the DE Circular 2010/01, which emphasises young people’s right to learn in a “safe environment” and to “not be treated any less favourably on grounds of their actual or perceived sexual orientation”. In addition, the majority of schools also outlined their zero-tolerance approach to homophobic, transphobic, and queerphobic “bullying” and “abuse”, often within their anti-

bullying policies. In addition to condemning peer-to-peer discrimination, several schools also highlighted the responsibility of teachers to “counteract prejudice” and not to “view teenage LGB attraction and gender identity as a passing phase”, as outlined in the CCEA guidance.

Furthermore, several schools (although less) took a more active approach to preventing and reducing this discrimination by claiming to actively teach pupils how to “challenge prejudicial attitudes” and “develop the skills to challenge sexist, homophobic, racist and disablist language and behaviour”, beyond simply including an anti-discrimination policy. For example, one [school] stated that its RSE lessons will “help children to realise the nature and consequences of discrimination, teasing, bullying and aggressive behaviours (including cyber-bullying), use of prejudice-based language and how to respond and ask for help.” Another [school] wrote that “all pupils should be educated to address any prejudice or negative assumptions they hold with regards to LGBTQI+ people or issues.”

In addition to addressing discrimination towards sexual orientations and gender identities, most schools (81.5%, n=101) claimed to support “inclusivity” and “diversity” in their RSE policies. Most often, schools mentioned this value within the context of “respect” for all individuals “regardless of” sexual orientation and gender identity. Schools also sought to provide pupils with an “awareness” of and “respect” for diverse family structures, including acknowledging that some children may have LGBTQ+ parents.

Despite claiming to uphold these notions of inclusivity and diversity, we found that schools often contradicted these values in various ways. First, many schools promoted and protected pupils’ rights to holding “diverging opinions” and used the notion of ‘tolerance’ rather than rights. These statements often came directly after schools’ statements about remaining inclusive to different sexual orientations, gender identities and family structures—implying that young people are permitted to hold prejudiced opinions towards people of different sexual orientations and gender identities, so long as they are held in a “peaceful manner”. For example, one [school] writes: “Respect of all people regardless of sexual orientation will be promoted, along

with the right of all members of the school community being allowed to have different views from others without aggression or antagonism”.

Second, most schools either explicitly or implicitly promoted heteronormativity in their RSE policies. Approximately one third of schools explicitly stated that their school would teach pupils that heterosexual relationships was the “main” or “ideal” context for sexual intimacy, with one school stating that it was “the most desirable option for a person’s psychological development”. Some schools even outline their beliefs that “homosexuality” is wrong. For example, one [school] writes that “the belief that homosexual acts are against the nature and purpose of human relationships will be presented to pupils”.

In an attempt to balance these principles, schools often contended that they would still teach young people to “respect” people with diverse sexual orientations and relationships, or at the very least not actively discriminate against them—with one school stating that “it is not Christian to despise those of a different sexual orientation”. Teachers are also told to practise “sensitivity” when prioritising heterosexuality in their RSE materials, “to avoid causing hurt and offence to [pupils] and their families, and to encourage the development of their sense of worth”. While these schools show an attempt to be inclusive and respectful towards people of different sexual orientations, this does not negate the fact that actively promoting heterosexuality as the ideal in their RSE curriculum content contributes to the marginalisation and stigmatisation of non-heterosexual identities and experiences.

Finally, within the school policies there was a significant gap in the inclusion of LGBTQ+ content in schools’ RSE curricula, as well as an affirmative and positive approach to sexual and gender diversity. Only approximately one third of schools listed gender and sexual identity in their curriculum content. Very few schools referenced the legalisation of same-sex marriage in Northern Ireland. There are however *some* schools that do demonstrate the inclusion of LGBTQ+ content in their RSE curricula. For example, one [school] wrote: “we wish to promote a positive view of sexual orientation and gender identity which in turn can help to raise the self- esteem of LGBTQI+”.

pupils". They further stated that they aim to "provide pupils with LGBTQI+ inclusive Relationships and Sex Education (RSE), opportunities to discuss sexuality, sexual orientation and gender identity, and including LGBTQI+ people and themes in the RSE, PD and the wider curriculum where relevant.

Gender Inequalities and Relations

4.3.5 In analysing schools' approach to education on gender inequalities and relations, the contracted experts found that work should be done to ensure that school policies promote gender equity, address gender-based violence, stereotypes and misogyny; and avoid the promotion of sexual double standards around sexual practices, including shaming and victim blaming narratives. They reported that:

The majority of schools include references to teaching gender-related topics, such as gender stereotypes, gender equality, and feminism in their policies. In particular, 26 schools quote the CCEA's definition of RSE, which makes reference to "gender issues":

"Relationships and Sexuality Education (RSE) is a lifelong process which encompasses the acquisition of knowledge, understanding and skills; and the development of attitudes, beliefs and values and personal and social relationships and gender issues."

Despite teaching these important topics, schools otherwise take a gender-blind approach in their policies, and thus fail to challenge and indirectly encourages harmful gender norms and inequalities. For starters, schools fail to account for the gendered context of sexual and gender-based violence. Most schools' policies reference types of violence that women and girls overwhelmingly experience, such as "sexual harassment", "sexual abuse", "rape", "domestic violence", "female genital mutilation (FGM)", and "sexual exploitation". While the majority of schools have policies on how to respond to disclosures of sexual and gender-based violence, they fail to account for, and challenge, the societal gender inequalities that often underpin these forms of violence. It is also notable that tech facilitated gender-based violence is absent from these discussions despite

social media and online networks constituting a significant component of young people's everyday lives.

Furthermore, schools indirectly contribute to the societal victim-blaming and slut-shaming of women and girls. For example, the majority 54% of schools (n=67) claim to teach young people strategies to "protect themselves" from sexual and other forms of violence and harassment. Several of these schools specifically reference the Department of Health, Social Services and Public Safety's Stopping Domestic and Sexual Violence and Abuse in Northern Ireland's (2013) statement that RSE "will also help them develop appropriate behaviour to protect themselves" (CCEA, 2015, p. 2). This quote is also featured in the CCEA primary RSE guidance document. By way of contrast, very few schools emphasised the importance of preventing others from perpetrating this violence. By focusing on preventing young people from becoming victims, rather than preventing perpetrators from engaging in violence, schools inadvertently contribute to the ideology that young people (most often girls) are responsible for their own victimization (e.g., due to their choice of clothing).

There were only a few schools who did challenge these harmful societal norms surrounding gender-based violence. For example, [three schools] included the following quote:

"It is also important that the pupils are encouraged to challenge the 'blame' that can be attached to victims of sexual abuse and domestic and/or sexual violence in a relationship, particularly female victims because of factors such as how they choose to dress, or their alcohol intake. Through Relationships and Sexuality Education, pupils will develop a deeper knowledge and understanding of personal safety, and the importance of having equal, mutually respectful, consensual, non-exploitative and non-violent relationships. Pupils will also develop the resilience to work their way through difficult situations, and find out where to access help and support."

4.4 Findings Relating to the CCEA

4.4.1 Along with obtaining schools' RSE policies, the NIHRC also requested that schools provide answer a number of questions in relation

to the provision of RSE. This included advising on whether the school utilised the CCEA RSE Hub and, if so, which resources they used. In relation to school engagement with CCEA resources, the independent experts reported that:

Despite its lack of legislative power, we found that the majority of schools (87.7%, n=114) directly referenced the CCEA guidance in their RSE policies. Of the 166 schools who responded to our questionnaire, 60.8% (n=101) responded that they used the CCEA RSE hub resources. The quantity and type of resources used, however, varied from school to school. For example, one school stated that they “use or plan to use all CCEA resources”, while another school stated they merely use the hub as a point of reference, and “do not make direct use of materials”. Furthermore, when asked which CCEA hub topics covered in the CCEA RSE hub materials used, many schools were vague in their responses. Namely, schools described that they used a “variety” or “range of” hub materials that were selected “on an ad-hoc basis” or “at the discretion of the teacher”. Some schools, however, did claim to cover all RSE hub priority areas and materials.

This inconsistency in schools’ use of the hub’s materials, however, aligns with the intended purpose of the CCEA RSE hub. The hub’s introductory webpage states that it is “designed to offer schools flexibility in their approach to the delivery of RSE. This approach will enable all schools to deliver effective programmes in line with their ethos and RSE policy.” In addition, at the beginning of each priority area’s units, it writes: “you should review these resources and links before use to check if they are . . . in line with your school’s ethos and RSE policy.”

4.4.2 They further analysed the content of the CCEA Post-Primary RSE Guidance and the RSE Hub with specific consideration to information on access to abortion, contraception, sexual orientation and gender identity, and gender inequalities and relations.

Abortion

4.4.3 In relation to resources on access to abortion services the contracted experts found that the RSE Hub provides several resources on access to abortion that are scientifically accurate. However, they

concluded that more comprehensive materials are required. They reported that:

The CCEA guidance for post-primary schools only mentions 'abortion' once, and this is within the context of teaching 'sensitive issues'. Here, the CCEA (2015) notifies schools that the topic of abortion has "the potential to be sensitive" and reminds them that they "may wish to deal with such issues differently, depending on their distinctive ethos" (p. 19). While they later promote the inclusion of sensitive topics in schools' RSE curricula and policies, this recommendation is non-statutory and thus non-binding, as previously mentioned. Importantly, this guidance has also not been updated since the recent decriminalisation of abortion in Northern Ireland.

Despite the limited reference to abortion in the CCEA guidance, we found several sources on the RSE hub on abortion that were scientifically accurate. In particular, in 'The Impact of Loss' unit of the RSE hub's 'Teen Parenting' priority area, the 'Teaching Notes' provides teachers with a link to the Royal College of Obstetricians and Gynaecologists and the Faculty of Sexual and Reproductive Healthcare's 'Abortion and Abortion Care Factsheet'. This factsheet provides updated, evidence-based, scientifically accurate information on the laws on abortion in Northern Ireland, as well as information on women and girls' rights to accurate and impartial information on abortion and confidential treatment, types of support available, and the timing, price, and safety of abortion in England, Scotland and Wales (but not NI). This resource also presents scientific data to dismantle several myths related to abortion, with the goal to challenge stigma and misinformation on the topic. For example, it writes: "current evidence suggests that the foetus is unable to feel pain under 24 weeks" and "abortion does not cause mental illness" (FSFRH, 2021, p. 7). In addition to this resource, the 'Teaching Notes' of 'The Impact of Loss' unit also list the current laws surrounding abortion in Northern Ireland, and states that: "women can have an abortion without their partner's agreement" and "men do not have the legal right to make their partner have an abortion or to stop them from having an abortion."

Aside from this teaching note, there are two key activities in this unit that focus on abortion. First, there is an activity that encourages young people to learn the NHS' definition of abortion. The second activity on this topic focuses on the "debate on abortion" (p. 7), where participants are asked to discuss the positive and negative consequences of having an abortion. An extension of this activity is the 'Walking Debate' where students are asked whether they agree or disagree with the following statements: "Abortion is always wrong," "the foetus's right to life takes priority over the mother's right of choice about her own body," and "the mother has the right to choose" (p. 7). Asking students to voice their opinions on abortion and validating anti-abortion perspectives runs the risk of contributing to the shame and stigma associated with abortion and could be particularly damaging for those in the room who have experienced or are contemplating getting an abortion. Such approaches are not recommended within contemporary RSE practice.

Overall, the RSE hub requires more comprehensive materials on abortion (aside from one link, one 'teaching note' and two activities). Furthermore, the hub fails to provide education on access to abortion, as required by the UN CEDAW Committee. While it does provide a link to the NHS page on abortion, which provides several options for accessing abortions and a search tool for finding abortion clinics, this resource does not apply to the Northern Ireland context. Therefore, by failing to provide any resources on accessing safe abortion, the RSE hub contributes to discrimination against women, and potentially increases vulnerabilities and risk-taking behaviour for girls and women who are faced with unintended pregnancies.

Contraception

4.4.4 In relation to information on contraception, the independent experts found that there were a number of resources on this topic. However, some resources promote an abstinence only model and there is a tendency towards adopting a risk-focused approach. They reported that:

The CCEA's RSE hub has a dedicated priority area entitled "Developments in Contraception", which covers a range of resources on contraception options, beyond abstinence, most of which are scientifically accurate and age-

appropriate. However, the unit “What is Contraception and How Do I make the Right Choice?” offers three resources that align with abstinence-only models. These resources are also the first resources listed in the guidance on contraception. These organisations treat abstinence as the only legitimate strategy to preventing pregnancy and fail to outline the various options available for young people to avoid the risk of STIs and unintended pregnancy. For example, rather than promoting the use of condoms as an alternative means of reducing transmission of STIs, one resource discourages condom use by claiming that “they are not nearly 100% effective” and “don’t prevent against HPV, gonorrhoea, or genital herpes among many other STDs.”

Our medically qualified expert responded that: “this is a mis-representation of the fact that condoms are not 100% effective. In fact, condoms, if used correctly, are extremely effective in preventing STIs. It is true that you can still contract STIs even if you use a condom, including warts and herpes, but you will still significantly reduce your risk by using one”. This resource thus fails to provide information on the dual protection against pregnancy and STIs provided by condom use, which is an important component of CSE (UNESCO, 2018).

Unlike the ‘rights-based approach’ to adolescent sexuality, which accounts for the spectrum of risks and opportunities associated with adolescent sexual activity (Berglas, 2014), we found that the hub overwhelmingly focused on the risks associated with sexual activity, i.e., teenage pregnancy, STIs, gendered violence and harassment. This fits with the “sex-as-risk paradigm” (Schalet 2011), which treat sex education as simply a tool for risk and harm prevention. This risk-focused lens was evident in the contraception priority area of the hub. In particular, the three abstinence-only resources only emphasise the negative outcomes of sex, including STIs, pregnancy, and emotional repercussions.

Sexual Orientation and Gender Identity

4.4.5 In relation to sexual orientation and gender identity, our independent experts found that there are a wide range of resources that

align with a comprehensive approach to sexuality education. They reported that:

The CCEA guidance reminds school staff and teachers not to view “teenage LGB attraction and gender identity as a passing phase, as this would in effect trivialise an important part in the development of these young people’s lives, and potentially have an ongoing negative impact on them” (CCEA, p. 15). In addition to preventing LGBTQ+ prejudice among school staff, the CCEA guidance (2015) points to the responsibility of schools to challenge homophobic bullying and discrimination among pupils at the “whole-school level” and to do so “as robustly as they would with any other form of bullying” (p. 15). The CCEA consequently asks for schools to develop policies that address homophobic bullying, quoting the ECNI’s (2019) ‘good practice’ measures for addressing homophobic bullying in schools. Examples of good practice include: “updating anti-bullying policies to cover all equality issues including sexual orientation, transgender bullying, sexual harassment and bullying for other reasons relating to sex, gender or relationships” and “dealing with all complaints promptly, seriously, sympathetically, confidentially and effectively” (p. 11-12).

Aside from preventing discrimination and prejudice, schools are encouraged to promote inclusivity and diversity in their school cultures, policies, and curriculum content. The CCEA outlines several ways in which schools can promote better inclusivity and diversity in their RSE policies and curriculum content. Section 1 of the ‘Relationships and Sexuality Education Guidance’ states that RSE is important because it “promotes a better understanding of diversity and inclusion” (CCEA, p. 5). While not legally mandated, the guidance emphasises how inclusive RSE can “help to promote a positive view of sexual orientation and gender identity, which in turn can help raise the self-esteem of young people who may feel different” (p. 15). In Section 3 of the guidance, entitled ‘Delivering Inclusive Relationships and Sexuality Education’, the guidance writes: “a young person’s sexual orientation and/or gender identity is a central and significant part of who they are and how they see themselves in relation to others” (p. 15). The guidance (2015) goes on to explain that “schools should handle the issue of sexual orientation and gender identity in a

sensitive, non-confrontational and reassuring way”, and should teach pupils to be respectful of the “diversity of family life in today’s society, particularly the fact that some children may have gay, lesbian or bisexual parents or carers” (CCEA, p. 6).

The RSE hub has a specific priority area dedicated to ‘LGBTQ+ Matters’, which features units, guidance, background information, teaching resources, trainings, and organisations. In the description of this priority area, the CCEA writes:

“Learning about LGBTQ+ matters should cover: the importance of valuing diversity and the uniqueness of individuals, including diversity in sexual attraction and gender identity; the terms associated with sex, sexuality, gender identity and transgender, and an understanding of what they mean in real life; that homophobic, biphobic and transphobic bullying is unacceptable and how to challenge it; and how young LGBTQ+ people can access support.”

This inclusion of content on young people’s diverse identities and sexual attractions aligns with a comprehensive approach to sexuality education. Furthermore, this priority area covers a range of resources generated by established and well-regarded LGBTQ-led organizations, such as Brook, Stonewall, Cara-Friend and The Rainbow Project, on LGBTQ+ identities, ‘coming out’, HBT bullying, gender identity, transgender people in the media, and LGBTQ+ history and pride.

Gender Inequalities and Relations

4.4.6 In relation to gender inequalities and relations, the independently contracted experts found that while the CCEA provides some resources that challenges gender stereotypes, there are other resources that reinforce harmful gender norms. They reported that:

The CCEA (2015) guidance for schools lacks clear strategies for schools to address gender inequalities and gender-based violence. The guidance emphasises article 34 of the UN CRC which protects young people from sexual abuse and exploitation. While the guidance accounts that “female gender” can increase the vulnerability of a young person, this is mentioned among a list of factors including: “low

self-esteem, looked-after children, young people living in difficult home circumstances, substance misuse, being bullied at school, and disengagement with school – the majority of child sexual exploitation victims live at home (CCEA, 2015, p. 7). It further states that “all children and young people, both male and female, are at risk” (CCEA, 2015, p. 7). This is indicative of a gap in critical discussion of the influence of gender norms and inequalities in young people’s experiences with sexual violence.

With that being said, the guidance does point out the issues with victim-blaming girls and women. The CCEA (2015) encourages pupils to “challenge the ‘blame’ that can be attached to victims of sexual abuse and domestic and/or sexual violence in a relationship, particularly female victims because of factors such as how they choose to dress, or their alcohol intake” (p. 7). The guidance then goes on to explain that RSE should help pupils to “develop a deeper knowledge and understanding of personal safety, and the importance of having equal, mutually respectful, consensual, non-exploitative and non-violent relationship” (CCEA, 2015, p. 7-8). Finally, the guidance includes strategies for preventing harassment and sexist bullying. The CCEA (2015) writes: “specific reference should be made to . . . cyber bullying, sexual harassment and bullying for other reasons relating to sex, gender, or relationships” (p. 25).

While there is no specific priority area that focuses on gender, there are several mentions of gender throughout the RSE Hub. In the “Gender Identity” unit of the “LGBTQ+ Matters” priority area, it writes that “pupils are learning about: stereotypes and characteristics that may be assigned to a person based on their gender; problems associated with stereotyping; the main terms linked to gender; how to cope with and respond to negative questions and comments about gender; strategies to make school and society more inclusive. It then has two activities that aims to teach and challenge gender stereotypes. It also includes a link to the NSPCC lesson plan entitled “Gender Stereotypes” which “challenges gender stereotypes and can help pupils to identify, manage and respond to gender-based bullying”.

Furthermore, in the “Teenage Pregnancy” priority area, it emphasises the importance of teaching boys about pregnancy, parenting and the complexities of bringing up a child and the implications for their own lives. It further writes: “Taking a gender-transformative approach ... to RSE on the topic of teen pregnancy addresses the often-neglected role and perspectives of teenage men. It encourages reflection and discussion, challenges gender norms and power inequalities between different genders, and goes beyond the gender stereotypes surrounding teen pregnancy. It also highlights the importance of boys and men in the female reproductive health and rights agenda, and how unplanned pregnancy impacts on them.”

While the CCEA Hub includes “Consent” and “Domestic and Sexual Violence and Abuse” as priority areas, there are only a select few instances where they include a discussion of gender in this context. In the “Consent Links” and “Healthy, Positive Sexual Expression and Relationships Links”, the Hub includes a link to the NSPCC Pornography lesson plan, which “explores how pornographic material is not representative of real sex and that it can give misleading information about consent and gender roles”. In the “Domestic and Sexual Violence and Abuse Links” and “Healthy, Positive Sexual Expression and Relationships Links” it includes a link to the NSPCC resource “Secondary AGENDA: Supporting young people to raise awareness of gender inequalities, sexual harassment and violence. It also includes links to support services available to young people who have experienced sexual violence. Furthermore, in Unit 1 of “Domestic and Sexual Violence and Abuse” it writes: “Usually (but not always) it is the man who hurts the woman”.

Furthermore, the Hub generally emphasises the “risks” of sexting with the goal to prevent young people from engaging in sexting. Given the fact that it is predominantly girls who are at risk of having their nude images shared without their consent, what is termed image based sexual abuse (Walker and Sleath, 2017; Ringrose et al., 2021), this messaging to young people to not send nudes is particularly targeted at girls. Furthermore, it runs the risk of blaming girls for their own victimization, as it contributes to the shame in sending the nude image in the first place. For example, in Unit 3 on “Sexting”, it gives the following

advice: “Remember, once the image is out there you lose control over who has access to it if it is shared” and “keep in mind that if your relationship breaks up, that person has the image of you and could use it to blackmail you or get back at you”. Here, the guidance generally fixates on preventing victimization, rather than perpetration, which could serve to stigmatize those young people (often girls) whose image had been shared non-consensually. As a result, these resources could be improved if they focused more on the role of the perpetrator, and the influence of gender norms (including masculinity norms) and the provision of support to victims, as well as an emphasis on consent in this context.

Finally, there were two instances where the hub promoted harmful gender norms surrounding contraception. In Unit 3, called “What is the Future of Contraception?”, the unit outlines several developments in contraception research. Among a list of new contraception options, they describe a form of male birth control, delivered as a pill, a nasal spray or a cream that men can take several hours before sexual intercourse. They mention: “However, its reliability would depend on the male using this contraception in the proper way, which may present trust issues for their partner.” This is indicative of a gendered bias, as trust issues could also be mentioned when it comes to female birth control, but the responsibility of contraception is traditionally placed on the woman or girl, so it is assumed that she will be ‘trustworthy’. Furthermore, this unit also outlines the unwanted side effects of male birth control, namely low sex drive and problems with ejaculation. Of note, the contraceptive implant for women, which is also listed on this page, can lead to low sex drive, but this is not mentioned. This represents a common societal trend of prioritising the health and sex drive of men over women in modern medicine and contraception research (Allen, 2007).

4.5 Pupils’ Voice and Rights

4.5.1 The independent experts noted that the CCEA (2019) guidance recommends that school policies include references to sections of the UN CRC, which demonstrates a clear intent of the CCEA and Department of

Education NI for schools to promote the human rights of young people. However, they concluded that:

Much guidance appeared to imagine the student to be passive and deficient – unknowledgeable, potentially reckless, in need of protection from bullying, peer pressure, media influence, of guidance in moral values that they are assumed to lack. Where they were considered as 'responsible' this was often conceived in punitive terms about accepting consequences of sexual activity, such as parenthood. Too rarely was the child imagined as a rights-bearer seeking relationships, who could actively contribute to RSE and make independent informed decisions, or even as deserving of adult interest in their lives and cultures.

4.5.2 They recommended that:

Schools should engage pupils as partners in co-developing and evaluating RSE. Consulting students should help ensure that RSE is 'student-sensitive', appropriate and meets the needs of young people in the context of their actual relationship and sexual cultures.

4.6 Summary

4.6.1 As set out in our legal and policy framework post primary schools have broad discretion to deliver RSE. There are some positive examples of schools exercising this discretion to provide comprehensive and scientifically accurate RSE. However, based on our analysis of evidence provided, in the majority of schools this is not the case. There is clearly a need for schools to develop their capacity to deliver RSE. Whilst a number of issues need to be addressed, the development of the CCEA hub is a positive step and can provide a basis for enhancing the capacity of schools to deliver RSE.

4.6.2 The involvement of external providers can ensure access to specialist insights. However, it is important that schools maintain oversight and ensure that the overall provision of RSE is comprehensive and scientifically accurate.

Chapter 5: Conclusions and Recommendations

5.1.1 In this report, we have explored the legal obligations placed on the Secretary of State NI by virtue of Northern Ireland (Executive Formation etc) Act 2019. This has involved an exploration of the requirements set out in the UN CEDAW Committee recommendation 86(d) and of relevant international human rights standards. To inform our analysis we have reviewed relevant policies and materials in post-primary schools throughout NI. Informed by this analysis we have developed a number of recommendations.

5.1.2 In developing these recommendations, the NIHRC has noted that the policy framework governing the provision of RSE in NI is complex with a variety of approaches in schools throughout NI. The absence of a NI Assembly has made the development of recommendations more complicated. Furthermore, it has contributed to a lack of reasoned consideration of measures required to bring about implementation of the 2019 Act and recommendation 86(d).

5.1.3 Whilst the 2019 Act places a legal obligation on the Secretary of State NI, the NI Office has indicated to the NIHRC that the preferred option is for the Department of Education NI to initiate the reforms required to bring about implementation. The NIHRC appreciates that there are significant advantages to the Department of Education NI bringing forward the necessary reforms. However, as the NIHRC has set out within this report the implementation of the UN CEDAW Committee recommendation 86(d) is necessary to ensure that the rights of children and young people are adequately protected. Furthermore, the NIHRC notes that the 2019 Act requires the Secretary of State to carry out the duties imposed by section 9 of the 2019 Act “expeditiously, recognising the importance of doing so for protecting the human rights of women in NI”.¹⁵⁰ As time passes the advantages offered by a reform programme initiated by the Department of Education NI are outweighed by the number of children and young people whose rights are left unfulfilled.

5.1.4 Noting the passage of time, the NIHRC considers that the Secretary of State NI should immediately begin the process of developing options for reform of the Minimum Content Order (recommendations 1 and 2). Once a preferred option is developed the NI Office, alongside the Department of Education NI, should seek to address the recommendations in this report relating to implementation (recommendations 3,4,5,6, and 7). The NIHRC notes that the Department of Education NI is already taking a number of steps to support schools in

¹⁵⁰ Section 9(7).

developing their capacity to deliver RSE. We have made several recommendations for further actions to support schools to meet their obligations to deliver comprehensive RSE (recommendations 8,9,10 and 11). Recommendation 5 relates to monitoring by the ETI, in addition to this recommendation the NIHRC makes two broader recommendations relating to the policy framework governing RSE provision in NI (recommendation 13 and 14).

5.1.5 The NIHRC has been conscious since the outset of this investigation that the policy framework governing the provision of post primary education is at a time of potential change. The New Decade New Approach Agreement made a number of commitments to the review and reform of education in NI.¹⁵¹ Although not making specific reference to the need for reform of RSE, the commitments remain relevant. The agreement includes a commitment to improvements and reforms to deliver a better and more efficient education system, including an external, independent review of education provision.

5.1.6 The Independent Review of Education commenced in October 2021. The appointed panel, chaired by Dr Keir Bloom, delivered an interim report in October 2022 and a final report is expected by April 2023. Whilst the issue of RSE is not included in the terms of reference for this review the NIHRC engaged with officials responsible for supporting the Review who confirmed that the issue of RSE had been raised by learners and teachers.¹⁵²

5.1.7 In preparation for this investigation it was noted that the need for greater legal prescription for the provision of RSE in schools throughout NI had been acknowledged by the Gillen Review. Throughout the time in which this investigation has taken place the need for more specific RSE provision has been raised by independent experts appointed by NI Executive, by academics and by the general public.

5.1.8 The Department for Communities, for the development of the Gender Equality Strategy and the LGBTQI+ Strategy, adopted a co-design approach, which included appointing two Expert Advisory Panels. The Expert Panels was tasked with gathering evidence to inform the respective strategies. The Expert Panel Reports were published by the Department for Communities in March 2021. Both Expert Panels recommended that inclusive RSE should be taught in a comprehensive and standardised way across all schools and that the subject should not be dependent on school ethos.¹⁵³ The publication of the strategies have

¹⁵¹ NI Office, 'New Decade, New Approach' (NIO, 2020).

¹⁵² Independent Review of Education, Interim Report, October 2022.

¹⁵³ Department for Communities, 'Gender Equality Strategy Expert Advisory Panel Report', (DfC, 2021) and Department for Communities, 'LGBTQI+ Strategy Expert Advisory Panel – Themes and Recommendations', (DfC, 2021).

since been delayed and it is unclear whether the recommendation of the Expert Panel Reports will feature within the final strategies.

5.1.9 The Department of Health and Department of Justice in their report on a consultation into a new domestic and sexual abuse strategy noted that consultees highlighted the “need for mandatory age-appropriate Relationship and Sexuality Education (RSE) dealing with healthy/unhealthy relationships, plus all types of relationships and sexual orientation. This was one of most frequently raised issues”.¹⁵⁴

5.1.10 In January 2023 the Ulster University (UU), Queen's University Belfast (QUB) and the Northern Health Trust published a report entitled ‘Young People's Understanding of Coercive Control’.¹⁵⁵ The report recorded that there was limited evidence of coercive control being taught through RSE in schools in NI.

5.1.11 The NIHRC considers that the case for reform is compelling and hopes through publication of this report to encourage action by government.

Legal Reform: The Education (Curriculum Minimum Content) Order (NI) 2007

5.1.12 The NIHRC’s analysis has clearly demonstrated that the only way to ensure that RSE provision is a compulsory component of the NI curriculum is to amend the Minimum Content Order. The introduction of Departmental Circulars is insufficient to meet the requirements of the CEDAW Committee recommendation 86(d).

5.1.13 The NIHRC notes that the Minimum Content Order sets out educational requirements in broad terms. To satisfy the requirement that RSE is comprehensive, human rights standards indicate that it must include a broad range of issues including, but not limited to, gender relations, LGBTQIA+ issues, disability and information on harmful practices such as child, early and forced marriage and female genital mutilation/cutting. Education programmes should be non-judgemental and should take care not to reinforce harmful and demeaning stereotypes. Whilst the NIHRC appreciates that the development of necessary amendments to the Minimum Content Order may be complicated this

¹⁵⁴ Department of Health and Department of Justice, ‘Call for Views Summary Report a New Domestic and Sexual Abuse Strategy’, (DoH/DoJ, 2022), at 4.

¹⁵⁵ Susan Lagdon Et Al, ‘Young People's Understanding of Coercive Control in Northern Ireland’, (NHSCT, QUB and UU, 2023).

should in no way dissuade the NI Office or Department of Education NI from taking the necessary steps to guarantee a child's right to education.

1. The NIHRC recommends that the Education (Curriculum Minimum Content) Order (NI) 2007 is amended to reflect the CEDAW Committee recommendation 86(d) to "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."¹⁵⁶

5.1.14 The NIHRC appreciates that the legislative process of amending the Minimum Content Order is not clear at this moment in time. However, the NIHRC considers that the process of developing legislative amendments can begin immediately. During this investigation the NIHRC has noted a variety of views on the most suitable amendment to the Minimum Content Order. One possible approach is to amend the Minimum Content Order at Key stages 3 and 4 to designate RSE as an Area of Learning. Alternatively, RSE could be designated as a contributory element under Learning for Life and Work. There will also be a need to review existing references to RSE.

2. The NIHRC recommends that the NI Office, with the support of the Department of Education NI, develop options for reform of the Minimum Content Order. Draft amendments should be developed to achieve the aim of ensuring that all elements of comprehensive RSE are delivered within every school in NI. The amendments should be sufficiently prescriptive to guarantee a standard level of RSE throughout all schools in NI.

Legal Reform: Implementation

5.1.15 The NIHRC notes that the policy framework governing the provision of post primary education in Northern Ireland affords a significant degree of discretion to individual schools.

5.1.16 The introduction of any additional elements to the statutory curriculum will require significant planning to ensure effective delivery in schools. In preparation for the enactment of amendments to the Minimum Content Order, a review of pre-existing Departmental guidance to schools

¹⁵⁶ CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the United Kingdom of Great Britain and Northern Ireland under Article 8 of the Optional Protocol to the UN CEDAW Report of the Committee', 6 March 2018, at para 86(d).

relating to RSE will be required. As set out in our findings chapter a school's RSE policy is currently a key internal document guiding delivery of RSE provision. In light of their new obligations to deliver comprehensive, age appropriate and scientifically accurate RSE, many schools will have to amend their existing policies.

3. The NIHRC recommends that the NI Office and Department of Education NI develop an implementation plan to accompany the proposed reforms to the Minimum Content Order. This should include the development of a Circular to schools providing guidance on the key elements of 'comprehensive' RSE. This should be developed following engagement with relevant stakeholders and experts to ensure that RSE programmes are inclusive and meet the educational needs of young people with diverse gender and sexual identities, ethnic minority students and disabled students.

4. The Department of Education NI should support schools to amend their policies and procedures relating to RSE to ensure they fully take into account any reforms to the Minimum Content Order.

5.1.17 Through its inspection of child protection and safeguarding policies and practices, the ETI routinely assesses whether schools have an appropriate policy for the delivery of RSE within the curriculum. Continued monitoring of the implementation of amendments to the Minimum Content Order will be crucial in ensuring effective compliance with UN CEDAW Committee recommendation 86(d).

5. In line with the pre-existing arrangements for monitoring the delivery of the curriculum it is recommended that the ETI amend their oversight arrangements to ensure that schools are appropriately delivering the new elements of the Minimum Content Order. The ETI should develop new arrangements for engaging with children and young people during their assessment of RSE provision.

5.1.18 The following questions are offered as examples of what might be helpful to ensure effective implementation.

- (1) How is the age appropriateness of RSE determined within current provision and by whom?
- (2) How is it ensured that RSE is comprehensive? Who assesses the comprehensiveness? How often?

- (3) How is the scientific accuracy of RSE ensured? Who assesses that and how often is it assessed/ reviewed? When was it last assessed and reviewed? Where is the evidence of this?
- (4) What aspects of RSE are covered in the current school curriculum?
 - How is this delivered?
 - By whom is this delivered?
 - Within what subject area is this delivered?
- (5) What aspects of RSE are covered in the current provision?
 - How is this delivered?
 - By whom is this delivered?
 - Within what subject area is this delivered?
- (6) If the services of external providers are utilised how do you review their resources and services? How do you ensure that the use of external providers leads to knowledge transfer to the permanent teaching staff ? How is the central role of the school assured ?
- (7) What aspects of Sexual and Reproductive Health Education are compulsory?
- (8) Does SRH education cover prevention of early pregnancy?
 - How this is delivered?
 - By whom is this delivered?
 - Within what subject area is this delivered?
- (9) (a) Does RSE education cover access to abortion?
 - How is this delivered?
 - By whom is this delivered?
 - Within what subject area is this delivered?

5.1.19 The NIHRC's independent experts found that, within school policies, there is limited consideration of children and young people as rights-bearers who can actively contribute to RSE. As highlighted within the Human Rights Framework chapter, the UN CRC Committee has recommended that the State establish structures for the meaningful participation of young in designing laws, policies and programmes that

relate to sexual and reproductive education.¹⁵⁷ Engaging with students should help ensure that RSE is 'student-sensitive', appropriate and meets the needs of all young people.

6. The NIHRC recommends that the implementation of the required amendments to the Minimum Content Order should be informed by the views and educational needs of young people. Care should be taken to ensure that engagement and consultation considers the needs of students with diverse gender and sexual identities, ethnic minority students and disabled students.

7. The Department of Education NI should support schools to include students in co-developing and evaluating RSE policies.

Developing the capacity of schools

5.1.20 The Department of Education NI has taken steps to enhance the capacity of the teaching profession in NI to deliver RSE. This has included engaging with those responsible for educating new entrants to the profession and funding continuing professional development for teachers. The NIHRC further notes that the Belfast Health and Social Care Trust has designed and delivered an RSE training course for teachers of post primary schools. However, our evidence gathering has indicated that further investment is needed to enhance the capacity of teachers. Furthermore, UK wide data has shown that 46% of teachers reported that they do not feel confident teaching RSE.¹⁵⁸

5.1.21 The NIHRC considers that teacher confidence and competence is critical to the effective delivery of comprehensive RSE. The NIHRC has identified potential actions that could enhance the capacity of teachers including:

- The introduction of an accredited training scheme for teachers responsible for RSE provision
- Placing a requirement on schools to nominate dedicated RSE lead teachers with protected hours for continuous professional development

¹⁵⁷ CRC/C/GBR/CO/5, 'Committee on the Rights of the Child Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', 12 July 2016 at para 31(a).

¹⁵⁸ NSPCC, 'Half of secondary school teachers don't feel confident delivering sex and relationships education'. Available at: [Half of secondary school teachers don't feel confident delivering sex and relationships education | NSPCC](#)

- A review of teacher training programmes and continuous professional development arrangements to assess how they are supporting teachers to deliver RSE
- Developing opportunities for teachers to share best practice in the delivery of RSE within and across schools

5.1.22 The NIHRC recognises that developing teacher competence and confidence is essential to the effective delivery of RSE and it is vital that members of the teaching profession are involved in the delivery.

8. The NIHRC recommends the Department of Education engage with teachers to invite their views on the supports they require to enable them to competently deliver RSE to post primary school children.

9. The NIHRC recommends that the Department of Education engage with teacher training colleges in Northern Ireland (Stranmillis University College, St Mary's University College, Queen's University Belfast and Ulster University) to ensure their programmes adequately educate newly qualified teacher in the provision of RSE. The Department of Education NI should also consider arrangements for the continuing professional development of members of the teaching profession, to ensure they are trained in the delivery of comprehensive, scientifically accurate RSE.

5.1.23 The role of external providers in delivering RSE has been considered as part of this investigation. While a lack of teacher confidence may contribute to the dependence of external providers, the NIHRC has also noted that external providers may be equipped to provide expertise on specific knowledge areas. However, this should not be as an alternative to a permanent supportive presence in a school. The NIHRC considers that there is a need to explore the ways in which schools are engaging with external providers in RSE and whether these relationships are effectively contributing to the knowledge base within individual schools.

5.1.24 During the investigation our experts analysed resources developed by external providers that were not in all cases considered to be comprehensive, pluralistic and objective. The NIHRC also identified examples of schools using resources developed by external providers which were outdated. This underscores the need for schools and teachers to develop their ability to critically assess materials and lessons provided by external providers. The NIHRC notes the publication of Procurement Guidance Note 05/21 which provides guidance to NI public authorities on

integrating human rights considerations into their public procurement exercises. This may inform bespoke guidance for schools on integrating human rights considerations into their procurement processes relating to RSE.

10. The NIHRC recommends that the Department of Education NI develop additional guidance for schools on how to establish effective partnerships with external RSE providers. This should include guidance on ensuring that programmes and resource are compliant with international human rights standards.

5.1.25 The UN CEDAW Committee has made clear that RSE should include scientifically based information relating to contraceptives and access to abortion services. Education programmes should be non-judgemental and should take care not to reinforce harmful and demeaning stereotypes. Our independently contracted experts have found that there are many resources available on the CCEA RSE Hub that align with a rights-based approach to RSE. However, further analysis is required to ensure there is comprehensive and scientifically accurate information on access to abortion services and that resources do not reinforce harmful norms and stereotypes.

11. The CCEA should review resources provided under the RSE hub to ensure they meet the requirements set out in CEDAW Committee recommendation 86(d).

Monitoring

5.1.26 Along with the monitoring of implementation by ETI, it is the NIHRC's view that the RSE curriculum itself should be subject to regular review and evaluation. The CoE Commissioner for Human Rights has recommended that RSE curricula be subject to regular reviews. The NIHRC is conscious of the need for continual monitoring of arrangements to ensure that reforms to the Minimum Content Order are properly implemented. The NIHRC notes that the NI Assembly Committee for Education has taken an interest in RSE provision.

12. The NIHRC recommends that the RSE Curriculum is regularly evaluated and revised by the Department of Education NI, in order to ensure that it is accurate, human rights compliant, and adapting to emerging needs. Regular updates should be provided to the NI Assembly Committee for Education.

5.1.27 In addition to the references to monitoring included in the UN CEDAW Committee recommendation the 2019 Act places a duty on the Secretary of State for NI to “ensure that the recommendations in paragraphs 85 and 86 of the CEDAW report are implemented in respect of Northern Ireland”. Noting the difficulties in securing changes to the Minimum Content Order, the NIHRC considers that through performing an oversight role the Secretary of State for NI can underpin monitoring arrangements developed by the Department of Education NI. Furthermore, through this role the Secretary of State NI and NI Office could share experiences elsewhere in the UK in the provision of RSE in post primary schools.

13. The NIHRC recommends that the Secretary of State NI put in place ongoing arrangements to monitor the effectiveness of any measures taken to bring about implementation of the UN CEDAW Committee recommendation 86(d) in NI.

5.2 Further Areas of Investigation

5.2.1 The NIHRC is conscious that this investigation focused on mainstream schools and did not examine policies and practices in special needs schools. As a result, the NIHRC has not made specific recommendations relating to special educational needs schools. However, the NIHRC considers that there is a need for specific actions to be taken to ensure that RSE provision in special needs schools complies with the UN CEDAW Committee recommendation 86(d).

5.2.2 The UN CEDAW Committee recommendation uses the term “adolescents” which include those aged up to 19. The compulsory age of education in Northern Ireland is 16. Reflecting this the Minimum Content Order does not prescribe a curriculum for those in post 16 education. Noting this the NIHRC has not made recommendations relating to post 16 education. The NIHRC does note that CCEA RSE hub includes resources relating to post 16 education. As the Department of Education NI takes steps to address the recommendations contained in this report it is important to consider the right to education of children in education aged 16 to 19.

5.2.3 In line with its statutory functions the NIHRC will continue to monitor developments relating to the provision of RSE in post primary schools in NI. The NIHRC will publish an assessment of progress against our recommendations in the summer of 2024.



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